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Contents

I *Acts whose publication is obligatory*

- ★ **Council Regulation (EEC) No 2793/92 of 21 September 1992 on urgent action for the supply of foodstuffs for the victims of the conflict in what was formerly Yugoslavia** 1
- ★ **Council Regulation (EEC) No 2794/92 of 21 September 1992 amending for the second time Regulation (EEC) No 4028/86 on Community measures to improve and adapt structures in the fisheries and aquaculture sector** 3
- ★ **Council Regulation (EEC) No 2795/92 of 21 September 1992 amending Regulation (EEC) No 3677/89 in regard to the total alcoholic strength by volume of certain quality wines imported from Hungary** 5
- Commission Regulation (EEC) No 2796/92 of 25 September 1992 fixing the import levies on cereals and on wheat or rye flour, groats and meal 6
- Commission Regulation (EEC) No 2797/92 of 25 September 1992 fixing the premiums to be added to the import levies on cereals, flour and malt 8
- Commission Regulation (EEC) No 2798/92 of 25 September 1992 opening a standing invitation to tender in Belgium, Germany, France, Greece and Italy for the free supply of common wheat flour and pasta to the victims of the conflict in what was formerly Yugoslavia (Zagreb) 10
- ★ **Commission Regulation (EEC) No 2799/92 of 25 September 1992 imposing a provisional anti-dumping duty on imports of deadburned (sintered) magnesia originating in the People's Republic of China** 15
- ★ **Commission Regulation (EEC) No 2800/92 of 25 September 1992 imposing a provisional anti-dumping duty on imports of magnesium oxide originating in the People's Republic of China** 23

★ Commission Regulation (EEC) No 2801/92 of 25 September 1992 amending Regulation (EEC) No 2006/80 determining the intervention centres for cereals	31
Commission Regulation (EEC) No 2802/92 of 25 September 1992 fixing the corrective amount applicable to the refund on rice and broken rice	33
Commission Regulation (EEC) No 2803/92 of 25 September 1992 opening a standing invitation to tender for the supply of medium grain milled rice to Albania	36
★ Commission Regulation (EEC) No 2804/92 of 25 September 1992 amending Regulation (EEC) No 891/89 on special detailed rules for the application of the system of import and export licences for cereals and rice	40
Commission Regulation (EEC) No 2805/92 of 25 September 1992 introducing a countervailing charge on fresh lemons originating in Argentina	41
Commission Regulation (EEC) No 2806/92 of 25 September 1992 fixing the maximum buying-in price and the quantities of beef bought in for the 77th partial invitation to tender under Regulation (EEC) No 1627/89	43
Commission Regulation (EEC) No 2807/92 of 25 September 1992 fixing the import levies on white sugar and raw sugar	45
Commission Regulation (EEC) No 2808/92 of 25 September 1992 altering the export refunds on cereals and on wheat or rye flour, groats and meal	47

II *Acts whose publication is not obligatory*

Council

92/477/EEC :

★ Council Decision of 21 September 1992 on the conclusion of the Agreement in the form of an exchange of letters concerning the provisional application of the Protocol defining, for the period 21 May 1992 to 20 May 1995, the fishing opportunities and the financial contribution provided for by the Agreement between the European Community and the Government of the Democratic Republic of Madagascar on fishing off Madagascar	50
Agreement in the form of an exchange of letters on the provisional application of the protocol defining, for the period 21 May 1992 to 20 May 1995, the fishing opportunities and the financial contribution provided for by the Agreement between the European Community and the Government of the Democratic Republic of Madagascar on fishing off Madagascar	51

Commission

92/478/EEC :

★ Commission Decision of 24 September 1992 concerning certain protection measures relating to swine vesicular disease in The Netherlands	52
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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 2793/92**of 21 September 1992****on urgent action for the supply of foodstuffs for the victims of the conflict in what was formerly Yugoslavia**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 43 and 235 thereof,

Having regard to the proposal of the Commission,

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

Whereas foodstuffs should be made available to the victims of the conflict in the former Yugoslavia in order to improve the food supply, taking account of the diversity of local situations, without however jeopardizing progress towards a system of supply based on market rules; whereas the Community has agricultural products in storage as a result of intervention operations and, in view of the situation on the market, priority should be given, in carrying out the proposed action, to disposing of these products; whereas, furthermore, provision should be made for mobilizing agricultural products on the Community market in response to specific requests; whereas regularization of the agricultural markets may also be achieved by supplying such products in processed form;

Whereas the cost of food aid operations carried out in favour of the victims of the conflict in what was formerly Yugoslavia since 16 October 1991 should be, finally, charged to the appropriations of the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section;

Whereas it is necessary to verify that the agricultural products supplied under this measure are used as intended;

Whereas, it is for the Commission to lay down detailed rules for the implementation of this measure;

Whereas the action proposed is essentially humanitarian in its aim and this Regulation should therefore also be based upon Article 235 of the Treaty,

Article 1

An emergency measure is hereby adopted under the conditions laid down in this Regulation, for the free supply to the victims of the conflict in what was formerly Yugoslavia of certain foodstuffs to be determined, available as a result of intervention operations.

In the case of specific requests for products not available from intervention, the products may be mobilized on the Community market.

Foodstuffs purchased on the Community market by the partners of the Commission as emergency aid since 16 October 1991 shall form part of this emergency measure.

Expenditure on this measure shall be limited to ECU 72,5 million entered in the general budget of the European Communities, taking into account the amount of ECU 35,0 million provided by Council Regulation (EEC) No 2139/92 of 23 July 1992 on urgent action for the supply of agricultural products for the victims of the conflict in what was formerly Yugoslavia⁽²⁾.

Article 2

1. The products may be supplied unprocessed or in processed form.

2. This measure may also relate to foodstuffs obtained through a commercial exchange of products from intervention storage against foodstuffs belonging to the same group of products.

⁽¹⁾ Opinion delivered on 16 September 1992 (not yet published in the Official Journal).

⁽²⁾ OJ No L 214, 30. 7. 1992, p. 8.

3. The supply costs, including transport and, where applicable, processing shall be determined by invitation to tender or, on account of the urgency of the situation, by direct agreement procedure.

4. The costs shall be reimbursed to the operators concerned in respect of the supply of products for which proof is provided provided that the products have reached the delivery stage laid down.

5. Distribution costs shall be covered in accordance with the usual emergency aid procedures.

6. Products consigned pursuant to this Regulation shall not qualify for export refunds and shall not be subject to the arrangements concerning monetary compensatory amounts.

Article 3

1. The Commission shall be responsible for executing the measure.

2. The detailed rules for the application of this Regulation shall be adopted in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92⁽¹⁾ or, as the case may be, in the corresponding articles of other Regulations on the common organization of the market.

Article 4

The Commission shall be responsible for supervising the delivery operations.

Article 5

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, 21 September 1992.

For the Council

The President

J. GUMMER

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

COUNCIL REGULATION (EEC) No 2794/92**of 21 September 1992****amending for the second time Regulation (EEC) No 4028/86 on Community measures to improve and adapt structures in the fisheries and aquaculture sector**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 42 and 43 thereof,

Having regard to the Act of Accession of Spain and Portugal, and in particular Article 155 (2) (a) thereof,

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

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

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

Whereas the new statistics available show that the five new Länder of unified Germany may, as far as aquaculture is concerned, be regarded as less-developed Community regions in respect of which Council Regulation (EEC) No 4028/86 of 18 December 1986 on Community measures to improve and adapt structures in the fisheries and aquaculture sector ⁽⁴⁾, provides for a higher rate of Community aid;

Whereas Ceuta and Melilla qualify as regions which may receive the maximum level of aid for aquaculture;

Whereas Regulation (EEC) No 4028/86 provides for the maximum level of Community aid for Mecklenburg-Vorpommern and for Ceuta-Melilla for measures aimed at the restructuring, renewal, and modernization of the fishing fleet;

Whereas the regions in question should, accordingly, be included in Annex III to Regulation (EEC) No 4028/86,

HAS ADOPTED THIS REGULATION:

Article 1

Annex III to Regulation (EEC) No 4028/86 is hereby replaced by the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 21 September 1992.

For the Council

The President

J. GUMMER

⁽¹⁾ OJ No C 127, 19. 5. 1992, p. 10.

⁽²⁾ OJ No C 241, 21. 9. 1992.

⁽³⁾ Opinion delivered on 1 and 2 July 1992 (not yet published in the Official Journal).

⁽⁴⁾ OJ No L 376, 31. 12. 1986, p. 7. Regulation as last amended by Regulation (EEC) No 3944/90 OJ No L 380, 31. 12. 1990, p. 1.

ANNEX

ANNEX III

**COMMUNITY AID AND FINANCIAL CONTRIBUTIONS FROM MEMBER STATES FOR
THE DEVELOPMENT OF AQUACULTURE AND STRUCTURAL WORKS IN COASTAL
WATERS****I. Aquaculture**

Regions	Community aid	Financial contribution from Member States
1. Greece, Andalusia, Canary Islands, Ceuta and Melilla, Castile-León, Castile-La-Mancha, Extremadura, Galicia, West of Scotland ⁽¹⁾ , <i>arrondissements</i> of Quimper and Lorient, Ireland, Northern Ireland, Mezzogiorno, Portugal, the French Overseas Departments, Veneto, Mecklenburg-Vorpommern, Brandenburg, Sachsen-Anhalt, Thüringen and Sachsen	40 %	between 10 and 30 %
2. Other regions	25 %	between 10 and 25 %

(¹) The 'West of Scotland' shall mean Dumfries and Galloway, the Western Isles, Orkney and Shetland, together with the districts of Caithness, Sutherland, Ross and Cromarty, Skye and Lochalsh, Lochaber, Argyll and Bute, Cunninghame, Kyle and Carrick.

II. Protected marine areas

Community aid : 50 %.

Contributions from Member States : between 10 and 35 %.

COUNCIL REGULATION (EEC) No 2795/92
of 21 September 1992
amending Regulation (EEC) No 3677/89 in regard to the total alcoholic strength
by volume of certain quality wines imported from Hungary

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine⁽¹⁾, and in particular Article 70 (2) thereof,

Having regard to the proposal from the Commission,

Whereas Article 70 (1) (b) of Regulation (EEC) No 822/87 prohibits importation of wine, other than liqueur or sparkling wine, for direct human consumption that has a total alcoholic strength by volume of more than 15 % ;

Whereas under Article 70 (2) (a) of Regulation (EEC) No 822/87 the Council, by Regulation (EEC) No 3677/89 of 7 December 1989 on the total alcoholic strength by volume and the total acidity of certain imported quality wines⁽²⁾, waived this prohibition in the case of certain Hungarian wines ; whereas this waiver expires on

31 August 1992 ; whereas pending the possible conclusion of a wine sector agreement between the Community and Hungary the waiver should be extended for a year from the abovementioned date,

HAS ADOPTED THIS REGULATION :

Article 1

In Article 1 (3) of Regulation (EEC) No 3677/89, '31 August 1992' shall be replaced by '31 August 1993'.

Article 2

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

It shall apply from 1 September 1992.

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

Done at Brussels, 21 September 1992.

For the Council

The President

J. GUMMER

⁽¹⁾ OJ No L 84, 27. 3. 1987, p. 1. Regulation as last amended by Regulation (EEC) No 1576/92 (OJ No L 180, 1. 7. 1992, p. 27).

⁽²⁾ OJ No L 360, 9. 12. 1989, p. 1. Regulation as amended by Regulation (EEC) No 2201/91 (OJ No L 203, 26. 7. 1991, p. 3).

COMMISSION REGULATION (EEC) No 2796/92

of 25 September 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 1738/92⁽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 1820/92⁽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 24 September 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 1820/92 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 26 September 1992.

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

Done at Brussels, 25 September 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 180, 1. 7. 1992, p. 1.⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.⁽⁴⁾ OJ No L 201, 31. 7. 1990, p. 9.⁽⁵⁾ OJ No L 185, 4. 7. 1992, p. 1.

ANNEX

to the Commission Regulation of 25 September 1992 fixing the import levies on cereals and on wheat or rye flour, groats and meal

(ECU/tonne)

CN code	Levy (*)
0709 90 60	148,73 (*) (*)
0712 90 19	148,73 (*) (*)
1001 10 10	166,33 (*) (*) (*)
1001 10 90	166,33 (*) (*) (*)
1001 90 91	138,42
1001 90 99	138,42 (*)
1002 00 00	154,39 (*)
1003 00 10	125,82
1003 00 90	125,82 (*)
1004 00 10	110,66
1004 00 90	110,66
1005 10 90	148,73 (*) (*)
1005 90 00	148,73 (*) (*)
1007 00 90	151,51 (*)
1008 10 00	50,67 (*)
1008 20 00	102,12 (*)
1008 30 00	48,56 (*)
1008 90 10	(*)
1008 90 90	48,56
1101 00 00	206,71 (*) (*)
1102 10 00	229,05 (*)
1103 11 10	270,62 (*) (*)
1103 11 90	222,92 (*)

(*) 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 (triticale).

(*) 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.

(*) 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.

(*) 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 2797/92

of 25 September 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 1738/92⁽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 1821/92⁽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 24 September 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 26 September 1992.

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

Done at Brussels, 25 September 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 180, 1. 7. 1992, p. 1.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 201, 31. 7. 1990, p. 9.

⁽⁵⁾ OJ No L 185, 4. 7. 1992, p. 4.

ANNEX

to the Commission Regulation of 25 September 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 9	1st period 10	2nd period 11	3rd period 12
0709 90 60	0	0	0	0,38
0712 90 19	0	0	0	0,38
1001 10 10	0	0	0	0
1001 10 90	0	0	0	0
1001 90 91	0	0,58	0,58	0
1001 90 99	0	0,58	0,58	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	0,38
1005 90 00	0	0	0	0,38
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	0,81	0,81	0

B. Malt

(ECU/tonne)

CN code	Current 9	1st period 10	2nd period 11	3rd period 12	4th period 1
1107 10 11	0	1,03	1,03	0	0
1107 10 19	0	0,77	0,77	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 2798/92

of 25 September 1992

opening a standing invitation to tender in Belgium, Germany, France, Greece and Italy for the free supply of common wheat flour and pasta to the victims of the conflict in what was formerly Yugoslavia (Zagreb)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2139/92 of 23 July 1992 on urgent action for the supply of agricultural products to the victims of the conflict in what was formerly Yugoslavia ⁽¹⁾,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals ⁽²⁾, as last amended by Regulation (EEC) No 1738/92 ⁽³⁾, and in particular Article 7 (6) thereof,

Whereas Commission Regulation (EEC) No 2344/92 of 10 August 1992 laying down detailed rules applicable to the free supply of agricultural products to the victims of the conflict in what was formerly Yugoslavia ⁽⁴⁾ provides for allocation of the supply of common wheat flour and pasta under Council Regulation (EEC) No 2139/92 to be made by invitation to tender; whereas the invitations to tender for the free supply of processed products cover the quantities of basic products to be taken from intervention stocks as payment in kind for these supplies, and for the processing, transport and other related costs;

Whereas tenders may relate to common wheat and durum wheat; whereas criteria must therefore be laid down to determine which is the most favourable tender; whereas to that end tenders should be compared on the basis of the value of the quantity of the basic product requested as payment in kind;

Whereas it is necessary to ensure that deadlines for delivery are complied with; whereas the appropriate provisions should therefore be laid down concerning the release of delivery securities in the case of late deliveries;

Whereas a standing invitation to tender should be opened in five Member States for the supply of 24 190 tonnes of common wheat flour and 1 950 tonnes of pasta to be delivered to Zagreb;

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

HAS ADOPTED THIS REGULATION:

Article 1

Under the conditions laid down in Regulation (EEC) No 2344/92, the Belgian, German, French, Greek and Italian intervention agencies shall open a standing invitation to tender for the supply of 24 190 tonnes of common wheat flour and 1 950 tonnes of pasta, as set out in Annex I and in accordance with the provisions of this Regulation.

Article 2 (2) of Regulation (EEC) No 2344/92 notwithstanding, the aforementioned products shall be delivered in the packaging as defined in points 1.3 and 2.3 of Annex I.

Article 2

Tenders shall be for the quantity, in metric tonnes, of common wheat or of durum wheat necessary to cover the supply, transport and other costs, up to the delivery stage provided for, of the entire lot indicated in the notice of invitation to tender provided for in Article 15 (2) of Regulation (EEC) No 2344/92.

The quantity of wheat awarded as payment in kind for the supply shall be made available, at the successful tenderer's choice, from the intervention stocks designated for this purpose in the abovementioned notice of invitation to tender.

The tender security shall be set at ECU 15 per tonne.

Article 3

1. Where the quantities actually supplied during a one-week period are found to be less than 50 % of the quantities to be supplied pursuant to the delivery schedule laid down in point 3.5 of Annex I, the security provided for in Article 8 of Regulation (EEC) No 2344/92 shall be forfeit in respect of the quantity not supplied during the abovementioned period. However, if the operator provides proof that the quantity was delivered during the following week, only 10 % of the security shall be forfeit. Such deliveries shall not be included in the deliveries scheduled for the following week.

⁽¹⁾ OJ No L 214, 30. 7. 1992, p. 8.

⁽²⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽³⁾ OJ No L 180, 1. 7. 1992, p. 1.

⁽⁴⁾ OJ No L 227, 11. 8. 1992, p. 18.

2. The previous paragraph shall apply when the operator is responsible for the delay in deliveries.

Article 4

1. The time limit for submission of tenders for the first partial invitation to tender shall be 11 a.m. on 30 September 1992 (Brussels time).

2. The time limit for submission of tenders for the following partial invitation to tender shall expire at 11 a.m. each Wednesday (Brussels time).

3. The time limit for submission of tenders for the last partial invitation to tender shall expire at 11 a.m. on 21 October 1992 (Brussels time).

4. Notwithstanding Article 15 of Commission Regulation (EEC) No 2344/92, the intervention agency concerned shall publish an invitation to tender at least three days before the date laid down for the first partial invitation to tender.

Article 5

Tenders shall be submitted to the intervention agency concerned.

The intervention agencies concerned shall forward the tenders to the Commission in accordance with the schedule specified in Annex II.

Article 6

A specimen of the takeover certificate referred to in Article 9 (3) of Regulation (EEC) No 2344/92 is given in Annex III hereto.

The certificate shall be issued after the goods have been taken over by the authorities referred to in point 3.4 of Annex I.

Article 7

The successful tenderer shall undertake to provide the authorities laid down in point 3.4 of Annex I with the documents required for the purposes of the supply which

are specified in the invitation to tender issued by the intervention agency concerned.

Article 8

For the purposes of booking the expenditure by the European Agricultural Guidance and Guarantee Fund (EAGGF), the book value of the products concerned shall be:

Common wheat: ECU 52/tonne

Durum wheat: ECU 67/tonne.

Article 9

When scrutinizing tenders, the Commission departments shall determine the value of the quantities of basic products requested as payment in kind on the basis of the intervention price applicable during September 1992. The tender offering the lowest value for the quantity of the basic product requested as payment in kind shall be selected.

Article 10

The Member States concerned shall take all appropriate measures to ensure that no refund or monetary compensatory amount is applied within the framework of the supply, in particular by specifying this on the export licence.

Article 11

1. The Member States concerned shall adopt all additional provisions necessary for implementation of this Regulation.

2. The Member States concerned shall send to the Commission all information on the carrying out of the supply, in particular relating to the award of the contract, delivery times and the actual date of takeover by the authorities referred to in point 3.4 of Annex I.

Article 12

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, 25 September 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX I

1. Common wheat flour

1.1. Number of lots: one lot of 24 190 tonnes

1.2. Characteristics and quality of the goods⁽¹⁾:

OJ No C 114, 29. 4. 1991 (point II.B.1 (a))

1.3. Packaging:

(a) 12 100 tonnes packed in new jute/polypropylene mix bags; content 25 or 50 kg net-weight. Sacks shall be placed on disposable pallets of appropriate dimensions and each pallet shall be covered with polyethylene netting.

(b) 12 090 tonnes packed in 1 kg white paper sachets suitable for the storage of foodstuffs. The paper must be of a minimum weight of 80 g/m². If glue is used in making up or sealing the outer packaging, it must be water-resistant

These sachets shall be packed in outer packaging to a maximum weight of 25 kg. This outer packaging shall be of cardboard or shrink-wrapped polyethylene film of sufficient strength to survive transportation over long distances and under difficult conditions. The outer packaging shall be placed on disposable pallets of appropriate dimensions and each pallet shall be covered with polyethylene netting.

1.4 Marking:

— European flag: OJ No C 114, 29. 4. 1991 (Annexes I and II).

— Bags of 25 or 50 kg net-weight:

Inscriptions in Serbo-Croat:

'European Community' (in letters at least 5 cm high); 'Humanitarian Aid — Common wheat flour' (in letters at least 2,5 cm high)

— 1 kg sachets:

Inscriptions in Serbo-Croat:

'European Community' (in letters at least 1 cm high); 'Humanitarian Aid — Common wheat flour' (in letters at least 0,5 cm high)

2. Pasta

2.1. Number of lots: one lot of 1 950 tonnes

2.2. Characteristics and quality of the goods:

OJ No C 114, 29. 4. 1991 (point II.C.1 (a))

2.3. Packaging:

OJ No C 114, 29. 4. 1991 (point II.C.2)

The cartons must be placed on disposable pallets measuring 110 × 80 cm and secured by polyethylene netting.

2.4. Marking:

European flag: OJ No C 114, 29. 4. 1991 (Annexes I and II)

Inscriptions in Serbo-Croat:

'European Community'; 'Humanitarian Aid — Pasta' (in letters at least 1 cm high on packs and 3 cm high on cartons)

3. Conditions of supply

3.1. Mobilization of the product: domestic market of the Member State concerned.

3.2. Method of transport: by road.

3.3. Stage of delivery: fashwarehouse: Pavillion 7 Zagrebadei Valesajam, avenue Dubrovnik, 41000 Zagreb

⁽¹⁾ The successful tenderer shall submit to the authorities referred to in point 3.4 a certificate issued by an official authority certifying that, for the product to be supplied, the standards relating to radioactivity have not been exceeded by the Member State concerned.

3.4. Authorities responsible for the takeover:

Fulvio Paolini, ECHO Zagreb Hotel I Remetinecka 106 41000 Zagreb

3.5. Delivery schedule:

Deliveries shall start on 9 October 1992. However, for flour in sachets of 1 kg and for pasta deliveries start on 26 October 1992.

The quantities to be delivered each working day until delivery of the total quantity is achieved are fixed at 360 tonnes for flour and at 40 tonnes for pasta

3.6. Where a tender is not accepted on 30 September 1992, all the aforementioned dates shall be deferred by seven days; the same deferral shall apply where a tender is not accepted in subsequent tendering procedures

3.7. On the initiative of the tenderer and with the agreement of the authorities referred to in point 3.4., deliveries may be made earlier than provided for in point 3.5.

*ANNEX II***Standing invitation to tender for the free supply of common wheat flour and pasta to the victims of the conflict in what was formerly Yugoslavia (Zagreb)**

(Regulation (EEC) No 2798/92)

(tonnes)

Tenderer's number	Quantity of common wheat required as payment in kind	Quantity of durum wheat required as payment in kind
1		
2		
3		
4		
5		

*ANNEX III***Take-over Certificate**

I, the undersigned,

(name, first name, position of authority)

acting on behalf of

hereby certify that the following goods have been taken over :

Product :	
Total quantity : (tonnes)	
Place and date of take-over :	
Rail wagon numbers/registration numbers of heavy goods vehicles (!)	
Name and address of transport company	

Name of monitoring agency :

.....
.....

Name and signature of its on-the-spot representative :

.....
.....

Observations or reservations :

.....
.....
.....
.....
.....

Signature
(Stamp)

(!) Delete where inapplicable.

COMMISSION REGULATION (EEC) No 2799/92

of 25 September 1992

imposing a provisional anti-dumping duty on imports of deadburned (sintered) magnesia originating in the People's Republic of China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

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

Whereas :

A. PROCEDURE

(1) In October 1991 the Commission announced, by a notice published in the *Official Journal of the European Communities*⁽²⁾, the initiation of an anti-dumping proceeding concerning imports into the Community of deadburned magnesia falling within CN code 2519 90 30, originating in the People's Republic of China.

(2) The Commission officially informed the exporters and importers known to be concerned, the representatives of the exporting country and the complainants.

It requested the parties concerned to reply to the questionnaires which had been sent to them and gave them the opportunity to make known their views in writing and to request a hearing.

(3) All the complainant Community producers, representing the entire Community production of natural deadburned magnesite, replied to the questionnaires (see recital 6). Eurométaux, on behalf of the Community producers, made its views known in writing and requested a hearing which the Commission granted.

(4) Five Chinese trading organizations, hereafter referred to as Chinese exporters, (Liaoning Metals & Minerals Import and Export Corporation, China Metallurgical Import and Export Corporation, Citic Trading Inc., China Metallurgical Import and Export Corporation, Dalian Branch, China

National Minerals Import and Export Corporation) replied to the questionnaires.

In addition, the principal organization in the People's Republic of China with responsibility for trade in deadburned magnesite, the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters, made known in writing the views of the cooperating Chinese exporters. That organization and the cooperating Chinese exporters sought a hearing and this was granted by the Commission.

It became apparent, after a comparison with the Eurostat Official Statistics, that the five Chinese exporters which cooperated accounted for approximately 33 % of exports of deadburned magnesite from the People's Republic of China to the Community and that no information, apart from Eurostat, was available regarding exports by other Chinese exporters.

(5) The Commission sent questionnaires to the importers listed in the complaint.

In addition two other importers made themselves known to the Commission within the period specified in the notice of initiation.

It became apparent, after a comparison with the Eurostat Official Statistics, that the four Community importers which cooperated accounted for approximately 67 % of imports of deadburned magnesite from the People's Republic of China to the Community.

(6) The Commission investigated and verified all the information considered necessary for the purposes of a preliminary determination of dumping and resultant injury. To this end it carried out an investigation at the premises of the following :

(a) *Community producers :*

- Grecian Magnesite SA, Athens, Greece,
- Financial Mining, Industrial and Shipping Corporation, Athens, Greece (Fimisco),
- Magnomin SA, Thessaloniki, Greece,
- Magnesitas Navarras, Pamplona, Spain.

Two of the Greek producers, Financial Mining Industrial and Shipping Corporation (Fimisco) and Macedonian Magnesite Mining Industrial Shipping Co. ceased all operations in November 1991.

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No C 276, 23. 10. 1991.

Consequently, certain information requested from both companies was not available for the investigation period.

(b) *Importers into the Community:*

- Frank & Schulte, Essen, Germany,
- Possehi Erzkontor GmbH, Lübeck, Germany,
- Otavi Minen AG, Eschborn, Germany,
- Van Mannekus, Rotterdam, The Netherlands.

- (7) The Commission also sought information from producers in the reference country suggested by the complainant and considered reasonable by the Commission (see recitals 14 and 15). Valuable and complete information was provided by and verified at Magnesit Anonim Sirketi, Eskisehir, Turkey.
- (8) The investigation of dumping covered the period from 1 July 1990 to 30 June 1991 (the investigation period).

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

- (9) The product covered by this proceeding is natural deadburned magnesite, hereinafter referred to as deadburned magnesite. Magnesite is a naturally occurring magnesium carbonate. To produce deadburned magnesite the ore is mined, crushed, sorted and then burnt in a kiln at temperatures of 1 500 to 2 000 °C. Deadburned magnesite has a magnesia content ranging from about 80 to 98 % MgO (magnesium oxide). The main impurities are SiO₂, Fe₂O₃, Al₂O₃, CaO and B₂O₃ (silicon oxide, iron oxide, aluminium oxide, calcium oxide and boron oxide). The main application for deadburned magnesite is in the refractory industry to make formed and unformed refractories.

2. Like product

- (10) As regards the definition of like product within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88, the Commission has found that deadburned magnesite of whatever origin has to be regarded as one single product having the same basic and identical physical and chemical characteristics and the same applications.
- (11) In this respect the Commission has established that all deadburned magnesite is produced from mineral deposits which are similar in terms of the raw magnesite content and the existence of impurities. It is extracted and processed in similar ways and is used to make the same range of refractory products.

It is true that the methods of extraction, the magnesite content of the deposit, the level of impurities, and the production process, may vary from mine to mine, worldwide. However, these differences do not have a considerable bearing on the end product and are not such as to justify the Chinese claim that deadburned magnesite production in the People's Republic of China is unique in term of the methods and processes used in manufacture and the chemical and physical characteristics of the magnesite.

- (12) Deadburned magnesite may take the form of different grades of MgO (magnesium oxide) and the end product is not chemically uniform. However, the Commission found no clear dividing lines enabling the classification of deadburned magnesite into a number of different like products. The boundary between the grades is blurred by overlapping usage since consumers do use, for identical purposes, magnesite of different grades and from different sources of supply.

In these circumstances, the Commission cannot accept the argument of the Chinese exporters that Chinese deadburned magnesite is unique in terms of the application of the final product since the different types of the final product clearly resemble and are in competition with each other. Consumer's perception of all magnesite is as a material for the production of formed and unformed refractories regardless of its source. Differences in the cost of production of different grades have not bearing on the end product as such and have been taken into account in the construction of normal value (see recital 16).

- (13) The Commission, therefore, concludes that all qualities of deadburned magnesite have to be considered to be one single like product.

C. DUMPING

1. Normal value

- (14) In order to establish whether imports of deadburned magnesite originating in the People's Republic of China were being dumped, the Commission has to take into account the fact that China is not a market economy country and accordingly, to base its calculations on the normal value of the product in question in a market economy. To that end, the complainant had proposed Turkey. Chinese exporters made known their objections to Turkey as a reference country, arguing only that no like product existed in Turkey. However, they suggested no alternative reference country. For the reasons given above, this objection has, for the purposes of provisional findings, been rejected (see recital 10).

The Commission examined whether Turkey was a reasonable choice of reference country: in this respect the choice of the reference country has to be based on criteria such as the level of economic development, the access to raw materials, the competitive situation, and the representativity of the market in relation to the quantities exported by the exporting country.

Turkey is a market economy country having a comparable level of economic development to that of China, at least for the sector in question. As already shown (recital 11) the extraction process of the Turkish producers with regard to the raw material is similar to that of the Chinese exporters. Moreover, there are three Turkish companies selling on the domestic market which are in competition with each other. The quantity of their domestic production of deadburned magnesite is representative in relation to the Chinese exports. Finally, no specific objection was raised by any interested party against the choice of Turkey. For these reasons, the Commission considers that, for the purposes of provisional findings, Turkey is an appropriate reference country.

- (15) As far as the question as to whether sales prices on the Turkish domestic market can serve as a basis for determination of the normal value is concerned, the investigation in Turkey revealed that there are restrictions on the importation of deadburned magnesite into Turkey which may have some effects on price competition in Turkey. In addition, the Turkish market is one where the majority of sales of deadburned magnesite are between related companies and therefore are not considered to be in the ordinary course of trade. The Commission thus considers it inappropriate to base normal value on selling prices. However, costs of production for excavation and processing are determined competitively as shown by the widespread use of subcontractors, selected through a process of competitive tendering. Therefore, in accordance with Article 2 (5) (b) of Regulation (EEC) No 2423/88, it was considered that for the purpose of provisional findings a normal value has to be established on the cost of production of the cooperating producer.

- (16) For each grade of deadburned magnesite the constructed value was determined by adding toge-

ther all costs of production, both fixed and variable, incurred in the ordinary course of trade. To these costs were added a reasonable amount for the domestic selling and administrative expenses for this product during the investigation period based on the information available to the Commission.

The Chinese exporters argued that any cost calculations based on any country other than China should reflect the lower cost of raw material extraction and lower processing costs prior to burning found in China. The Commission has taken into account the specific situation in China in so far as it accepts that the purity of the deposit in China indicates that during the production process certain sorting and beneficiation⁽¹⁾ processes which are necessary in Turkey are not necessary in China. For this reason these specific Turkish costs which were found to account for 25 % of the Turkish cost of production were therefore deducted from the cost of production which serves as the basis for the normal value.

- (17) A reasonable profit margin was established on the basis of the information available concerning the profit requirements of the Turkish deadburned magnesite industry in the light of the level of investments essential to maintain production at the present level of technical efficiency. This margin is also considered as ensuring an acceptable return on the capital invested.

2. Export Price

- (18) Export prices were established on the basis of the prices actually paid or payable by the cooperating importers for deadburned magnesite exported to the Community.

D. COMPARISON

- (19) In its comparison of normal value and export prices, the Commission took account, in accordance with Article 2 (9) and (10) of Regulation (EEC) No 2423/88, of differences affecting price comparability,

⁽¹⁾ Beneficiation is the complex processing of the ore to remove impurities, notably heavy media separation, magnetic separation and flotation.

The comparison was made at the ex-works level on a transaction-by-transaction basis and at the same level of trade.

In the case of export prices, ocean freight and insurance costs for transport from China were deducted from export prices to arrive at fob prices; on the basis of the data available in Turkey, deductions were made relating to inland transport, insurance, handling and packing costs.

In the case of normal value, adjustments were made on the basis of the data in Turkey relating to internal transport, the cost of insurance, handling and packaging.

For the purpose of ensuring a fair comparison differences in physical characteristics were taken into account. Thus, the Commission noted that the Turkish producer did not produce all the MgO grades exported by the Chinese producers. The Commission has thus adjusted normal value to establish the full range of MgO grades by taking into account the cost of production differences by grade experienced by the Turkish producer. This included a 9 % adjustment to the cost of production to allow for the lower fuel costs incurred in producing grades up to and including 92 % MgO.

- (20) The Chinese exporters claimed that Chinese deadburned magnesite, in contrast to the Turkish like product, has to be considered to be substandard as it commands lower prices caused by the existence of certain chemical impurities, deterioration during transport and storage, and because the product is contaminated during burning.

The Commission has not found evidence of price differentials between Turkish and Chinese deadburned magnesite as it has not established that the Chinese product is substandard because of chemical impurities, deteriorates during transport or is contaminated. In the perception of end-users the product is not seen as being substandard in any way. Therefore, in accordance with Article 2 (9) (b) of Regulation (EEC) No 2423/88 these claims, have, for the purpose of provisional findings, been rejected.

E. DUMPING MARGIN

- (21) Normal value, determined as described above, was compared with the export prices on a transaction-by-transaction basis.

The preliminary examination of the facts shows that imports of deadburned magnesite are being dumped. The dumping margin is equal to the difference between the normal value and the price on export to the Community. Calculated as a

percentage of the weighted average cif value of the imports concerned it is ECU 69 per tonne.

The five Chinese exporters which cooperated claimed that they acted independently and were therefore entitled to individual dumping margins. However, these exporters are State-controlled organizations and are not joint ventures between Chinese and foreign companies. The Commission considers that because of the lack of independence of the exporters their claim, in this respect, has to be rejected.

F. INJURY

1. Factors relating to dumped imports

(a) Volume

- (22) On the basis of the Eurostat data shown under CN code 2519 90 30 imports originating in the People's Republic of China rose from 117 000 tonnes in 1988 to over 176 000 tonnes during the investigation period making China by far the largest exporter of deadburned magnesite to the Community.

(b) Market share

- (23) In calculating total consumption of deadburned magnesite on the Community market the Commission added Community producers sales in the Community to the total imports into the Community as shown under CN code 2519 90 30. This total was adjusted for re-exports from the Community. Total consumption is estimated as being 378 000 tonnes in 1988 and 429 000 tonnes in the investigation period. On this basis the Chinese exporters market share has risen substantially from 31 % in 1988 to 41 % during the investigation period. This increase should be viewed in the light of an increase in the size of the market of 13 % between 1988 and the investigation period, at a time when imports from China increased by 51 %.

(c) Prices

- (24) As regards price erosion, the Eurostat data shows that Chinese exporters reduced their prices by 9 % between 1988 and the investigation period. The reduction shown in the prices of the cooperating importers which have been taken as the basis for calculating the dumping margin, is even higher between 1988 and the investigation period than that shown by Eurostat.

The Commission also compared the average price of the imports from China (at the free-at-Community frontier duty paid stage) and the selling prices, calculated at the ex-works level, on a monthly average basis, of the same type of grades sold by Community producers. Every single import transaction, except one, was at a price lower than that of the Community producers.

The price undercutting during the investigation period was 64 % based on Community producers sales prices.

2. Factors relating to the state of the Community industry

(a) Production

- (25) Community production of deadburned magnesite during the investigation period was only 62 % of its 1988 level.

(b) Capacity, capacity utilization

- (26) For the calculation of capacity utilization the Commission has taken the total capacity available to produce both deadburned and caustic magnesite and allocated production capacity in proportion to the actual yearly production of both products.

Calculated on this basis, capacity utilization by the Community fell from 79 % in 1988 to 71 % during the investigation period. The capacity utilization of Fimisco and of Macedonian Magnesite Mining was not made available due to the cessation of both companies' activity in November 1991.

(c) Stocks

- (27) While production fell between 1988 and the investigation period, stock levels increased by 28 %. These figures do not include the stocks of Fimisco and of Macedonian Magnesite Mining which, it is understood, were large but on which no detailed information could be provided.

(d) Sales and market share

- (28) Community producers' sales quantity on the Community market fell by 15 % between 1988 and the investigation period, at a time when the size of the market was increasing. Sales by Fimisco and Macedonian Magnesite Mining are excluded from this figure. If sales by Fimisco and Macedonian Magnesite Mining are included there is an even more substantial drop in sales.

Community producers' market share fell from 37 % in 1988 to 23 % in the investigation period, at a time when the market was increasing in size (see recital 23).

(e) Prices

- (29) An analysis of the prices charged by Community producers on the markets where Chinese imports occur shows that the prices of the Community industry, on the basis of a grade-by-grade comparison, fell by 10 % between 1988 and the investigation period. During this period Community producers reduced their sales of lower grades and concentrated on selling the more highly priced MgO grades.

(f) Profits

- (30) The financial results achieved by Community producers have deteriorated since 1988 and two producers have ceased trading. During the investigation period the Community producers were incurring losses or substantially reduced returns on sales.

(g) Employment

- (31) With regard to the employment situation in the Community industry, employment fell by 14 % between 1988 and the investigation period, excluding Fimisco and Macedonian Magnesite Mining for the reasons given in recital 6.

3. Conclusion

- (32) In view of the fall in production, the decline in capacity utilization, the increase in stock levels, the fall in sales quantity and the loss of market share, the fall in prices and the loss or seriously reduced return on sales, the Commission considers that the Community industry has suffered material injury within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88.

G. CAUSAL LINK BETWEEN THE INJURY AND THE DUMPED IMPORTS

1. Effect of dumped imports

- (33) The Commission compared the volume and price trends of the dumped imports from China side-by-side with the sales and market share of the Community industry. It found that the deterioration of the economic situation of the Community industry coincided with the increase in volume of imports of Chinese deadburned magnesite.

It was the Chinese exporters which gained from the increase in consumption seen in the Community between 1988 and the investigation period at the expense of the Community industry.

- (34) The Commission found price to be the most important factor for customers in determining their source of supply. Consequently, the considerable price undercutting by the Chinese producers due to the effect of dumping has had a direct effect on the Community industry's volume of sales and their losses. The Community industry had been prevented from selling at a price level which would allow profit.

2. Effect of other factors

- (35) The Commission considered whether injury to the Community industry had also been caused by other factors.

The Commission identified North Korea as being the next largest exporter of deadburned magnesite to the Community. Calculating market size on the same basis as for China the North Korean market share has decreased from 18 % in 1988 to 14 % during the investigation period. Even if these imports have also caused some injury this does not detract from the Commission's finding that Chinese imports, taken in isolation, caused material injury. The Commission will, however, monitor the situation closely (see recital 41).

- (36) The Chinese exporters have suggested that any injury experienced by Community producers relating to grades over 92 % MgO cannot be caused by imports from China. They argue that, in general, high MgO grades over 92 % are not exported into the Community from China.

There is, however, clear evidence of the export of higher grades by the Chinese exporters at dumped prices during the investigation period. In addition, grades overlap in their use (see recital 12). The findings of injury have to be established on a global basis for the like product. It would be arbitrary to identify injury on a grade by grade basis.

- (37) An end-user has argued that because of the particular chemical structure of Chinese deadburned magnesite it has adapted its manufacturing process so as to use only Chinese magnesite and is, therefore, no longer a customer of the Community industry.

In this respect the Commission notes firstly, that the Community industry is a potential supplier of all specifications of deadburned magnesite for refractory products. Secondly, the adaptation of manufacturing processes to use Chinese magnesite is due to the price level of the Chinese imports for which dumping was found.

- (38) The Chinese exporters have argued that any injury experienced by the Community industry is caused by the inefficiency of the Community industry itself. However, this argument has not been substantiated and contradicts the evidence available to the Commission which indicates that the existing Community producers are notably efficient as a result of the rationalization and modernization of the industry.

3. Conclusion

- (39) The Commission concludes that taken in isolation, dumped imports of deadburned magnesite originating in the People's Republic of China have caused material injury to the Community industry.

H. COMMUNITY INTEREST

- (40) In order to examine whether the interests of the Community call for intervention to prevent the injury being caused during the proceeding, the Commission considered that the purpose of anti-dumping duties is, in general, to stop distortion of competition arising from unfair commercial practices and thus to re-establish open and fair competition on the Community market, which is fundamentally in the general Community interest.

With regard to this proceeding, the Commission considers that without measures to correct the effect of dumped Chinese imports, those firms still producing deadburned magnesite may be forced to shut down completely. Annual losses or seriously reduced profit levels are already a major problem for all Community producers, despite attempts to reduce costs by reducing employment levels, using sub-contractors, increasing efficiency and upgrading production facilities.

The Commission's view is that it would not be in the Community's interest to abandon a structurally sound industry at a time when, faced by unfair competition, it is sustaining serious injury which is jeopardizing its short-term viability.

- (41) The Chinese exporters put forward two main arguments with regard to Community interest.

The first was that it is not in the Community interest to impose ineffective measures. They claim that Community producers would not benefit from anti-dumping measures imposed on Chinese exports as these exports would be replaced by low period imports, above all from North Korea.

The Commission has considered the likely impact of these measures on the operation of the market for deadburned magnesite. It has found that the Chinese exporters are the market price leaders in that order exporters follow Chinese prices. It can thus be expected that the price increase resulting from the imposition of anti-dumping duties will also be followed by other exporters.

Therefore, and since no complaint has been lodged against any other exporter the Commission does not, for the time being, consider that there is sufficient reason to take action against imports from North Korea. However, the Commission will monitor the situation closely. Should Chinese imports be, to a large extent, replaced by imports from North Korea so that the injurious situation is not removed, the position of the Commission may be revised and appropriate action will be considered.

- (42) The second argument put forward by the Chinese exporters was that it is not in the Community's interest to increase costs for the refractory industry or the steel industry due to anti-dumping measures. Any cost increases would seriously affect the ability of the refractory industry and the steel industry to compete on international markets.

The Commission acknowledges that deadburned magnesite is a significant part of the cost of production of refractories. However, without measures, the Community deadburned industry will face a further deterioration of its already weakened position with the strong possibility of total shutdown. The negative results of such an eventuality would leave the Community with, at best, a much smaller natural deadburned magnesite industry, with the consequent loss of research, development and employment.

The refractory industry and in turn the steel industry would become further dependent on imported supplies. In the long term fewer competitors would mean higher prices. When these negative consequences are balanced with the short-term interest of users who would benefit from supplies at lower prices, it is evident that the Community inter-

est lies more in sustaining, over the long term, a viable magnesite industry.

- (43) In the light of the above, the Commission concluded that it is in the Community interest to adopt measures to prevent the injury being caused to Community production by imports of deadburned magnesite originating in the People's Republic of China during the proceeding and that the measures should take the form of a provisional anti-dumping duty.

I. PROVISIONAL DUTY

- (44) In order to determine whether a lower duty than the dumping margin should be imposed, in accordance with Article 13 (3) of the Basic Regulation the Commission compared the weighted average selling price of Chinese deadburned magnesite (on a free-at-Community frontier basis) with the corresponding weighted average production cost of deadburned magnesite produced during the same period by the Community industry, on a grade-by-grade basis.

Since the difference was higher than the dumping margin established it is the latter which should be imposed.

The duty shall take the form of a fixed amount. The Commission considers that, given the high level of price undercutting and of price decrease found during the investigation period, an *ad valorem* duty would diminish in effect and would not result in effective measures.

J. FINAL PROVISION

- (45) In the interests of sound administration a reasonable period should be allowed for interested parties to make known their views in writing on the findings contained in this Regulation and to request to be heard by the Commission,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of deadburned (sintered) magnesia originating in the People's Republic of China falling within CN code 2519 90 30.
2. The amount of duty shall be ECU 69 per tonne (net weight).
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 originating in the People's Republic of China shall be subject to the provision of a security equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 7 (4) (b) of Regulation (EEC) No 2423/88 the parties concerned may make known their views in writing and apply to be heard 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 13 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, 25 September 1992.

For the Commission

Frans ANDRIESEN

Vice-President

COMMISSION REGULATION (EEC) No 2800/92

of 25 September 1992

imposing a provisional anti-dumping duty on imports of magnesium oxide
originating in the People's Republic of China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

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

Whereas :

A. PROCEDURE

- (1) In October 1991 the Commission announced, by a notice published in the *Official Journal of the European Communities*⁽²⁾, the initiation of an anti-dumping proceeding concerning imports into the Community of magnesium oxide, commonly called caustic magnesite, falling within CN codes 2519 90 10 and ex 2519 90 90, originating in the People's Republic of China.

During the investigation it had become evident that the product imported under CN code 2519 90 10 was fused magnesia. The investigation has identified that caustic magnesite is imported under CN code ex 2519 90 90.

- (2) The Commission officially informed the exporters and importers known to be concerned, the representatives of the exporting country and the complainants.

It requested the parties concerned to reply to the questionnaires which had been sent to them and gave them the opportunity to make known their views in writing and to request a hearing.

- (3) All the complainant Community producers representing the entire Community production of natural caustic magnesite, replied to the questionnaires. Eurométaux, on behalf of the Community producers, made its views known in writing and requested a hearing which the Commission granted.

- (4) Five Chinese trading organizations, hereafter referred to as Chinese exporters, (Liaoning Metals & Minerals Import and Export Corporation, China Metallurgical Import and Export Corporation, Citic Trading Inc., China Metallurgical Import and Export Corporation, Dalian Branch, China National Minerals Import and Export Corporation) replied to the questionnaires.

In addition, the principal organization in the People's Republic of China with responsibility for trade in caustic magnesite, the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters, made known in writing the views of the cooperating Chinese exporters. That organization and the cooperating Chinese exporters sought a hearing and this was granted by the Commission.

It became apparent, after a comparison with the Eurostat Official Statistics, that the five Chinese exporters which cooperated accounted for approximately 55 % of exports of caustic magnesite from the People's Republic of China to the Community and that no information apart from Eurostat was available regarding exports by other Chinese exporters.

- (5) The Commission sent questionnaires to the importers listed in the complaint.

Four other importers made themselves known to the Commission within the period specified in the notice of initiation.

It became apparent, after a comparison with the Eurostat Official Statistics, that the Community importers which cooperated accounted for approximately 56 % of imports of caustic magnesite from the People's Republic of China to the Community.

- (6) The Commission investigated and verified all the information considered necessary for the purposes of a preliminary determination of dumping and resultant injury. To this end it carried out an investigation at the premises of the following :

(a) Community producers :

- Grecian Magnesite SA, Athens, Greece,
- Magnomin SA, Thessaloniki, Greece,
- Magnesitas Navarras, Pamplona, Spain,
- Magnesitas De Rublan, Lugo, Spain ;

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No C 279, 26. 10. 1991.

(b) Importers into the Community:

- Lehmann & Voss, Hamburg, Germany,
- Brown & Gillmer, Dublin, Ireland,
- Van Mannekus, Rotterdam, The Netherlands,
- N. Geurtsen, Hilversum, The Netherlands,
- GBC Ltd, Banstead, United Kingdom,
- Colin Stewart Minchem, Winsford, United Kingdom.

- (7) The investigation of dumping covered the period 1 July 1990 to 30 June 1991 (the investigation period).

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

- (8) The product covered by this proceeding is natural caustic magnesite hereinafter referred to as caustic magnesite. Magnesite is a naturally occurring magnesium carbonate. To produce caustic magnesite the ore is mined, crushed, sorted and then burnt in a kiln at temperatures of 700 to 1 000 °C. Caustic magnesite has a magnesia content ranging from about 80 to 98 % MgO (magnesium oxide). The main impurities are SiO₂, Fe₂O₃, Al₂O₃, CaO and B₂O₃ (silicon oxide, iron oxide, aluminium oxide, calcium oxide and boron oxide). Caustic magnesite is used in agriculture as an animal feed or as a fertilizer, in construction it is used for flooring and insulating boards and in industry its main application is in pulp and paper production.

2. Like product

- (9) As regards the definition of like product within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88 the Commission has found that caustic magnesite of whatever origin has to be regarded as one single product having the same basic and identical physical and chemical characteristics and the same applications.
- (10) In this respect, the Commission has established that all caustic magnesite is produced from mineral deposits which are similar in terms of the raw magnesite content and the existence of impurities. It is extracted and processed in similar ways and is used to make the same range of products. It is true that the methods of extraction, the magnesite content of the deposit, the level of impurities, and

the production process, may vary from mine to mine, worldwide.

However, these differences do not have a considerable bearing on the end product and are not such as to justify the Chinese claim that caustic magnesite production in the People's Republic of China is unique in terms of the methods and processes used in manufacture and the chemical and physical characteristics of the magnesite.

- (11) Caustic magnesite may take the form of different grades of MgO (magnesium oxide) and the end product is not chemically uniform. However, the Commission found no clear dividing lines enabling the classification of caustic magnesite into a number of different like products. The boundary between the grades is blurred by overlapping usage since consumers do use, for identical purposes, magnesite of different grades and from different sources of supply.

In these circumstances, the Commission cannot accept the argument of the Chinese exporters that Chinese caustic magnesite is unique in terms of the application of the final product since the different types of the final product clearly resemble and are in competition with each other. Consumer's perception of all magnesite is as a material for use in agriculture, in construction and in industry regardless of its source. Differences in the cost of production of different grades have no bearing on the end product as such and have been taken into account in the construction of normal value (see recital 17).

- (12) The Commission, therefore, concludes that all qualities of caustic magnesite have to be considered to be one single like product.

C. DUMPING

1. Normal value

- (13) In order to establish whether imports of caustic magnesite originating in the People's Republic of China were being dumped, the Commission has to take into account the fact that China is not a market economy country and, accordingly, to base its calculations on the normal value of the product in question in a market economy. To that end, the complainant had proposed Austria. The complainant also suggested that any other country producing caustic magnesite would be an appropriate reference country.

Chinese exporters made known their objections to any reference country, arguing that no like product existed. For the reasons given above, this objection has, for the purposes of provisional findings, been rejected.

In view of the more comparable levels of economic development in India, Brazil and China, contact was made with a Brazilian and an Indian company but only Tamilnadu Magnesite Ltd in India duly completed the Commission's questionnaire. However, for company specific reasons, it has proved impossible to arrange a verification visit to Tamilnadu Magnesite Ltd before September 1992. For the purpose of definitive measures it is proposed to use India as a reference country.

- (14) In order not to delay unduly the proceeding, the Commission has based normal value on information from Turkey concerning deadburned magnesite, obtained as part of a current anti-dumping proceeding⁽¹⁾. This is considered an appropriate course of action as the processing of the magnesite up to and after the burning stage is basically the same for both deadburned and caustic magnesite. The domestic sales of the Turkish producer of caustic magnesite were not considered to be sufficiently large to be representative in relation to the Chinese exports.

- (15) In the proceeding concerning deadburned magnesite, the Commission examined whether Turkey was a reasonable choice of reference country. In this respect the choice of the reference country has to be based on criteria such as the level of economic development, the access to raw materials, the competitive situation, and the representativity of the market in relation to the quantities exported by the exporting country.

Turkey is a market economy country having a comparable level of economic development to that of China, at least for the sector in question. As already shown (recital 10), the extraction process of the Turkish producers with regard to the raw material is similar to that of the Chinese exporters. Moreover, there are three Turkish companies selling on the domestic market which are in competition with each other. The quantity of their domestic production of deadburned magnesite is representative in relation to the Chinese exports. Finally, no specific objection was raised by any interested party against the choice of Turkey. For these reasons, the Commission considers that, for the purposes of provisional findings, Turkey is an appropriate reference country.

- (16) As far as the question as to whether sales prices on the Turkish domestic market can serve as a basis for determination of the normal value, is concerned the investigation in Turkey revealed that there are restrictions on the importation of deadburned magnesite into Turkey which may have some effects on price competition in Turkey. In addition, the Turkish market is one where the majority of sales of deadburned magnesites are between related companies and therefore are not considered to be in the ordinary course of trade. The Commission thus considers it inappropriate to base normal value on selling prices. However, costs of production for excavation and processing are determined competitively as shown by the widespread use of subcontractors, selected through a process of competitive tendering.

Therefore, in accordance with Article 2 (5) (b) of Regulation (EEC) No 2423/88, it was considered that for the purpose of provisional findings a normal value has to be established on the cost of production of the cooperating producer.

- (17) For each grade of deadburned magnesite the constructed value was determined by adding together all costs of production, both fixed and variable, incurred in the ordinary course of trade. To these costs were added a reasonable amount for the domestic selling and administrative expenses for this product during the investigation period based on the information available to the Commission.

The Chinese exporters argued that any cost calculations based on any country other than China should reflect the lower cost of raw material extraction and lower processing costs prior to burning found in China. The Commission has taken into account the specific situation in China in so far as it accepts that the purity of the deposit in China indicates that during the production process certain sorting and beneficiation⁽²⁾ processes which are necessary in Turkey are not necessary in China. For this reason these specific Turkish costs which were found to account for 25 % of the Turkish cost of production were therefore deducted from the cost of production which serves as the basis for the normal value.

- (18) A reasonable profit margin was established on the basis of the information available concerning the profit requirements of the Turkish deadburned

(1) OJ No C 276, 23. 10. 1991.

(2) Beneficiation is the complex processing of the ore to remove impurities, notably heavy media separation, magnetic separation and flotation.

magnesite industry in the light of the level of investments essential to maintain production at the present level of technical efficiency. This margin is also considered as ensuring an acceptable return on the capital invested.

2. Export price

- (19) Export prices were established on the basis of the prices actually paid or payable by the cooperating importers for caustic magnesite exported to the Community.

D. COMPARISON

- (20) In its comparison of normal value and export prices, the Commission took account, in accordance with Article 2 (9) and (10) of Regulation (EEC) No 2423/88, of differences affecting price comparability.

The comparison was made at the ex-works level on a transaction-by-transaction basis and at the same level of trade.

In the case of the normal value, adjustments were made on the basis of the data obtained in Turkey relating to internal transport, the cost of insurance, handling and packaging.

For the purpose of ensuring a fair comparison, differences in physical characteristics were taken into account. Thus, the Commission noted that the Turkish producer did not produce all the MgO grades exported by the Chinese producers. The Commission has thus adjusted the normal value for deadburned magnesite to establish the full range of MgO grades by taking into account the cost of production differences by grade experienced by the Turkish producer.

Secondly, to achieve a constructed normal value for caustic magnesite account was taken of the fact that burning costs for caustic magnesite are not as high as those incurred to produce deadburned magnesite. The difference between the burning costs for deadburned magnesite and for caustic magnesite was identified as being equal to 23 % of the cost of production for deadburned magnesite. A 23 % adjustment to the cost of production to allow for the lower fuel costs was therefore made.

In the case of the export prices, ocean freight and insurance costs for transport from China were deducted from export prices to arrive at prices ; on

the basis of the data available in Turkey, deductions were made relating to inland transport, insurance, handling and packing costs.

- (21) The Chinese exporters claimed that Chinese caustic magnesite, in contrast to the Turkish like product, has to be considered to be substandard as it commands lower prices caused by the existence of certain chemical impurities and because of deterioration during transport and storage.

The Commission has not found evidence of price differentials between Turkish and Chinese caustic magnesite as it has not established that the Chinese product is substandard because of chemical impurities or that it deteriorates during transport.

The Commission does not accept that the existence of price differentials caused by these alleged differences has been demonstrated. Therefore, in accordance with Article 2 (9) (a) these requests, have, for the purpose of provisional findings, been rejected.

E. DUMPING MARGIN

- (22) Normal value, determined as described above, was compared with the export prices on a transaction-by-transaction basis.

The preliminary examination of the facts shows that imports of caustic magnesite are being dumped. The dumping margin is equal to the difference between the normal value and the price on export to the Community. Calculated as a percentage of the weighted average of the cif value of the imports concerned it is ECU 34 per tonne.

The five Chinese exporters which cooperated claimed that they acted independently and were therefore entitled to individual dumping margins. However, these exporters are State — controlled organizations and are not joint ventures between Chinese and foreign companies. The Commission considers that because of the lack of independence of the exporters their claim, in this respect, has to be rejected.

F. INJURY

1. Factors relating to dumped imports

(a) Volume

- (23) On the basis of the Eurostat data shown under CN code 2519 90 90 imports originating in the People's

Republic of China rose from 72 000 tonnes in 1988 to over 120 000 tonnes during the investigation period, making China by far the largest exporter of caustic magnesite to the Community.

(b) *Market share*

- (24) In calculating total consumption of caustic magnesite on the Community market the Commission added Community producers sales in the Community to the total imports into the Community as shown under CN code 2519 90 90. This total was adjusted for re-exports from the Community. Total consumption is estimated as being 341 000 tonnes in 1988 and 368 000 tonnes in the investigation period. On this basis the Chinese exporters market share has risen substantially from 21 % in 1988 to 32 % during the investigation period. This increase should be viewed in the light of an increase in the size of the market of 8 % between 1988 and the investigation period, at a time when imports from China increased by 67 %.

(c) *Prices*

- (25) As regards price erosion, the Eurostat data shows that Chinese exporters reduced their prices by 20 % between 1988 and the investigation period. The reduction shown in the prices of the cooperating importers which have been taken as the basis for calculating the dumping margin, is even higher between 1988 and the investigation period than that shown by Eurostat.

The Commission also compared the average price of the imports from China (at the free-at-Community frontier duty paid stage) and the selling prices, calculated at the ex-works level, on a monthly average basis, of the same type of grades sold by Community producers. Every single import transaction was at a price lower than that of the Community producers.

The price undercutting during the investigation period was 37,7 % based on Community producers' sales prices.

2. Factors relating to the state of the Community industry

(a) *Production*

- (26) Community production of caustic magnesite during the investigation period was 92 % of its 1988 level.

(b) *Capacity, capacity utilization*

- (27) For the calculation of capacity utilization the Commission has thus taken the total capacity avail-

able to produce both deadburned and caustic magnesite and allocated production capacity in proportion to the actual yearly production of both products.

Calculated on this basis, capacity utilization by the Community fell from 77 % in 1988 to 67 % during the investigation period.

(c) *Stocks*

- (28) Stock levels fell by 17 % between 1988 and the investigation period.

(d) *Sales and market share*

- (29) Community producers' sales quantity on the Community market fell by 9 % between 1988 and the investigation period.

Community producers' market share fell from 53 % in 1988 to 45 % in the investigation period, at a time when the market was increasing in size (see recital 24).

(e) *Prices*

- (30) On average prices decreased by 13 % between 1988 and the reference period. This reflects the fact that Community producers tried to match dumped Chinese prices in an attempt to maintain market share.

(f) *Profits*

- (31) The financial results achieved by Community producers have deteriorated since 1988. During the investigation period the Community producers were incurring losses or substantially reduced returns on sales.

(g) *Employment*

- (32) With regard to the employment situation in the Community industry, employment fell by 13 % between 1988 and the investigation period.

3. Conclusion

- (33) In view of the fall in production, the decline in capacity utilization, the fall in sales quantities, the loss of market share and the loss or seriously reduced return on sales, the Commission considers that the Community industry has suffered material injury within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88.

G. CAUSAL LINK BETWEEN THE INJURY AND THE DUMPED IMPORTS

1. Effect of dumped imports

- (34) The Commission compared the volume and price trends of the dumped imports from China side-by-side with the sales and market share of the Community industry. It found that the deterioration of the economic situation of the Community industry coincided with the increase in volume of imports of Chinese caustic magnesite. It was the Chinese exporters which gained from the increase in consumption seen in the Community between 1988 and the investigation period at the expense of the Community industry.
- (35) The Commission found price to be the most important factor for customers in determining their sources of supply. Consequently, the considerable price undercutting by the Chinese producers due to the effect of dumping has had a direct effect on the Community industry's volume of sales and their losses. The Community industry had been prevented from selling at a price level which would allow profit.

2. Effect of other factors

- (36) The Commission considered whether injury to the Community industry had also been caused by other factors.

Calculating market size on the same basis as for China the North Korean market share was 8 % during the investigation period. Even if these imports have also caused some injury this does not detract from the Commission's finding that Chinese imports, taken in isolation, caused material injury. The Commission will, however, monitor the situation closely (see recital 42).

- (37) The Chinese exporters have suggested that any injury experienced by Community producers relating to grades over 91 % MgO cannot be caused by imports from China. They argue that, in general, high MgO grades over 91 % are not exported into the Community from China.

There is, however, clear evidence of the export of higher grades by the Chinese exporters at dumped prices during the investigation period. In addition, the like product comprises all grades, and grades

overlap in their use (see recital 11). The findings of injury have to be established on a global basis for the like product. It would be arbitrary to identify injury on a grade by grade basis.

- (38) The Chinese exporters, some importers and some end-users claim that the Chinese product and the Community product applications are different. In particular, certain pulp and paper producers and artificial fertilizer producers can only use Chinese magnesite in their production processes because of its particular chemical structure. The end-users also argue that the caustic magnesite currently supplied by Community producers if used to produce paper and liquid fertilizer generated deposits which require additional treatment to remove.

The Commission accepts that due to low-priced imports of caustic magnesite originating in China certain pulp and paper producers and artificial fertilizer producers have adapted their manufacturing process so as to use Chinese magnesite and are, therefore, no longer customers of the Community industry.

In this respect the Commission notes firstly, that the Community industry is a potential supplier of all specifications of caustic magnesite. Secondly, the adaptation of manufacturing processes to use Chinese magnesite is due to the price level of the Chinese imports for which dumping was found.

Companies can continue to purchase caustic magnesite from their current suppliers in China, at fair prices, or they can buy a product with a comparable chemical specification from Community or other producers.

- (39) The Chinese exporters have argued that any injury experienced by the Community industry is caused by the inefficiency of the Community industry itself. The Commission cannot accept this argument since it contradicts the evidence available to the Commission which indicated that following modernization programmes, the existing Community producers are, in general, as efficient as their counterparts anywhere in the world.

3. Conclusion

- (40) The Commission concludes that, taken in isolation, dumped imports of caustic magnesite originating in the People's Republic of China have caused material injury to the Community industry.

H. COMMUNITY INTEREST

- (41) In order to examine whether the interests of the Community call for intervention to prevent the injury being caused during the proceeding, the Commission considered that the purpose of anti-dumping duties is, in general, to stop distortion of competition arising from unfair commercial practices and thus to re-establish open and fair competition on the Community market, which is fundamentally in the general Community interest.

With regard to this proceeding, the Commission considers that without measures to correct the effect of dumped Chinese imports, those firms still producing caustic magnesite may be forced to shut down completely. Annual losses or seriously reduced profit levels are already a major problem for all Community producers despite attempts to reduce costs by reducing employment levels, using subcontractors, reducing stock levels, increasing efficiency and upgrading production facilities.

The Commission's view is that it would not be in the Community interest to abandon a structurally sound industry at a time when, faced by unfair competition, it is sustaining serious injury which is jeopardizing its short term viability.

- (42) The Chinese exporters put forward two main arguments with regard to Community interest.

The first was that it is not in the Community interest to impose ineffective measures. They claim that Community producers would not benefit from anti-dumping measures imposed on Chinese exports as these exports would be replaced by low-priced imports, above all from North Korea.

The Commission has considered the likely impact of these measures on the operation of the market for caustic magnesite. It has found that the Chinese exporters are the market price leaders in that other exporters follow Chinese prices. It can thus be expected that the price increase resulting from the imposition of anti-dumping duties will also be followed by other exporters.

Therefore, and since no complaint has been lodged against any other exporters, the Commission does not for the time being consider that there is sufficient reason to take action against imports from North Korea. However, the Commission will monitor the situation closely. Should Chinese imports be to a large extent replaced by imports

from North Korea so that the injurious situation is not removed, the position of the Commission may be revised and appropriate action will be considered.

- (43) The second argument put forward by the Chinese exporters was that it is not in the Community's interest to increase costs for end users due to anti-dumping measures. Any cost increases would seriously affect the ability of end-users to compete on international markets causing unemployment in these industries.

The Commission cannot accept that this argument has been substantiated. With the possible exception of the pulp and paper industry, caustic magnesite forms a small part of the overall cost for end-users.

Without measures the Community caustic industry will face a further deterioration of its already weakened position with the strong possibility of total shutdown. The negative results of such an eventuality would leave the Community with at best a much smaller natural caustic magnesite industry, with the consequent loss of research, development and employment. The end-users would become further dependent on imported supplies. In the long term fewer competitors would mean higher prices. When these negative consequences are balanced with the short-term interest of users who would benefit from supplies at lower prices, it is evident that the Community interest lies more in sustaining over the long term a viable caustic magnesite industry.

- (44) In the light of the above, the Commission concluded that it is in the Community interest to adopt measures to prevent the injury being caused to Community production by imports of caustic magnesite originating in the People's Republic of China during the proceeding and that the measures should take the form of a provisional anti-dumping duty.

I. PROVISIONAL DUTY

- (45) In order to determine whether a lower duty than the dumping margin should be imposed, in accordance with Article 13 (3) of the Basic Regulation the Commission compared the weighted average selling price of Chinese caustic magnesite (on a free-at-Community frontier basis) with the corresponding weighted average production cost of caustic magnesite produced during the same period by the Community industry.

Since the difference was higher than the dumping margin established it is the latter which should be imposed.

The duty shall take the form of a fixed amount. The Commission considers that, given the high level of price undercutting and of price decrease found during the investigation period, an *ad valorem* duty would diminish in effect and would not result in effective measures.

J. FINAL PROVISION

- (46) In the interests of sound administration a reasonable period should be allowed for interested parties to make known their views in writing on the findings contained in this Regulation and to request to be heard by the Commission,

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of magnesium oxide originating in the People's Republic of China falling within CN code ex 2519 90 90 (Taric code 2519 90 90 10).
2. The amount of duty shall be ECU 34 per tonne (net weight).

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 originating in the People's Republic of China shall be subject to the provision of a security equivalent to the amount of the provisional duty.

5. The proceeding concerning imports originating in the People's Republic of China falling within CN code 2519 90 10 shall be terminated.

Article 2

Without prejudice to Article 7 (4) (b) of Regulation (EEC) No 2423/88 the parties concerned may make known their views in writing and apply to be heard 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 13 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, 25 September 1992.

For the Commission

Frans ANDRIESEN

Vice-President

COMMISSION REGULATION (EEC) No 2801/92
of 25 September 1992
amending Regulation (EEC) No 2006/80 determining the intervention centres for
cereals

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 1738/92⁽²⁾, and in particular Article 3 (7) thereof,

Whereas Council Regulation (EEC) No 1145/76⁽³⁾ lays down rules for determining the intervention centres for cereals;

Whereas the intervention centres are determined by Commission Regulation (EEC) No 2006/80⁽⁴⁾, as last amended by Regulation (EEC) No 3224/91⁽⁵⁾; whereas, following the consultations provided for in Article 3 (7) of Regulation (EEC) No 2727/75, the list of centres should be amended;

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

Article 1

1. In the 'BUNDESREPUBLIK DEUTSCHLAND' and 'FRANCE' sections of the Annex to Regulation (EEC) No 2006/80 the amendments set out in the Annex to this Regulation are hereby made in respect of the *Länder* or departments concerned.

2. The following intervention centres are hereby deleted:

Bundesrepublik Deutschland:

- Erding (Bayern),
- Haldensleben (Sachsen-Anhalt);

France:

- Ancenis (Loire-Atlantique).

Article 2

This Regulation shall enter into force on the seventh 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, 25 September 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 180, 1. 7. 1992, p. 1.

⁽³⁾ OJ No L 130, 19. 5. 1976, p. 8.

⁽⁴⁾ OJ No L 197, 30. 7. 1980, p. 1.

⁽⁵⁾ OJ No L 305, 6. 11. 1991, p. 16.

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

Centros de intervención Interventionscentre Interventionsort Κέντρα παρεμβάσεως Intervention centres Centres d'intervention Centri di intervento Interventiecentrum Centros de intervenção	Trigo blando Blød hvede Weichweizen Σίτος μαλακός Common wheat Froment tendre Frumento tenero Zachte tarwe Trigo mole	Centeno Rug Roggen Σίκαλις Rye Seigle Segala Rogge Centeio	Cebada Byg Gerste Κριθή Barley Orge Orzo Gerst Cevada	Trigo duro Hård hvede Hartweizen Σίτος σκληρός Durum wheat Froment dur Frumento duro Durum tarwe Trigo duro	Maíz Majs Mais Αραβόσιτος Maize Maïs Granturco Maïs Milho	Sorgo Sorghum Sorghum Σόργο Sorghum Sorgho Sorgo Sorgho Sorgo
1	2	3	4	5	6	7
FRANCE						
'Charente — 16						
Le Gond-Pontouvre	+	—	—	—	+	
Cher — 18						
Nérondes	+	—	+	—	+	
Indre — 36						
Châtillon-sur-Indre	+	—	—	—	—	
Le Blanc	+	—	—	—	+	
Neuvy-Pailloux	+	—	—	—	—	
Poulaines	+	—	—	—	—	
Loire-Atlantique — 44						
Châteaubriant	+	—	+	—	+	
Maine-et-Loire — 49						
Montreuil-Bellay	+	—	—	+	+	
Noyant	+	—	—	—	—	
Segré	+	—	—	—	+	
Nièvre — 58						
Cercy-la-Tour	+	—	—	—	—	
BUNDESREPUBLIK DEUTSCHLAND						
'Land Bayern						
Kelheim	+	+	+	—	—	
Land Baden-Württemberg						
Donaueschingen	+	—	+	—	—	
Plochingen	+	—	+	—	—	
Land Nordrhein-Westfalen						
Siegen	+	—	+	—	—	
Land Niedersachsen						
Bückeberg	+	—	+	—	—	
Land Mecklenburg- Vorpommern						
Karstädt	+	+	+	—	—	
Land Sachsen-Anhalt						
Bülstringen	+	+	+	—	—	

COMMISSION REGULATION (EEC) No 2802/92

of 25 September 1992

fixing the corrective amount applicable to the refund on rice and broken rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice ⁽¹⁾, as last amended by Regulation (EEC) No 674/92 ⁽²⁾, and in particular the second subparagraph of Article 17 (4) thereof,

Whereas the first subparagraph of Article 17 (4) of Regulation (EEC) No 1418/76 provides that the export refund applicable to rice and broken rice on the day on which application for an export licence is made, adjusted for the threshold price which will be in force during the month of exportation, must be applied on request to exports to be effected during the period of validity of the licence ;

Whereas Commission Regulation No 474/67/EEC ⁽³⁾, as amended by Regulation (EEC) No 1397/68 ⁽⁴⁾, lays down detailed rules for the advance fixing of the export refund on rice and broken rice ;

Whereas that Regulation provides that the refund applicable on the day on which application for an export licence is made must, when it is fixed in advance, be reduced by an amount no greater than the difference between the cif forward delivery price and the cif price, where the former exceeds the latter by more than ECU 0,30 per tonne ; whereas on the other hand, the refund must be increased by an amount no greater than the difference between the cif price and the cif forward delivery price, where the former exceeds the latter by more than ECU 0,30 per tonne ;

Whereas the cif price is that determined in accordance with Article 16 of Regulation (EEC) No 1418/76 ; whereas the cif forward delivery price is that determined in accordance with Article 3 (2) of Council Regulation (EEC) No

1428/76 ⁽⁵⁾, based in respect of each month for which the export licence is valid, on the cif price calculated on the basis of offers for shipment during the month of exportation ;

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

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Council Regulation (EEC) No 1676/85 ⁽⁶⁾, as last amended by Regulation (EEC) No 2205/90 ⁽⁷⁾,
- for the other currencies, an exchange rate based on an average of the ecu rates published in the *Official Journal of the European Communities*, C series, over a period to be determined, multiplied by the coefficient referred to in the preceding indent ;

Whereas it follows from applying the provisions set out above that the corrective amount must be as set out in the Annex hereto ;

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

HAS ADOPTED THIS REGULATION :

Article 1

The corrective amount referred to in Article 17 (4) of Regulation (EEC) No 1418/76 which is applicable to the export refunds fixed in advance in respect of rice and broken rice shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 October 1992.

⁽¹⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽²⁾ OJ No L 73, 19. 3. 1992, p. 7.

⁽³⁾ OJ No 204, 24. 8. 1967, p. 20.

⁽⁴⁾ OJ No L 222, 10. 9. 1968, p. 6.

⁽⁵⁾ OJ No L 166, 25. 6. 1976, p. 30.

⁽⁶⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁷⁾ OJ No L 201, 31. 7. 1990, p. 9.

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

Done at Brussels, 25 September 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX

to the Commission Regulation of 25 September 1992 fixing the corrective amount applicable to the refund on rice and broken rice

(ECU/tonne)

Product code	Destination (°)	Current 10	1st period 11	2nd period 12	3rd period 1
1006 20 11 000	—	—	—	—	—
1006 20 13 000	01	0	0	0	0
1006 20 15 000	01	0	0	0	0
1006 20 17 000	—	—	—	—	—
1006 20 92 000	—	—	—	—	—
1006 20 94 000	01	0	0	0	0
1006 20 96 000	01	0	0	0	0
1006 20 98 000	—	—	—	—	—
1006 30 21 000	—	—	—	—	—
1006 30 23 000	01	0	0	0	0
1006 30 25 000	01	0	0	0	0
1006 30 27 000	—	—	—	—	—
1006 30 42 000	—	—	—	—	—
1006 30 44 000	01	0	0	0	0
1006 30 46 000	01	0	0	0	0
1006 30 48 000	—	—	—	—	—
1006 30 61 100	01	0	0	0	0
	02	0	0	0	0
	03	0	0	0	0
	04	0	0	0	0
1006 30 61 900	01	0	0	0	0
	04	0	0	0	0
1006 30 63 100	01	0	0	0	0
	02	0	0	0	0
	03	0	0	0	0
	04	0	0	0	0
1006 30 63 900	01	0	0	0	0
	04	0	0	0	0
1006 30 65 100	01	0	0	0	0
	02	0	0	0	0
	03	0	0	0	0
	04	0	0	0	0
1006 30 65 900	01	0	0	0	0
	04	0	0	0	0
1006 30 67 100	—	—	—	—	—
1006 30 67 900	—	—	—	—	—
1006 30 92 100	01	0	0	0	0
	02	0	0	0	0
	03	0	0	0	0
	04	0	0	0	0
1006 30 92 900	01	0	0	0	0
	04	0	0	0	0
1006 30 94 100	01	0	0	0	0
	02	0	0	0	0

(ECU/tonne)

Product code	Destination (1)	Current 10	1st period 11	2nd period 12	3rd period 1
1006 30 94 900	03	0	0	0	0
	04	0	0	0	0
	01	0	0	0	0
	04	0	0	0	0
1006 30 96 100	01	0	0	0	0
	02	0	0	0	0
	03	0	0	0	0
	04	0	0	0	0
1006 30 96 900	01	0	0	0	0
	04	0	0	0	0
	—	—	—	—	—
	—	—	—	—	—
1006 30 98 100	—	—	—	—	—
1006 30 98 900	—	—	—	—	—
1006 40 00 000	—	—	—	—	—

(1) The destinations are identified as follows :

- 01 Austria, Liechtenstein, Switzerland, the communes of Livigno and Campione d'Italia,
- 02 Zones I, II, III, VI, Ceuta and Melilla,
- 03 Zones IV, VII c), Canada and zone VIII, except Suriname, Guyana and Madagascar,
- 04 Destinations mentioned in Article 34 of Commission Regulation (EEC) No 3665/87.

NB : The zones are those defined in the Annex to Commission Regulation (EEC) No 2145/92 (OJ No L 214, 30. 7. 1992, p. 20).

COMMISSION REGULATION (EEC) No 2803/92

of 25 September 1992

opening a standing invitation to tender for the supply of medium grain milled rice to Albania

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1567/92 of 15 June 1992 on a second emergency measure supply of food products to the population of Albania⁽¹⁾,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽²⁾, as last amended by Regulation (EEC) No 1738/92⁽³⁾, and in particular Article 7 (6) thereof,

Having regard to Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice⁽⁴⁾, as last amended by Regulation (EEC) No 674/92⁽⁵⁾, and in particular Article 5 thereof,

Whereas Commission Regulation (EEC) No 1616/92 of 24 June 1992 laying down detailed rules applicable to the free supply of food products to the population of Albania⁽⁶⁾, as amended by Regulation (EEC) No 2098/92⁽⁷⁾, provides for allocation of the supply of cereals under Council Regulation (EEC) No 1567/92 to be made by invitation to tender; whereas the invitations to tender for the free supply of processed products cover the quantities of basic products to be taken from intervention stocks as payment in kind for these supplies, and for the processing, transport and other related costs;

Whereas a standing invitation to tender should be opened for the supply of a consignment of 500 tonnes of medium grain milled rice;

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

HAS ADOPTED THIS REGULATION:

Article 1

Under the conditions laid down in Regulation (EEC) No 1616/92, the Italian intervention agency shall open a standing invitation to tender for the supply to Albania of 500 tonnes of medium grain milled rice, as set out in Annex I and in accordance with the provisions of this Regulation.

⁽¹⁾ OJ No L 166, 20. 6. 1992, p. 1.

⁽²⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽³⁾ OJ No L 180, 1. 7. 1992, p. 1.

⁽⁴⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽⁵⁾ OJ No L 73, 19. 3. 1992, p. 7.

⁽⁶⁾ OJ No L 170, 25. 6. 1992, p. 18.

⁽⁷⁾ OJ No L 210, 25. 7. 1992, p. 15.

Article 2

Tenders shall be for the quantity, in tonnes, of paddy rice necessary to cover the supply, transport and other costs up to the delivery stage provided for, of all the lot indicated in the invitation to tender provided for in Article 14 (2) of Regulation (EEC) No 1616/92.

The quantity of paddy rice awarded as payment in kind for the supply shall be made available, at the successful tenderer's choice, from the intervention stocks designated for this purpose in the abovementioned invitation to tender.

With regard to the time limit for removal, the measures laid down in Article 17 of Commission Regulation (EEC) No 75/91⁽⁸⁾ shall not be applicable.

Article 3

1. The time limit for submission of tenders for the first partial invitation to tender shall be 11 a.m. on 1 October 1992 (Brussels time).

2. The time limit for submission of tenders under the subsequent partial invitations to tender shall expire each Thursday at 11 a.m. (Brussels time).

3. The time limit for submission of tenders for the last partial invitation to tender shall expire at 11 a.m. on 15 October 1992 (Brussels time).

4. Notwithstanding Article 14 of Commission Regulation (EEC) No 1616/92, the intervention agency concerned shall publish an invitation to tender at least three days before the date laid down for the first partial invitation to tender.

Article 4

Tenders shall be submitted to the Italian intervention agency.

The Italian intervention agency shall forward the tenders to the Commission in accordance with the schedule specified in Annex II.

Article 5

A specimen of the take-over certificate referred to in Article 9 (3) of Regulation (EEC) No 1616/92 is given in Annex III hereto.

The certificate shall be issued after the goods have been unloaded.

⁽⁸⁾ OJ No L 9, 12. 1. 1991, p. 15.

Article 6

The successful tenderer shall undertake to provide the Albanian authorities with the documents required for the purposes of the supply specified in the invitation to tender issued by the Italian intervention agency.

Article 7

For the purposes of booking the expenditure by the European Agricultural Guidance and Guarantee Fund (EAGGF), the book value of the product concerned shall be :

Rice : ECU 118,00 per tonne.

Article 8

Italy shall take all appropriate measures to ensure that no refund or monetary compensatory amount is applied within the framework of the supply, in particular by specifying this on the export licence.

Article 9

1. Italy shall adopt all and any additional provisions necessary for implementation of this Regulation.

2. Italy shall send to the Commission all and any information on the carrying out of the supply, in particular relating to the award to the contract, delivery times and the actual date of take-over by the beneficiary.

Article 10

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, 25 September 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX I

1. Destination : Albania
2. Product to be mobilized : medium grain milled rice
3. Characteristics and quality of the goods⁽¹⁾ : OJ No C 114, 29. 4. 1991 (point II.A.1.f)
4. Total quantity : 500 tonnes (in bags — slung)
5. Number of lots : one lot of 500 tonnes
6. Packaging⁽²⁾ : OJ No C 114, 29. 4. 1991 (point II.A.2.c)
7. Marking :
 - European flag : OJ No C 114, 29. 4. 1991 (Annex I)
 - Inscriptions in Albanian :
'RICE / EUROPEAN COMMUNITY'
8. Mobilization of the product : Italian domestic market
9. Method of transport : by sea, by rigged-up vessel, (unloading possibly on barges)
10. Stage of delivery : cif ex-ship port of unloading
11. Port of unloading : 500 tonnes in Durres
12. Final date for supply : Durres on 20 October 1992.
If no bid has been accepted on 1 October 1992, the above dates should be postponed by seven days.
The same should apply if no bid has been accepted on 8 October 1992.
13. Supply may be made earlier on the successful tenderer's initiative and on his own responsibility if unloading and port removal conditions in Durres allow.

⁽¹⁾ The successful tenderer shall submit to the beneficiary a certificate issued by an official authority certifying that, for the product to be supplied, the standards relating to radioactivity levels have been complied with in the Member State concerned.

The radioactivity certificate must specify the caesium-134 and -137 and iodine-131 contents.

⁽²⁾ With a view to possible re-bagging, the successful tenderer shall supply 2 % of empty bags of the same quality as those containing the goods, bearing the inscription followed by a capital 'R'.
Amended by OJ No C 135, 26. 5. 1992, p. 20.

*ANNEX II***Standing invitation to tender for the supply of 500 tonnes of medium grain milled rice to Albania**

[Regulation (EEC) No 2803/92]

Tenderer's number	Quantity of medium grain milled rice to be supplied (in tonnes)	Quantity of paddy rice required as payment in kind (in tonnes)
1	500	
2		
3		
4		
etc.		

*ANNEX III***Delivery by boat****TAKE-OVER CERTIFICATE**

I, the undersigned,
(Name, first name, company)

acting on behalf of the Albanian Government, certify that the following goods have been taken-over:

— name of the vessel:

— place and date of take-over:

— product:

— tonnage, weight taken over:

Observations or reservations:

.....
.....
.....
.....

COMMISSION REGULATION (EEC) No 2804/92**of 25 September 1992****amending Regulation (EEC) No 891/89 on special detailed rules for the application of the system of import and export licences for cereals and rice**

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

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EEC) No 1738/92 ⁽²⁾, and in particular Articles 12 (2) and 16 (6) thereof,

Whereas Commission Regulation (EEC) No 891/89 of 5 April 1989 on special rules for the application of the system of import and export licences for cereals and rice ⁽³⁾, as last amended by Regulation (EEC) 337/92 ⁽⁴⁾, introduced a period of reflexion of three days before the actual issue of export licences with advance fixing of the refund for cereal-based compound feedingstuffs; whereas the purpose of this time limit was to prevent licences being issued for excessive quantities; whereas this risk also exists for exports of groats, meal and malt; whereas, as a result, this measure should be extended to that product; whereas, consequently, Regulation (EEC) No 891/89 should be amended; whereas the impact of this amendment should be restricted to applications for export licences submitted prior to 1 January 1993;

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

HAS ADOPTED THIS REGULATION:

Article 1

The following is hereby added to Article 9 (3) of Regulation (EEC) No 891/89:

'The previous paragraph shall also apply to export licences for products falling within CN codes ex 1103 11, ex 1107 10 and ex 1107 20 where the applications for licences are submitted prior to 1 January 1993.'

Article 2

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

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

Done at Brussels, 25 September 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 180, 1. 7. 1992, p. 1.

⁽³⁾ OJ No L 94, 7. 4. 1989, p. 13.

⁽⁴⁾ OJ No L 36, 13. 2. 1992, p. 15.

COMMISSION REGULATION (EEC) No 2805/92

of 25 September 1992

introducing a countervailing charge on fresh lemons originating in Argentina

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 1754/92⁽²⁾, and in particular the second subparagraph of Article 27 (2) thereof,

Whereas Article 25 (1) of Regulation (EEC) No 1035/72 provides that, if the entry price of a product imported from a third country remains at least ECU 0,6 below the reference price for two consecutive market days, a countervailing charge must be introduced in respect of the exporting country concerned, save in exceptional circumstances; whereas this charge is equal to the difference between the reference price and the arithmetic mean of the last two entry prices available for that exporting country;

Whereas Commission Regulation (EEC) No 1413/92 of 27 May 1992 fixing for the 1992/93 marketing year the reference prices for fresh lemons⁽³⁾ fixed the reference price for products of class I for the month of September 1992 at ECU 56,33 per 100 kilograms net;

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

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

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

Whereas, for fresh lemons originating in Argentina the entry price calculated in this way has remained at least ECU 0,6 below the reference price for two consecutive market days; whereas a countervailing charge should therefore be introduced for these fresh lemons;

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

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Regulation (EEC) No 1676/85⁽⁶⁾, as last amended by Regulation (EEC) No 2205/90⁽⁷⁾,
- for the other currencies, an exchange rate based on an average of the ecu rates published in the *Official Journal of the European Communities*, C series, over a period to be determined, multiplied by the coefficient referred to in the preceding indent,

HAS ADOPTED THIS REGULATION:

Article 1

A countervailing charge of ECU 3,8 per 100 kilograms net is applied to fresh lemons (CN code ex 0805 30 10) originating in Argentina.

Article 2

This Regulation shall enter into force on 29 September 1992.

⁽¹⁾ OJ No L 118, 20. 5. 1972, p. 1.

⁽²⁾ OJ No L 180, 1. 7. 1992, p. 23.

⁽³⁾ OJ No L 146, 28. 5. 1992, p. 71.

⁽⁴⁾ OJ No L 220, 10. 8. 1974, p. 20.

⁽⁵⁾ OJ No L 368, 31. 12. 1985, p. 1.

⁽⁶⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁷⁾ OJ No L 201, 31. 7. 1990, p. 9.

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

Done at Brussels, 25 September 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

COMMISSION REGULATION (EEC) No 2806/92

of 25 September 1992

fixing the maximum buying-in price and the quantities of beef bought in for the 77th partial invitation to tender under Regulation (EEC) No 1627/89

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 90 thereof,

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal⁽¹⁾, as last amended by Regulation (EEC) No 2066/92⁽²⁾, and in particular Article 6 (8) thereof,

Whereas, pursuant to Commission Regulation (EEC) No 859/89 of 29 March 1989 laying down detailed rules for the application of intervention measures in the beef and veal sector⁽³⁾, as last amended by Regulation (EEC) No 695/92⁽⁴⁾, an invitation to tender was opened by Commission Regulation (EEC) No 1627/89 of 9 June 1989 on the buying in of beef by invitation to tender⁽⁵⁾, as last amended by Regulation (EEC) No 2733/92⁽⁶⁾;

Whereas, in accordance with Article 11 (1) of Regulation (EEC) No 859/89, a maximum buying-in price is to be fixed for quality R3, where appropriate, for each partial invitation to tender in the light of the tenders received; whereas, in accordance with Article 12 of that Regulation, only tenders lower than or equal to the maximum price are to be accepted, without, however, exceeding the average national or regional market price plus the amount mentioned in paragraph 1; whereas, however, pursuant to Article 5 of that Regulation, where the intervention agencies in Member States are offered meat in quantities greater than they are able to take over forthwith, such intervention agencies may limit buying in to the quantities they can take over;

Whereas, after the tenders submitted for the 77th partial invitation to tender have been examined and taking account, pursuant to Article 6 (1) of Regulation (EEC) No 805/68, of the requirements for reasonable support of the market and the seasonal trend in slaughterings, the maximum buying-in price and the quantities which may be accepted into intervention should be fixed;

Whereas the quantities offered at present exceed the quantities which may be bought in; whereas a reducing coefficient or, where appropriate depending on the differences in prices and the quantities tendered for, several reducing coefficients should accordingly be

applied to the quantities which may be bought in in accordance with Article 11 (3) of Regulation (EEC) No 859/89;

Whereas the scale of the quantities awarded warrants the application of the possibility provided for in Article 13 (2) of Regulation (EEC) No 859/89 of extending the period during which the intervention products are to be delivered by one week;

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 77th partial invitation to tender opened by Regulation (EEC) No 1627/89:

(a) for category A:

- the maximum buying-in price is hereby fixed at ECU 255,60 per 100 kilograms of carcasses or half-carcasses of quality R3,
- the maximum quantity of carcasses or half-carcasses accepted is hereby fixed at 19 873 tonnes; the quantities offered are hereby reduced by 30 % pursuant to Article 11 (3) of Regulation (EEC) No 859/89;

(b) for category C:

- the maximum buying-in price is hereby fixed at ECU 255,60 per 100 kilograms of carcasses or half-carcasses of quality R3,
- the maximum quantity accepted of carcasses or half-carcasses is hereby fixed at 53 035 tonnes; the quantities offered are hereby reduced by 30 % pursuant to Article 11 (3) of Regulation (EEC) No 859/89.

Article 2

By derogation from the first sentence of Article 13 (2) of Regulation (EEC) No 859/89 the time limit for delivery to intervention stores is extended by one week.

Article 3

This Regulation shall enter into force on 28 September 1992.

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 24.

⁽²⁾ OJ No L 215, 30. 7. 1992, p. 49.

⁽³⁾ OJ No L 91, 4. 4. 1989, p. 5.

⁽⁴⁾ OJ No L 74, 20. 3. 1992, p. 42.

⁽⁵⁾ OJ No L 159, 10. 6. 1989, p. 36.

⁽⁶⁾ OJ No L 277, 27. 9. 1992, p. 15.

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

Done at Brussels, 25 September 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

COMMISSION REGULATION (EEC) No 2807/92

of 25 September 1992

fixing the import levies on white sugar and raw sugar

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

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector⁽¹⁾, as last amended by Regulation (EEC) No 61/92⁽²⁾, and in particular Article 16 (8) thereof,

Whereas the import levies on white sugar and raw sugar were fixed by Commission Regulation (EEC) No 1813/92⁽³⁾, as last amended by Regulation (EEC) No 2787/92⁽⁴⁾;

Whereas it follows from applying the detailed rules contained in Commission Regulation (EEC) No 1813/92 to the information known to the Commission that the levies at present in force should be altered to the amounts set out in the Annex hereto;

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

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in

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

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

Whereas these exchange rates being those recorded on 24 September 1992,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 26 September 1992.

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

Done at Brussels, 25 September 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 6, 11. 1. 1992, p. 19.

⁽³⁾ OJ No L 183, 3. 7. 1992, p. 18.

⁽⁴⁾ OJ No L 281, 25. 9. 1992, p. 41.

⁽⁵⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁶⁾ OJ No L 201, 31. 7. 1990, p. 9.

ANNEX

to the Commission Regulation of 25 September 1992 fixing the import levies on white sugar and raw sugar

(ECU/100 kg)

CN code	Levy ⁽¹⁾
1701 11 10	39,83 ⁽¹⁾
1701 11 90	39,83 ⁽¹⁾
1701 12 10	39,83 ⁽¹⁾
1701 12 90	39,83 ⁽¹⁾
1701 91 00	46,91
1701 99 10	46,91
1701 99 90	46,91 ⁽²⁾

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

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

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

COMMISSION REGULATION (EEC) No 2808/92**of 25 September 1992****altering the export refunds on cereals and on wheat or rye flour, groats and meal**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 1738/92⁽²⁾, and in particular the fifth subparagraph of Article 16 (2) thereof,Whereas the export refunds on cereals and on wheat or rye flour, groats and meal were fixed by Commission Regulation (EEC) No 2790/92⁽³⁾;

Whereas it follows from applying the detailed rules contained in Commission Regulation (EEC) No 2790/92 to the information known to the Commission that the

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

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 (a), (b) and (c) of Regulation (EEC) No 2727/75, exported in the natural state, as fixed in the Annex to Regulation (EEC) No 2790/92 are hereby altered as shown in the Annex to this Regulation in respect of the products set out therein.

Article 2

This Regulation shall enter into force on 26 September 1992.

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

Done at Brussels, 25 September 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 180, 1. 7. 1992, p. 1.

⁽³⁾ OJ No L 281, 25. 9. 1992, p. 48.

ANNEX

to the Commission Regulation of 25 September 1992 altering export refunds on cereals and on wheat or rye flour, groats and meal

(ECU / tonne)		
Product code	Destination (1)	Amount of refund (2)
0709 90 60 000	—	—
0712 90 19 000	—	—
1001 10 10 000	—	—
1001 10 90 000	04	50,00
	02	20,00
1001 90 91 000	06	77,00
	02	0
1001 90 99 000	04	67,00
	05	21,00
	02	20,00
1002 00 00 000	03	21,00
	02	20,00
1003 00 10 000	06	75,00
	02	0
1003 00 90 000	04	65,00
	02	20,00
1004 00 10 000	—	—
1004 00 90 000	—	—
1005 10 90 000	—	—
1005 90 00 000	04	70,00
	07	90,00
	02	0
1007 00 90 000	—	—
1008 20 00 000	—	—
1101 00 00 100	02	105,50
1101 00 00 130	01	99,50
1101 00 00 150	01	91,50
1101 00 00 170	01	84,50
1101 00 00 180	01	79,50
1101 00 00 190	—	—
1101 00 00 900	—	—
1102 10 00 500	01	105,50
1102 10 00 700	—	—
1102 10 00 900	—	—
1103 11 10 200	01	140,00
1103 11 10 400	01	120,00
1103 11 10 900	01	0
1103 11 90 200	01	105,50
1103 11 90 800	—	—

(¹) The destinations are identified as follows :

- 01 All third countries,
- 02 Other third countries,
- 03 Switzerland, Austria and Liechtenstein,
- 04 Switzerland, Austria, Liechtenstein, Ceuta and Melilla,
- 05 Poland,
- 06 Romania,
- 07 Madagascar.

(²) Refunds for exports to the Republics of Serbia and Montenegro may only be granted for humanitarian aid supplied by charitable organizations fulfilling the conditions laid down in Article 2 (a) and Article 3 of Council Regulation (EEC) No 1432/92.

NB: The zones are those defined in Commission Regulation (EEC) No 2145/92 (OJ No L 214, 30. 7. 1992, p. 20).

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 21 September 1992

on the conclusion of the Agreement in the form of an exchange of letters concerning the provisional application of the Protocol defining, for the period 21 May 1992 to 20 May 1995, the fishing opportunities and the financial contribution provided for by the Agreement between the European Community and the Government of the Democratic Republic of Madagascar on fishing off Madagascar

(92/477/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Agreement between the European Economic Community and the Government of the Democratic Republic of Madagascar on fishing off Madagascar ⁽¹⁾,

Having regard to the proposal from the Commission,

Whereas the Community and the Democratic Republic of Madagascar held negotiations to determine the amendments or additions to be made to the Agreement on fishing off Madagascar at the end of the period of application of the first Protocols;

Whereas, as a result of these negotiations a new Protocol was initialled on 14 May 1992;

Whereas, under this Protocol, Community fishermen enjoy fishing opportunities in the waters falling within the sovereignty or jurisdiction of the Democratic Republic of Madagascar for the period 21 May 1992 to 20 May 1995;

Whereas, in order to avoid interruption of fishing activities by Community vessels, it is essential that the Protocol in question be approved as quickly as possible; whereas both parties have therefore initialled an Agreement in the form of an exchange of letters providing for the provisional application of the initialled Protocol from the day following the date of expiry of the Protocols previously in

force; whereas the Agreement in the form of an exchange of letters should be concluded, subject to a definitive decision under Article 43 of the Treaty,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement in the form of an exchange of letters concerning the provisional application of the Protocol defining for the period 21 May 1992 to 20 May 1995 the fishing opportunities and the financial contribution provided for by the Agreement between the European Community and the Government of the Democratic Republic of Madagascar on fishing off Madagascar is hereby approved on behalf of the Community.

The text of the Agreement in the form of an exchange of letters is attached to this Decision.

Article 2

The President of the Council is hereby authorized to designate the persons empowered to sign the Agreement in the form of an exchange of letters in order to bind the Community.

Done at Brussels, 21 September 1992.

For the Council

The President

J. GUMMER

⁽¹⁾ OJ No L 73, 18. 3. 1986, p. 26.

AGREEMENT

in the form of an exchange of letters on the provisional application of the protocol defining, for the period 21 May 1992 to 20 May 1995, the fishing opportunities and the financial contribution provided for by the Agreement between the European Community and the Government of the Democratic Republic of Madagascar on fishing off Madagascar

A. Letter from the Government of Madagascar

Sir ...

With reference to the Protocol, initialled on 14 May 1992, defining the fishing opportunities and the financial contribution for the period 21 May 1992 to 20 May 1995, I have the honour to inform you that the Government of Madagascar is willing to apply the Protocol provisionally from 21 May 1992 pending its entry into force in accordance with Article 6 thereof, provided that the European Community is prepared to do likewise.

This is on the understanding that the first instalment, equal to one third of the financial compensation laid down by Article 2 of the Protocol, must be paid before 30 November 1992.

I should be grateful if you would confirm the agreement of the European Community to such a provisional application.

Please accept, Sir, the assurance of my highest consideration.

*For the Government
of the Democratic Republic of Madagascar*

B. Letter from the Community

Sir ...

I have the honour to acknowledge receipt of your letter of today's date which reads as follows :

'With reference to the Protocol, initialled on 14 May 1992, defining the fishing opportunities and the financial contribution for the period 21 May 1992 to 20 May 1995, I have the honour to inform you that the Government of Madagascar is willing to apply the Protocol provisionally from 21 May 1992 pending its entry into force in accordance with Article 6 thereof, provided that the European Community is prepared to do likewise.

This is on the understanding that the first instalment, equal to one third of the financial compensation laid down by Article 2 of the Protocol, must be paid before 30 November 1992.

I should be grateful if you would confirm the agreement of the European Community to such a provisional application.'

I am pleased to confirm the agreement of the European Community to a provisional application.

Please accept, Sir ..., the assurance of my highest consideration.

*For the Council
of the European Communities*

COMMISSION

COMMISSION DECISION

of 24 September 1992

concerning certain protection measures relating to swine vesicular disease in
The Netherlands

(92/478/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Directive 90/425/EEC of
26 June 1990 concerning veterinary and zootechnical
checks applicable in intra-Community trade in certain
live animals and products with a view to the completion
of the internal market⁽¹⁾, as last amended by Council
Directive 92/65/EEC⁽²⁾ and in particular Article 10, para-
graph 4 thereof,

Having regard to Council Directive 89/662/EEC of
11 December 1989 concerning veterinary checks in
intra-Community trade with a view to the completion of
the internal market⁽³⁾, as last amended by Directive
91/496/EEC⁽⁴⁾ and in particular Article 9, paragraph 4
thereof,

Whereas several outbreaks of swine vesicular disease have
occurred in the Netherlands;

Whereas these outbreaks are liable to endanger the herds
of other Member States, in view of the trade in live pigs,
fresh pigmeat and certain meat-based products;

Whereas it is necessary to take measures to prevent the
spread of this disease to other Member States;

Whereas the authorities of the Netherlands have under-
taken to implement national measures that are necessary
to guarantee the efficient implementation of the Deci-
sion;

Whereas the measures provided for in this Decision are in
accordance with the opinion of the Standing Veterinary
Committee,

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of this Decision 'disinfection' means the
operation, after thorough cleansing, destined to destroy
swine vesicular disease virus.

Article 2

1. The Netherlands shall not send to other Member
States:

- live pigs coming from its territory,
- fresh pigmeat and pigmeat products obtained from
pigs slaughtered after 9 September 1992 coming from
those holdings and parts of its territory described in
the Annex.

2. The restrictions described in paragraph 1 shall not
apply to meat products which have undergone one of the
treatments laid down in Article 4 (1) of Council Directive
80/215/EEC of 22 January 1980 on health problems
affecting intra-Community trade in meat products⁽⁵⁾.

3. The Netherlands are authorized to dispatch in a
sealed means of transport to the other Member States,
with effect from 23 September 1992, fresh pig meat and
products based on pigmeat obtained from pigs:

- (a) slaughtered after the 23rd September 1992;
- (b) coming from outside that part of the territory
described in the Annex;
- (c) coming from a holding where all pigs are every 15
days submitted to a thorough health examination by a
veterinarian designated by the competent veterinary
authorities and found to have presented no sign of
disease;

⁽¹⁾ OJ No L 224, 18. 8. 1990, p. 29.

⁽²⁾ OJ No L 268, 14. 9. 1992, p. 54.

⁽³⁾ OJ No L 395, 30. 12. 1989, p. 13.

⁽⁴⁾ OJ No L 268, 24. 9. 1991, p. 56.

⁽⁵⁾ OJ No L 47, 21. 2. 1980, p. 4.

- (d) originating from a well separated unit where a guarantee has been obtained in writing from the person in charge of the pigs that no live pigs have been introduced into the unit during the 15 day period prior to movement to the slaughterhouse;
- (e) which have been transported directly under official control from the herd of origin to the designated abattoir: the means of transport utilized must have undergone cleansing and disinfection under official control before and after each journey and bear a visible mark to that effect;
- (f) which have undergone a serological negative test in case of suspicion.

Article 3

1. The health certificate provided for in Council Directive 64/433/EEC of 26 June 1964 on health problems affecting intra-Community trade in fresh meat ⁽¹⁾ accompanying pigmeat sent from the Netherlands must be completed by the following:

'Meat in accordance with Commission Decision 92/478/EEC of 24 September 1992 concerning certain protection measures relating to swine vesicular disease in the Netherlands.'

2. The health certificate provided for in Council Directive 77/99/EEC of 21 December 1976 on animal health problems affecting intra-Community trade in meat products ⁽²⁾ accompanying meat products sent from the Netherlands must be completed by the following:

'Products in accordance with Commission Decision 92/478/EEC of 24 September 1992 concerning certain protection measures relating to swine vesicular disease in the Netherlands.'

Article 4

The Netherlands shall:

- arrange that all parts of the transportation network engaged in transport of pigs are undergoing thorough and repeated cleansing and disinfection,
- arrange for an epidemiological survey in order to ascertain the extent of swine vesicular disease infection. Priority should be given to areas most recently affected by the disease and to holdings suspected to having been infected,
- establish a 10 km zone next to its borders to neighbouring countries to ensure compliance with the measures given in this decision on movement of pigs, pigmeat and pigmeat products.

Article 5

This Decision shall apply until 15 October 1992. The situation shall be reviewed by the Standing Veterinary Committee not later than 9 October 1992 to assess the disease situation and any protection measures necessary at that time.

Article 6

This Decision is addressed to the Member States.

Done at Brussels, 24 September 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No 121, 29. 7. 1964, p. 2012/64.

⁽²⁾ OJ No L 26, 31. 1. 1977, p. 85.

*ANNEX***Holdings and part of the territory of the Netherlands subject to the prohibition of this Decision**

(a) All holdings suspected of being infected with swine vesicular disease.

(b) The part of the territory of the Netherlands situated inside the line formed by:

Motorway N302 from Harderwijk to the southeast to Motorway A1, A1 eastwards to Motorway A50, A50 southwards, continuing on Motorway A12, A12 westwards until the point where Motorway A50 continues. A50 southwards where it crosses the river Neder Rijn, the river Neder Rijn westwards where it ends in the river Lek, the river Lek westwards where it crosses Motorway A27, A27 northbound where it reaches Motorway A28, A28 northeast where it reaches Motorway N302.
