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I

*(Acts whose publication is obligatory)***COUNCIL REGULATION (EEC) No 3482/92****of 30 November 1992**

imposing a definitive anti-dumping duty on imports of certain large electrolytic aluminium capacitors originating in Japan and collecting definitively the provisional anti-dumping duty

THE COUNCIL 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 12 thereof,

Having regard to the proposal from the Commission, submitted after consultation within the Advisory Committee as provided for under the above Regulation,

Whereas :

A. PROVISIONAL MEASURES

- (1) The Commission, by Regulation (EEC) No 1451/92⁽²⁾ (hereafter referred to as the Provisional Duty Regulation) imposed a provisional anti-dumping duty on imports of certain large electrolytic aluminium capacitors with a CV product (capacitance multiplied by rated voltage) between 18 000 and 310 000 µC (micro-coulombs), originating in Japan falling within CN code ex 8532 22 00 (hereafter referred to as 'LAECs'). The Council, by Regulation (EEC) No 2848/92⁽³⁾ extended this duty for a period not exceeding two months.

B. SUBSEQUENT PROCEDURE

- (2) Following the imposition of the provisional anti-dumping duty, the interested parties, who so requested, were granted an opportunity to be heard by the Commission. They also made written

submissions making known their views on the findings.

- (3) Upon request, parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive duties and the definitive collection of amounts secured by way of a provisional duty. They were also granted a period within which to make representations subsequent to the disclosure.
- (4) The oral and written comments submitted by the parties were considered and, where appropriate, the Commission's findings were modified to take account of them.
- (5) One exporting producer cooperated in the first part of the proceeding but failed, after the imposition of provisional duties, to reply to a certain number of requests for information addressed by the Commission concerning export transactions and informed the Commission that he would no longer participate in the investigation. This exporter, when informed by the Commission that final findings might be made on the basis of facts available, confirmed that it would not further participate in the investigation.

This lack of information precluded the Commission from determining, for the purpose of definitive findings, the total number of export transactions and the price of a number of these transactions.

In these circumstances the Commission concluded that it did not have the necessary reliable information available to establish individual conclusions concerning dumping and injury for this exporter. Accordingly, the findings for this exporter were based on the facts available in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88.

The Council confirms this conclusion.

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No L 152, 4. 6. 1992, p. 22.

⁽³⁾ OJ No L 286, 1. 10. 1992, p. 1.

- (6) Due to the complexity of the proceeding, in particular to the detailed verification of the voluminous data involved and the numerous arguments put forward, the investigation could not be concluded within the normal time limit.

C. COMMUNITY INDUSTRY

- (7) The Commission found in recitals 8 to 12 of the Provisional Duty Regulation that the three producers supporting the complaint satisfied the requirements to be regarded as the Community industry within the meaning of Article 4 (5) of Regulation (EEC) No 2423/88 and particularly that no reasonable grounds existed to exclude Nederlandse Philips Bedrijven BV from the Community industry.
- (8) One of the cooperating exporters disputed the Commission's conclusions on the definition of the Community industry. Its arguments were the following :
- (i) Philips was itself, through one of its companies i.e. Philips Consumer Electronics BV, an importer of the dumped products ;
 - (ii) the price advantages obtained as a result of the purchases of LAEC's in Japan by Philips Consumer Electronics BV must have outweighed the corresponding losses of Nederlandse Philips Bedrijven BV, the LAEC's manufacturing division. Thus, Philips as a whole, had benefitted from dumping and should, consequently, be excluded from the Community industry.

As to these arguments, the Commission recalls its previous general practice to exclude importing Community producers only when they are either shielded from the effect of the dumped imports, draw undue benefits from them or import such quantities in relation to their own production that they cannot be considered any longer as being committed to production in the Community.

Indeed, to include such companies in the injury findings would distort aggregate data bearing on the constitution of the Community industry.

- (9) In the light of the above considerations, the Commission has examined whether the imports by Philips Consumer Electronics BV are such as to justify the exclusion of the whole Philips group from the scope of the Community industry. In this respect, the Commission first examined, whether Philips was shielded from or benefitted through the effects of dumping and has concluded, as is shown

in recitals 21 and 23 of this Regulation, that Philips Bedrijven BV suffered material injury through the effects of dumping and was therefore, not shielded from the unfair business practices.

The Commission has further found that whatever the advantages obtained by Philips Consumer Electronics BV, these have not offset the disadvantages suffered by Nederlandse Philips Bedrijven BV. In addition to the lost sales to Philips Consumer Electronics BV, the former was indeed not able to benefit from economies of scales and could not make the necessary investments and research and development expenses. It is for these reasons precisely, that Philips has supported the anti-dumping complaint in order to put an end to the injurious dumping practices, an action which Philips would not have taken if the advantages obtained by Philips Consumer Electronics BV had outweighed the damages suffered by Nederlandse Philips Bedrijven BV.

As to the commitment of Philips to continue producing in the Community, the quantities imported by Philips Consumer Electronics BV were small in relation to the production output of Nederlandse Philips Bedrijven BV. In addition, none of the findings in recital 10 of the Provisional Duty Regulation have been contested by any of the parties involved.

- (10) These circumstances are considered sufficient by the Commission, in exercising the responsibility for assessing whether certain producers with links to exporters or importers or who are themselves importers of the dumped products should be excluded from the Community industry, to confirm its decision that Nederlandse Philips Bedrijven BV should not be excluded from the Community industry.

For all these reasons the Council confirms the considerations and findings of recitals 9 to 12 of the Provisional Duty Regulation and considers that no reasonable grounds exist to exclude Nederlandse Philips Bedrijven BV from the Community industry.

D. PRODUCT UNDER CONSIDERATION, LIKE PRODUCT

- (11) The Commission in recitals 13 to 15 of the Provisional Duty Regulation defined the products forming the subject of the proceeding and concluded that the LAEC's produced and sold by the Community producers formed one single category of product and constituted a like product to the product imported from Japan.

- (12) One of the exporters, without objecting to the like product determination of the Commission, claimed that separate injury findings should have been made in respect of DIN type and snap-in type capacitors. This exporter considered that the lack of separation between these two categories prevented a proper assessment of the relationship of its exports, which are mainly of the snap-in type, with the market data put forward by the complainant.

The Commission considers that, insofar as both the snap-in and the DIN type capacitors have been considered like products and are interchangeable in their uses, there is no justification to split the injury findings into two categories, in particular as the exporter making this request did not introduce any arguments or evidence leading to indicate that these two categories cannot be considered as like products. The Community industry manufactures both DIN and snap-in capacitors in a proportion estimated to be of 30 % for DIN types and 70 % for snap-in types while the Japanese exporters export almost exclusively snap-in types. The exporter making this claim has admitted that snap-in capacitors are replacing DIN type capacitors in the Community. This implies that these products are directly competing and therefore that any depression of the prices of the snap-in capacitors inevitably has an effect on the prices of the DIN type capacitors.

All these factual elements lead the Commission to consider that the request of the exporter is not justified.

The Council confirms this conclusion and the findings of the Commission in recitals 13 to 15 of the Provisional Duty Regulation.

E. DUMPING

1. Normal value

- (13) No comments from any of the interested parties were received concerning the manner in which normal values had been calculated for purposes of provisional determinations in recitals 16 and 17 of the Provisional Duty Regulation.

For one of the exporters investigated, the Commission observed that a material error had taken place in the calculation of its sales, general and administrative expenses. These were modified and the normal values for the exporter concerned were

modified accordingly. The exporter concerned did not object to this course of action.

2. Export price

- (14) No comments from any of the interested parties were received concerning the manner in which export prices had been determined for the purpose of the preliminary findings in recital 18 of the Provisional Duty Regulation.

The Council confirms the findings of the Commission.

3. Comparison

- (15) None of the parties concerned objected to the Commission's method of comparison between normal values and export prices nor to the decisions of the Commission concerning allowances as set out in recitals 19 to 21 of the Provisional Duty Regulation.

The Council confirms these findings.

4. Dumping margins

- (16) Normal values and export prices were compared on a transaction by transaction basis. The final examination of facts shows the existence of dumping in respect of LAECs originating in Japan, the margin of dumping being equal to the amount by which the normal value exceeds the price for export to the Community.
- (17) One of the exporters contested the way in which the Commission had calculated the dumping margins by taking only the best selling models of those exported to the Community. The Commission notes that the models selected account for more than 70 % of total export transactions and that it has been standard practice of the institutions in a number of cases where the large number of transactions so required, to consider a significant quantity such as 70 % of the export transactions, in application of Article 2 (13) of Regulation (EEC) No 2423/88, as being representative. The Commission also notes that this exporter had requested to the Commission to limit the number of domestic transactions being reported during the investigation in view of their extremely large number.

In these circumstances the Commission considers that the use of sampling techniques is well justified in the present case.

The Council confirms these conclusions.

(18) For purposes of definitive findings the Commission took account of new information available concerning the total value of the sales to the Community of the cooperating exporters and the dumping margins were modified accordingly.

(19) The weighted average margins of dumping for each exporter, expressed as a percentage of the total cif value are as follows:

— Eina Co. Ltd.	35,8 %
— Nippon Chemi-con Corporation	11,6 %
— Rubycon Corporation	30,1 %.

(20) As far as the other non-cooperating exporters are concerned, no comments on the conclusions in recitals 23 and 24 of the Provisional Duty Regulation were received by the Commission with the exception of the request received from one exporter to reply to the questionnaire well after the time limit set in the Notice of initiation and shortly before the publication of the Provisional Duty Regulation. This request could not be accepted as the company concerned failed to respect any of the procedural rules applicable to anti-dumping proceedings.

In these circumstances the Council confirms the conclusions as set out in recitals 23 and 24 of the Provisional Duty Regulation. The dumping margin determined for non-cooperating exporters is 75 %.

F. INJURY

(21) The Commission found in recital 33 of the Provisional Duty Regulation, that the Community industry had suffered material injury, within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88, mainly in the form of loss of profitability and loss of market share.

(22) One of the exporters requested that a specific type of capacitor being sold to a client in Italy should be excluded from the scope of the proceeding as, it argued, its sales could not have caused injury to the Community industry. The claim was based on the allegation that this product was being sold at a price higher than that offered by a Community producer and that, being sold in only one Member State it could not cause injury to the Community industry in the rest of the Community. The Commission notes in respect of this request that the consideration of this specific type of capacitors

as a like product has not been disputed and that it has been the consistent practice of the Commission and the Council to establish the existence of injury to the industry concerned by assessing the combined effect of all dumped imports of the product concerned into the Community without examining the impact of a particular type of product or a particular transaction.

The Commission cannot therefore accept the request of the exporter.

The Council confirms this conclusion.

(23) No other comments from the interested parties were received concerning the conclusions of the Commission on injury as set out in recitals 25 to 33 of the Provisional Duty Regulation.

These conclusions are confirmed by Council.

G. CAUSALITY

(24) The Commission noted in recital 34 of the Provisional Duty Regulation that the increase in volume and market share of the dumped imports coincided with the deterioration of the situation of the Community industry. The Commission examined whether other factors might have been the cause of the injury to the Community industry and concluded in recital 38 that the dumped imports of Japanese origin had, taken in isolation, caused material injury to the Community industry.

(25) It was argued by one of the exporters that the problems being faced by the Community producers were not the result of the exports originated in Japan but rather of the fact that the Community producers were less cost efficient than the Japanese exporters and that the products put on the market by the Community producers were overspecified in relation to the requirements of the market.

Without examining the issue whether the Japanese exporters actually enjoy some cost advantages it must be stressed that the Community industry, as explained in recital 35 of the Provisional Duty Regulation, has not been able to make use of its extended capacity and to benefit from the economies of scale due to the very substantial price undercutting of the Japanese imports. The Commission considers that, in any case, with such substantial undercutting of prices, which is higher than any presumed cost advantage, these presumed cost advantages are irrelevant.

Moreover, the Commission notes that the exporters concerned by this proceeding consistently sold in the Community below their cost of production as indicated in recitals 26 and 40 of the Provisional Duty Regulation. In these circumstances the Commission considers that, irrespective of the existence of cost advantages even if these were accepted, this flagrant dumping of the exporters causes injury to the Community industry.

It was further argued in particular that Community producers were selling overspecified DIN and snap-in capacitors. The results of the investigation have shown however, that Community producers manufacture these products in accordance with the specifications requested by their customers. The argument cannot, therefore, be considered as substantiated and the allegations of this exporter cannot be accepted.

- (26) No other arguments concerning the findings of the Commission on the causation of injury set out in recitals 34 to 38 of the Provisional Duty Regulation have been made. The Commission ratifies these findings.

The Council confirms these conclusions.

H. COMMUNITY INTEREST

- (27) In its provisional findings the Commission considered the interest of the Community manufacturing industry, of the user industry and of the final consumers and came to the conclusion in recital 43 of the Provisional Duty Regulation that it was in the interest of the Community to remove the effects of the injury caused to the Community industry by the dumping found.
- (28) The Commission has further examined the impact that the proposed duties might have on users of capacitors in the Community. For a popular consumer product, the cost of the LAEC incorporated into one unit accounts for approximately 1,7 % of the cost of the material content, or for approximately 1 % of the ex factory price, including labour, overheads and profit. The impact of a 75 % duty on the material content cost will be an increase of 1,275 % while at the ex factory level the result will be an increase of that price by 0,75 %. The impact of the duty on final consumers will be even less and may therefore be considered as negligible.
- (29) Although the Commission recognizes, as indicated in recital 40 of the Provisional Duty Regulation, that every reduction in cost is important for the consumer electronics industry, the Commission must balance all interests involved when consid-

ering whether the interest of the Community requires the imposition of measures. In this particular case the Community industry, in view of the consistent under cost pricing of the exporters, might be forced to shut down if fair conditions of trade are not restored and, in such circumstances, the present advantages to the user industry of being supplied at lower prices may disappear.

In these circumstances the Commission considers that the interest of the Community calls for the re-establishment of a fair competitive situation and that any disadvantage which might result are in any event, limited both in scale and in time.

The Council confirms these conclusions.

I. DUTY

- (30) In establishing the level of the definitive duties to be imposed the Council confirms the Commission's methodology and findings outlined in recitals 44 to 47 of the Provisional Duty Regulation with regard to imports from cooperating exporters and from exporters which did not reply to the Commission's questionnaire within the established time limit.

No arguments from any interested parties were received by the Commission concerning these findings.

- (31) As to the exporter referred to in recital 5 of this Regulation the Commission has concluded that in view of the impossibility of determining its export prices, definitive findings in respect of the level of duty should be made on the basis of the facts available in accordance with Article 7 (7) of Regulation (EEC) No 2423/88 as for the other non-cooperating exporters. The facts available taken into consideration for the determination of the duty are those referred to in recitals 24 and 47 of the Provisional Duty Regulation.

The Council confirms these conclusions.

J. UNDERTAKINGS

- (32) Several exporters offered price undertakings to the Commission. The Commission examined the offers and considered that in view of the wide variety of different types of LAECs and the rapid technology developments, efficient monitoring of the adherence of the exporters to the terms of the undertaking would not be practicable.

In these circumstances the Commission considers that the undertakings cannot be accepted. The exporters have been informed accordingly.

The Council confirms this conclusion.

K. COLLECTION OF PROVISIONAL DUTIES

- (33) In view of the dumping margins established and the seriousness of the injury caused to the Community industry, the Council considers it necessary that amounts secured by way of provisional anti-dumping duties should be definitively collected to the extent of the amount of the duty definitively imposed, and for those exporters for which the definitive duty is higher than the provisional duty to the extent of the amount of the provisional duty imposed,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of large electrical capacitors, aluminium electrolytic, with a CV product (capacitance multiplied by rated voltage) between 18 000 and 310 000 µc (micro-coulombs), at a voltage of 160 V or more and with a diameter of 19 mm or more and at a length of 20 mm or more, originating in Japan and falling within CN code: ex 8532 22 00 (Taric codes 8532 22 00 * 11 and 8532 22 00 * 91).

2. The rate of duty shall be 75 % expressed as a percentage of the net, free-at-Community-frontier price,

before duty (Taric additional code 8665), except when manufactured by the following companies for which the rate of duty expressed as a percentage of the net, free-at-Community-frontier price, before duty shall be as set out below:

	<i>Rate of duty</i>	<i>Taric addi- tional code</i>
— Eina Co. Ltd, Fujisawa City, Kanagawa	35,8 %	(8661)
— Nippon Chemi-con Corpo- ration, Tokyo	11,6 %	(8663)
— Rubycon Corporation, Ina Nagano	30,1 %	(8664).

Article 2

The amounts secured by way of provisional anti-dumping duty imposed by Regulation (EEC) No 1451/92 shall be definitively collected at the rates of duty definitively imposed in the case of Nippon Chemi-Con Corporation and of Rubycon Corporation and at the rates of provisional duty applicable in all other cases.

Article 3

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

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

Done at Brussels, 30 November 1992.

For the Council

The President

T. EGGAR

COUNCIL REGULATION (EEC) No 3483/92**of 27 November 1992****amending Regulation (EEC) No 1307/85 authorizing the Member States to grant
a consumption aid for butter**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission ⁽¹⁾,Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas the scheme introduced by Council Regulation (EEC) No 1307/85 ⁽³⁾, authorizing the Member States to grant aid for butter in favour of the final private consumer expired at the end of the 1991/92 milk year; whereas, in order to prevent a fall in butter consumption, that aid scheme should be extended to the end of the 1992/93 milk year with a lower maximum as from 1 January 1993,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1 of Regulation (EEC) No 1307/85 is hereby amended as follows:

1. in the first indent, '1991/92' shall be replaced by '1992/93';
2. the second indent shall be replaced by the following:

'The aid must not exceed ECU 50 per 100 kilograms of butter. However, as from 1 January 1993, that amount shall be reduced to ECU 25 per 100 kilograms of butter.'

Article 2

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

It shall apply from the beginning of the 1992/93 milk year.

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

Done at Brussels, 27 November 1992.

*For the Council**The President*

J. PATTEN

⁽¹⁾ OJ No L 221, 28. 8. 1992, p. 4.

⁽²⁾ Opinion delivered on 19 November 1992 (not yet published in the Official Journal).

⁽³⁾ OJ No L 137, 27. 5. 1985, p. 15. (Last amended by Regulation (EEC) No 3092/91 (OJ No L 293, 24. 10. 1991, p. 9)).

COUNCIL REGULATION (EEC) No 3484/92**of 27 November 1992****amending Regulation (EEC) No 1785/81 on the common organization of the markets in the sugar sector**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 43 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 Article 303 of the Act of Accession of Spain and Portugal provides for the implementation of a preferential system for the adequate supply of raw sugar to the Portuguese refineries during a seven-year period following accession; whereas this preferential system involves the application of a reduced levy for imports of raw sugar from third countries for that purpose and the use of available supplies of raw cane and beet sugar harvested in the Community eligible under the arrangements laid down by Council Regulation (EEC) No 2225/86 of 15 July 1986 laying down measures for the marketing of sugar produced in the French overseas departments and for the equalization of the price conditions with preferential raw sugar ⁽⁴⁾ and available supplies of preferential raw sugar as referred to in Article 33 of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector ⁽⁵⁾; whereas the abovementioned transitional period ends on 31 December 1992;

Whereas, under the terms of the declaration of the European Economic Community on supplies to the sugar refining industry in Portugal annexed to the Act of Accession of Spain and Portugal, the Community is prepared to carry out, before the end of the transitional period, an overall examination of the supply situation of the refining industry in the Community and in particular of the Portuguese industry, on the basis of a report from the Commission accompanied if necessary by proposals permitting the Council to decide, if need be, on the measures to be taken;

Whereas the Community must also determine, before 1 January 1993, the production system to apply throughout the sector from 1 July 1993; whereas it is advisable, therefore, in order not to anticipate the system to be chosen, to determine at the same time the rules for future supply to Portuguese and other Community refineries;

Whereas, in order not to interrupt supplies to Portuguese refineries when the preferential scheme provided for in Article 303 of the Act of Accession comes to an end on 31 December 1992, it is necessary to extend, on a transitional basis, the said scheme by including its provisions in Regulation (EEC) No 1785/81, with the appropriate changes, and to make the provisions applicable throughout the period so as to cover the period until the new production system in the sugar sector comes into effect,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1785/81 is hereby amended as follows:

1. the first subparagraph of Article 9 (4c) shall be replaced by the following:

'4c. From 1 January to 30 June 1993, adjustment aid shall be granted, as an intervention measure, to the refining industry in Portugal for quantities of raw sugar imported from third countries under the terms of Article 16a.'

2. the following Article shall be added:

'Article 16a

1. From 1 January to 30 June 1993, a reduced levy shall be charged on raw cane sugar originating in Côte d'Ivoire, Malawi, Zimbabwe and Swaziland which is imported into mainland Portugal, up to a maximum quantity of 37 500 tonnes expressed as white sugar.

2. Where, during the period referred to in paragraph 1, the Community forward estimate for raw sugar indicates that the availability of raw sugar is insufficient to ensure adequate supply of Portuguese refineries, the Portuguese Republic may be authorized to import from third countries, at a reduced levy and in respect of the said period, the quantities which are estimated to be lacking.

⁽¹⁾ OJ No C 265, 14. 10. 1992, p. 3.

⁽²⁾ Opinion delivered on 20 November 1992 (not yet published in the Official Journal).

⁽³⁾ Opinion delivered on 24 November 1992 (not yet published in the Official Journal).

⁽⁴⁾ OJ No L 194, 17. 7. 1986, p. 7.

⁽⁵⁾ OJ No L 177, 1. 1. 1981, p. 4. Regulation as last amended by Regulation (EEC) No 61/92 (OJ No L 6, 11. 1. 1992, p. 19).

3. The reduced levy referred to in paragraphs 1 and 2 shall be equal to the intervention price for raw sugar referred to in Article 3 (2) in force at the time of importation, less an amount equal to the average spot price for raw sugar quoted on the London Stock Exchange delivered, where appropriate, to the cif stage over the first 20 days of the month preceding the month for which the levy is fixed.

4. Where the polarization of the imported raw sugar deviates from 96°, the levy shall be increased or decreased, as the case may be, by 0,14 % for each one-tenth of a degree by which it deviates.

5. Each month the Commission shall fix the reduced levy for the following month. The levy to be collected shall be that applicable on the day of importation.

6. Certificates for the import of raw sugar under the system provided for in this Article shall be valid from their date of issue until the end of the period referred to in paragraph 1.

7. Applications for the certificates referred to in paragraph 6 shall be submitted to the competent agency in Portugal and be accompanied by a declaration from a refiner to the effect that the latter undertakes to refine the quantity of raw sugar concerned in Portugal in the six months following importation.

Where the sugar concerned is not refined within the prescribed time limit, the importer shall pay a sum equal to the difference between the threshold price and the intervention price for raw sugar which is applicable at the time of importation of the sugar.

8. Applications for import certificates and the certificates themselves shall include in box 12 the following entry :

"Raw sugar originating in (name of the country or countries referred to in paragraph 1 or 2) imported at

reduced levy pursuant to Article 16a of Regulation (EEC) No 1785/81".

9. The security relating to certificates as referred to in paragraph 7 shall be ECU 0,25 per 100 kilograms net weight of sugar.

10. The Portuguese Republic shall report to the Commission :

(a) every month in respect of the preceding month :

— the quantity of raw sugar by weight for which import certificates as referred to in paragraph 6 have been issued,

— the quantity of raw sugar by weight actually imported under certificates as referred to in paragraph 6 ;

(b) every quarter the quantity of raw sugar by weight and in white-sugar equivalent refined during the quarter preceding that in which the report is made.

11. Detailed rules for the application of this Article and in particular the quantities which are estimated to be lacking, the nature and, where appropriate, the origin of the raw sugars which may be imported under this Article shall be adopted in accordance with the procedure laid down in Article 41.

Article 2

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

It shall be applicable from 1 January 1993.

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

Done at Brussels, 27 November 1992.

For the Council

The President

J. PATTEN

COMMISSION REGULATION (EEC) No 3485/92

of 2 December 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 1 December 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 3 December 1992.

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

Done at Brussels, 2 December 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 2 December 1992 fixing the import levies on cereals and on wheat or rye flour, groats and meal

(ECU/tonne)	
CN code	Levy (°)
0709 90 60	132,62 (°) (°)
0712 90 19	132,62 (°) (°)
1001 10 10	169,64 (°) (°) (°)
1001 10 90	169,64 (°) (°) (°)
1001 90 91	141,77
1001 90 99	141,77 (°)
1002 00 00	156,13 (°)
1003 00 10	124,02
1003 00 90	124,02 (°)
1004 00 10	114,96
1004 00 90	114,96
1005 10 90	132,62 (°) (°)
1005 90 00	132,62 (°) (°)
1007 00 90	138,42 (°)
1008 10 00	47,40 (°)
1008 20 00	109,84 (°)
1008 30 00	35,74 (°)
1008 90 10	(°)
1008 90 90	35,74
1101 00 00	211,28 (°) (°)
1102 10 00	231,38 (°)
1103 11 10	275,46 (°) (°)
1103 11 90	227,36 (°)

(°) 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 3486/92

of 2 December 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 1 December 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 3 December 1992.

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

Done at Brussels, 2 December 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 2 December 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 12	1st period 1	2nd period 2	3rd period 3
0709 90 60	0	0	0	0
0712 90 19	0	0	0	0
1001 10 10	0	0	0	0
1001 10 90	0	0	0	0
1001 90 91	0	0	0	0
1001 90 99	0	0	0	0
1002 00 00	0	0	0	0
1003 00 10	0	0	0	0
1003 00 90	0	0	0	0
1004 00 10	0	0	0	0
1004 00 90	0	0	0	0
1005 10 90	0	0	0	0
1005 90 00	0	0	0	0
1007 00 90	0	0	0	0
1008 10 00	0	0	0	0
1008 20 00	0	0	0	0
1008 30 00	0	0	0	0
1008 90 90	0	0	0	0
1101 00 00	0	0	0	0

B. Malt*(ECU/tonne)*

CN code	Current 12	1st period 1	2nd period 2	3rd period 3	4th period 4
1107 10 11	0	0	0	0	0
1107 10 19	0	0	0	0	0
1107 10 91	0	0	0	0	0
1107 10 99	0	0	0	0	0
1107 20 00	0	0	0	0	0

COMMISSION REGULATION (EEC) No 3487/92**of 1 December 1992****establishing unit values for the determination of the customs value of certain perishable goods**

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

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

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

Whereas the result of applying the rules and criteria laid down in that same Regulation to the elements communicated to the Commission in accordance with Article 1 (2)

of that Regulation is that the unit values set out in the Annex to this Regulation should be established in regard to the products in question,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 4 December 1992.

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

Done at Brussels, 1 December 1992.

For the Commission

Christiane SCRIVENER

Member of the Commission

⁽¹⁾ OJ No L 154, 13. 6. 1981, p. 26.

⁽²⁾ OJ No L 321, 21. 11. 1990, p. 6.

ANNEX

Code	CN code	Description	Amount of unit values per 100 kg net									
			ECU	Bfrs/Lfrs	Dkr	DM	FF	Dr	£ Irl	Lit	Fl	£
1.10	0701 90 51 0701 90 59	New potatoes	92,33	3 726	699,17	181,09	614,18	23 609	68,98	158 023	203,63	74,74
1.20	0702 00 10 0702 00 90	Tomatoes	55,64	2 245	421,36	109,13	370,14	14 228	41,57	95 233	122,72	45,04
1.30	0703 10 19	Onions (other than seed)	10,35	418	78,42	20,31	68,88	2 648	7,73	17 724	22,84	8,38
1.40	0703 20 00	Garlic	126,54	5 107	958,23	248,19	841,75	32 357	94,53	216 573	279,08	102,44
1.50	ex 0703 90 00	Leeks	35,55	1 434	269,21	69,72	236,48	9 090	26,56	60 845	78,40	28,78
1.60	ex 0704 10 10 ex 0704 10 90	Cauliflowers	31,88	1 340	252,88	65,14	221,09	7 537	24,43	48 965	73,34	22,77
1.70	0704 20 00	Brussels sprouts	53,72	2 267	423,88	110,06	374,08	11 735	41,29	82 719	124,09	37,72
1.80	0704 90 10	White cabbages and red cabbages	23,05	975	182,88	47,36	160,54	5 181	17,70	35 248	53,35	16,11
1.90	ex 0704 90 90	Sprouting broccoli or calabrese (<i>Brassica oleracea</i> var. <i>italica</i>)	82,30	3 322	623,26	161,43	547,50	21 046	61,49	140 866	181,52	66,63
1.100	ex 0704 90 90	Chinese cabbage	39,75	1 677	314,32	81,49	274,48	9 909	30,51	61 684	91,79	27,92
1.110	0705 11 10 0705 11 90	Cabbage lettuce (head lettuce)	129,38	5 222	979,79	253,78	860,69	33 085	96,66	221 446	285,36	104,75
1.120	ex 0705 29 00	Endives	22,96	965	182,14	46,92	159,25	5 429	17,59	35 268	52,83	16,40
1.130	ex 0706 10 00	Carrots	29,52	1 246	232,51	60,55	203,65	7 364	22,69	45 777	68,23	20,76
1.140	ex 0706 90 90	Radishes	84,79	3 422	642,13	166,32	564,07	21 683	63,35	145 130	187,02	68,65
1.150	0707 00 11 0707 00 19	Cucumbers	50,36	2 032	381,36	98,77	335,00	12 877	37,62	86 194	111,07	40,77
1.160	0708 10 10 0708 10 90	Peas (<i>Pisum sativum</i>)	308,87	12 467	2 338,94	605,81	2 054,62	78 981	230,76	528 632	681,21	250,06
1.170		Beans :										
1.170.1	0708 20 10 0708 20 90	Beans (<i>Vigna</i> spp., <i>Phaseolus</i> spp.)	75,30	3 039	570,27	147,70	500,95	19 256	56,26	128 889	166,09	60,96
1.170.2	0708 20 10 0708 20 90	Beans (<i>Phaseolus</i> spp., <i>vulgaris</i> var. <i>Compressus Savi</i>)	107,76	4 349	816,06	211,37	716,86	27 556	80,51	184 440	237,67	87,24
1.180	ex 0708 90 00	Broad beans	92,83	3 894	734,40	189,09	645,42	21 793	71,04	142 837	212,96	66,61
1.190	0709 10 00	Globe artichokes	176,01	7 104	1 332,87	345,23	1 170,85	45 008	131,50	301 248	388,19	142,50
1.200		Asparagus :										
1.200.1	ex 0709 20 00	— green	363,94	14 690	2 756,02	713,84	2 420,99	93 064	271,90	622 896	802,68	294,65
1.200.2	ex 0709 20 00	— other	283,85	11 457	2 149,48	556,74	1 888,18	72 583	212,06	485 810	626,03	229,80
1.210	0709 30 00	Aubergines (egg-plants)	101,09	4 080	765,53	198,28	672,47	25 850	75,52	173 021	222,96	81,84
1.220	ex 0709 40 00	Ribbed celery (<i>Apium graveolens</i> var. <i>dulce</i>)	36,75	1 483	278,32	72,09	244,49	9 398	27,45	62 905	81,06	29,75
1.230	0709 51 30	Chantarelles	1 419,0	57 401	10 720,9	2 789,11	9 463,39	362 312	1 059,4	2 384 427	3 138,97	1 157,8
1.240	0709 60 10	Sweet peppers	74,10	2 991	561,14	145,34	492,93	18 948	55,36	126 826	163,43	59,99
1.250	0709 90 50	Fennel	40,06	1 692	318,24	82,26	277,42	9 639	30,81	61 820	92,50	28,05
1.260	0709 90 70	Courgettes	38,41	1 614	304,72	78,38	267,79	8 982	29,39	59 164	88,32	27,15
1.270	ex 0714 20 10	Sweet potatoes, whole, fresh (intended for human consumption)	98,95	4 174	781,50	202,59	690,51	22 594	75,77	151 536	228,30	69,55
2.10	ex 0802 40 00	Chestnuts (<i>Castanea</i> spp.), fresh	113,93	4 599	862,80	223,47	757,91	29 134	85,12	195 004	251,28	92,24
2.20	ex 0803 00 10	Bananas (other than plantains), fresh	30,75	1 241	232,90	60,32	204,59	7 864	22,97	52 639	67,83	24,90
2.30	ex 0804 30 00	Pineapples, fresh	25,29	1 020	191,53	49,61	168,25	6 467	18,89	43 289	55,78	20,47
2.40	ex 0804 40 10 ex 0804 40 90	Avocados, fresh	112,91	4 557	855,01	221,46	751,08	28 872	84,35	193 245	249,02	91,41

Code	CN code	Description	Amount of unit values per 100 kg net									
			ECU	Bfrs/Lfrs	Dkr	DM	FF	Dr	£ Irl	Lit	Fl	£
2.50	ex 0804 50 00	Guavas and mangoes, fresh	150,56	6077	1 140,13	295,31	1 001,53	38 499	112,48	257 685	332,06	121,89
2.60		Sweet oranges, fresh :										
2.60.1	0805 10 11 0805 10 21 0805 10 31 0805 10 41	— Sanguines and semi-sanguines	17,76	746	139,59	36,23	122,40	4 458	13,61	27 429	40,84	12,80
2.60.2	0805 10 15 0805 10 25 0805 10 35 0805 10 45	— Navels, Navelines, Navelates, Salustianas, Vernas, Valencia lates, Maltese, Shamoutis, Ovalis, Trovita and Hamlins	36,65	1 479	277,56	71,89	243,82	9 372	27,38	62 734	80,84	29,67
2.60.3	0805 10 19 0805 10 29 0805 10 39 0805 10 49	— Others	39,27	1 585	297,43	77,04	261,28	10 043	29,34	67 224	86,62	31,79
2.70		Mandarins (including tangerines and satsumas), fresh ; clementines, wilkings and similar citrus hybrids, fresh :										
2.70.1	ex 0805 20 10	— Clementines	50,91	2 055	385,58	99,87	338,71	13 020	38,04	87 147	112,30	41,22
2.70.2	ex 0805 20 30	— Monreales and Satsumas	34,24	1 382	259,28	67,15	227,76	8 755	25,58	58 602	75,51	27,72
2.70.3	ex 0805 20 50	— Mandarins and wilkings	57,76	2 438	454,90	118,47	398,43	14 408	44,40	89 560	133,50	40,62
2.70.4	ex 0805 20 70 ex 0805 20 90	— Tangerines and others	58,00	2 341	439,24	113,76	385,84	14 832	43,33	99 274	127,92	46,96
2.80	ex 0805 30 10	Lemons (<i>Citrus limon</i> , <i>Citrus limonum</i>), fresh	41,54	1 676	314,57	81,47	276,33	10 622	31,03	71 097	91,61	33,63
2.85	ex 0805 30 90	Limes (<i>Citrus aurantifolia</i>), fresh	131,89	5 323	998,79	258,70	877,38	33 727	98,54	225 740	290,89	106,78
2.90		Grapefruit, fresh :										
2.90.1	ex 0805 40 00	— white	34,76	1 403	263,28	68,19	231,28	8 890	25,97	59 506	76,68	28,14
2.90.2	ex 0805 40 00	— pink	52,85	2 133	400,21	103,66	351,56	13 514	39,48	90 454	116,56	42,78
2.100	0806 10 11 0806 10 15 0806 10 19	Table grapes	92,70	3 741	701,99	181,82	616,66	23 704	69,25	158 660	204,45	75,05
2.110	0807 10 10	Water-melons	37,11	1 497	281,03	72,79	246,86	9 489	27,72	63 516	81,85	30,04
2.120		Melons (other than water-melons) :										
2.120.1	ex 0807 10 90	— Amarillo, Cuper, Honey dew (including Cantalene), Onteniente, Piel de Sapo (including Verde Liso), Rochet, Tendral, Futuro	75,80	3 059	574,02	148,68	504,24	19 383	56,63	129 737	167,18	61,36
2.120.2	ex 0807 10 90	— other	114,59	4 625	867,74	224,75	762,26	29 301	85,61	196 121	252,72	92,77
2.130	0808 10 91 0808 10 93 0808 10 99	Apples	39,40	1 590	298,43	77,29	262,15	10 077	29,44	67 450	86,91	31,90
2.140		Pears										
2.140.1	0808 20 31 0808 20 33 0808 20 35 0808 20 39	Pears — Nashi (<i>Pyrus pyrifolia</i>)	227,64	9 188	1 723,81	446,49	1 514,27	58 209	170,07	389 605	502,06	184,29
2.140.2	0808 20 31 0808 20 33 0808 20 35 0808 20 39	Other	65,32	2 636	494,70	128,13	434,57	16 705	48,80	111 810	144,08	52,88
2.150	0809 10 00	Apricots	32,40	1 360	254,53	66,06	223,20	8 129	24,82	50 014	74,48	23,34
2.160	0809 20 10 0809 20 90	Cherries	79,83	3 352	627,19	162,79	549,98	20 031	61,15	123 238	183,53	57,51
2.170	ex 0809 30 00	Peaches	121,11	4 888	917,18	237,56	805,68	30 971	90,48	207 295	267,12	98,05

Code	CN code	Description	Amount of unit values per 100 kg net									
			ECU	Bfrs/Lfrs	Dkr	DM	FF	Dr	£ Irl	Lit	Fl	£
2.180	ex 0809 30 00	Nectarines	54,80	2 222	417,68	107,76	364,34	13 899	41,12	94 671	121,37	43,83
2.190	0809 40 11 0809 40 19	Plums	103,83	4 191	786,33	203,67	690,74	26 552	77,57	177 721	229,01	84,06
2.200	0810 10 10 0810 10 90	Strawberries	267,58	10 800	2 026,33	524,84	1 780,01	68 424	199,91	457 977	590,16	216,63
2.205	0810 20 10	Raspberries	1 686,7	71 352	13 344,9	3 467,96	11 643,49	414 554	1 296,5	2 611 963	3 905,77	1 180,3
2.210	0810 40 30	Fruit of the species <i>Vaccinium myrtillus</i>	161,42	6 779	1 268,11	329,16	1 111,99	40 501	123,65	249 172	371,08	116,29
2.220	0810 90 10	Kiwi fruit (<i>Actinidia chinensis</i> Planch.)	87,92	3 549	665,82	172,45	584,89	22 483	65,69	150 486	193,92	71,18
2.230	ex 0810 90 80	Pomegranates	73,71	2 975	558,23	144,59	490,37	18 850	55,07	126 168	162,58	59,68
2.240	ex 0810 90 80	Khakis (including Sharon fruit)	74,51	3 007	564,29	146,15	495,69	19 054	55,67	127 537	164,34	60,32
2.250	ex 0810 90 30	Lychees	501,00	20 222	3 793,92	982,68	3 332,73	128 112	374,31	857 477	1 104,97	405,61

COMMISSION REGULATION (EEC) No 3488/92**of 1 December 1992****re-establishing the levying of customs duties on products of category 40 (order No 40.0400), originating in India, to which the preferential tariff arrangements set out in Council Regulation (EEC) No 3832/90 apply**

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

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

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

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

Whereas, in respect of products of category 40 (order No 40.0400), originating in India, the relevant ceiling amounts to 37 tonnes ;

Whereas on 5 February 1992 imports of the products in question into the Community, originating in India, a country covered by preferential tariff arrangements, reached and were charged against, that ceiling ;

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

HAS ADOPTED THIS REGULATION :

Article 1

As from 6 December 1992 the levying of customs duties, suspended pursuant to Regulation (EEC) No 3832/90, shall be re-established in respect of the following products, imported into the Community and originating in India :

Order No	Category (unit)	CN code	Description
40.0400	40 (tonnes)	ex 6303 91 00 ex 6303 92 90 ex 6303 99 90 6304 19 10 ex 6304 19 90 6304 92 00 ex 6304 93 00 ex 6304 99 00	Woven curtains (including drapes) interior blinds, curtain and bed valances and other furnishing articles, other than knitted or crocheted of wool, of cotton or of man-made fibres

Article 2

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

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

Done at Brussels, 1 December 1992.

For the Commission

Christiane SCRIVENER

Member of the Commission

⁽¹⁾ OJ No L 370, 31. 12. 1990, p. 39.

⁽²⁾ OJ No L 341, 12. 12. 1991, p. 1. This Regulation as last amended by Council Regulation (EEC) No 1509/92 (OJ No L 159, 12. 6. 1992, p. 1).

COMMISSION REGULATION (EEC) No 3489/92
of 1 December 1992

re-establishing the levying of customs duties on products of category No 77 (order No 40.0770), originating in Thailand, to which the preferential tariff arrangements set out in Council Regulation (EEC) No 3832/90 apply

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

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

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

Whereas, in respect of products of category No 77 (order No 40.0770), originating in Thailand, the relevant ceiling amounts to 45 tonnes;

Whereas on 16 November 1992 imports of the products in question into the Community, originating in Thailand, a country covered by preferential tariff arrangements, reached and were charged against that ceiling;

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

HAS ADOPTED THIS REGULATION:

Article 1

As from 6 December 1992 the levying of customs duties, suspended pursuant to Regulation (EEC) No 3832/90, shall be re-established in respect of the following products, imported into the Community and originating in Thailand:

Order No	Category (unit)	CN code	Description
40.0770	77 (tonnes)	ex 6211 20 00	Ski suits, other than knitted or crocheted

Article 2

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

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

Done at Brussels, 1 December 1992.

For the Commission

Christiane SCRIVENER

Member of the Commission

⁽¹⁾ OJ No L 370, 31. 12. 1990, p. 39.

⁽²⁾ OJ No L 341, 12. 12. 1991, p. 1. Regulation as last amended by Regulation (EEC) No 1509/92 (OJ No L 159, 12. 6. 1992, p. 1).

COMMISSION REGULATION (EEC) No 3490/92**of 2 December 1992****opening invitations to tender for the fixing of aid for the private storage of
carcasses and half-carcasses of lamb**

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

Having regard to Council Regulation (EEC) No 3013/89
of 25 September 1989 on the common organization of
the market in sheepmeat and goatmeat⁽¹⁾, as last
amended by Regulation (EEC) No 2069/92⁽²⁾, and in
particular Article 7 (3) thereof,

Whereas Commission Regulation (EEC) No 3446/90 of
27 November 1990 laying down detailed rules for
granting private storage aid for sheepmeat and goat-
meat⁽³⁾, as amended by Regulation (EEC) No 1258/91⁽⁴⁾,
provides in particular for detailed rules on the invitation
to tender;

Whereas Commission Regulation (EEC) No 3447/90 of
28 November 1990 on special conditions for the granting
of private storage aid for sheepmeat and goatmeat⁽⁵⁾, as
last amended by Regulation (EEC) No 1258/91, provides
in particular the minimum quantities in respect of which
a tender may be submitted;

Whereas the application of Article 7 (3) of Regulation
(EEC) No 3013/89 results in the opening of invitations to
tender for private storage aid;

Whereas that Article provides for the application of these
measures on the basis of the situation of each quotation

zone; whereas it is appropriate consequently to open
tenders separately for each of the zones where the condi-
tions are fulfilled,

HAS ADOPTED THIS REGULATION:

Article 1

Separate invitations to tender are opened in Great Britain,
Denmark, Germany, France, Netherlands, Ireland and
Northern Ireland for aid to private storage for carcasses
and half-carcasses of lamb.

Subject to the provisions of Regulation (EEC) No 3447/90
tenders may be submitted to the intervention agencies of
the Member States concerned.

Article 2

Tenders must be submitted not later than 2 p.m. on 9
December 1992 to the relevant intervention agency.

Article 3

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

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

Done at Brussels, 2 December 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 289, 7. 10. 1989, p. 1.

⁽²⁾ OJ No L 215, 30. 7. 1992, p. 59.

⁽³⁾ OJ No L 333, 30. 11. 1990, p. 39.

⁽⁴⁾ OJ No L 120, 15. 5. 1991, p. 15.

⁽⁵⁾ OJ No L 333, 30. 11. 1990, p. 46.

COMMISSION REGULATION (EEC) No 3491/92**of 2 December 1992****concerning the grant in the Azores of flat-rate aid for the production of sugarbeet and special aid for the processing of sugarbeet into white sugar**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1600/92 of 15 June 1992 concerning specific measures for the Azores and Madeira relating to certain agricultural products⁽¹⁾, and in particular Article 25 (3) thereof,

Having regard to Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy⁽²⁾, as last amended by Regulation (EEC) No 2205/90⁽³⁾, and in particular Article 12 thereof,

Whereas Article 25 of Regulation (EEC) No 1600/92 provides for the grant, subject to certain conditions, of aid at a flat rate per hectare for the development of sugarbeet production in the Azores and special aid for the processing into white sugar of sugarbeet harvested in the Azores;

Whereas, in order to ensure that the aid is effective, conditions should be laid down for their application, in particular the minimum conditions for their grant together with the administrative formalities to be completed for that purpose;

Whereas provision should be made in respect of aid paid without due entitlement;

Whereas Regulation (EEC) No 1600/92 entered into force on 1 July 1992; whereas since Portugal has already applied the criteria and conditions laid down in this Regulation in respect of the 1992/93 marketing year, the Regulation should be made applicable with effect from that year;

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

HAS ADOPTED THIS REGULATION:

Article 1

Subject to the conditions in this Regulation, Portugal shall pay to producers of sugarbeet harvested in the

Azores and to processors of such sugarbeet into white sugar in the Azores respectively the flat-rate aid per hectare and the special aid for processing referred to in Article 25 of Regulation (EEC) No 1600/92.

Article 2

1. For the grant of the flat-rate aid per hectare, sugarbeet producers shall, prior to the harvesting of the areas sown, make a declaration to the competent authorities designated by Portugal and shall at the same time present their aid application in writing.
2. The areas eligible for aid shall consist for each producer of at least:
 - (a) 0,1 hectare for the 1992/93 marketing year;
 - (b) 0,2 hectare for the 1993/94 marketing year;
 - (c) 0,3 hectare for subsequent marketing years.
3. Aid applications shall be admissible only if the production of sugarbeet per hectare is at least 25 tonnes.
4. The aid referred to in paragraph 1 shall be paid only after the harvesting and the delivery of the sugarbeet in question to the processor, who shall notify the competent authorities of the quantity of sugarbeet delivered by each sugarbeet producer.

Article 3

1. For the grant of the special processing aid, the processing undertaking shall submit an application in writing to the competent authorities.

The application shall indicate the quantity of white sugar produced from sugarbeet harvested in the Azores and shall be accompanied by:

- (a) proof of purchase of the sugarbeet in respect of each producer who delivered the processed sugarbeet and
 - (b) from the 1993/94 marketing year onwards, a written undertaking not to refine raw sugar during the period of processing of the sugarbeet into white sugar.
2. The aid referred to in paragraph 1 shall be paid only after it has been established that white sugar has been produced from the sugarbeet harvested in the Azores.

Article 4

1. Portugal shall take all the measures necessary to ensure that the aid is granted only up to a maximum corresponding to the production in the Azores of 10 000 tonnes of white sugar per marketing year.

⁽¹⁾ OJ No L 173, 27. 6. 1992, p. 1.

⁽²⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽³⁾ OJ No L 201, 31. 7. 1990, p. 9.

2. Portugal shall take all the additional measures necessary for the application of this Regulation and in particular those concerning the form of the aid applications, the checking of supporting documents as well as the checking of land areas and the quantities of sugarbeet harvested and white sugar produced.

Article 5

Portugal shall notify the Commission :

- (a) within three months following the entry into force of this Regulation, of the additional measures adopted pursuant to Article 4 (2);
- (b) within 45 working days of the end of each marketing year :
 - of the areas and the overall amount for which the flat-rate aid per hectare has been requested and paid,
 - of the quantities of white sugar produced and the overall amount of the special processing aid paid.

Article 6

The conversion into Portuguese escudos shall be made :

- (a) in the case of the aid referred to in Article 2, by applying the agricultural conversion rate applicable on

the date of the last delivery of sugarbeet to the processor ;

- (b) in the case of the aid referred to in Article 3, by applying the agricultural conversion rate applicable on the date of the establishment by Portugal of the definitive production of the processing undertaking in question.

Article 7

1. Where aid has been paid without due entitlement, the competent authorities shall recover the amounts paid out, with interest from the date on which the aid was paid to the date on which it is actually recovered. The interest rate applicable shall be that in force for similar recovery operations under Portuguese law.

2. The aid recovered together with the interest shall be paid to the paying departments and agencies and deducted by them from the expenditure financed by the European Agricultural Guidance and Guarantee Fund (EAGGF) in proportion to the Community contribution.

Article 8

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

It shall apply with effect from the 1992/93 marketing year.

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

Done at Brussels, 2 December 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

COMMISSION REGULATION (EEC) No 3492/92
of 2 December 1992
fixing the aid for cotton

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

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

Having regard to Council Regulation (EEC) No 2169/81 of 27 July 1981 laying down the general rules for the system of aid for cotton ⁽²⁾, as last amended by Regulation (EEC) No 2053/92 ⁽³⁾, and in particular Article 5 (1) thereof,

Whereas the amount of the additional aid referred to in Article 5 (1) of Regulation (EEC) No 2169/81 was fixed by Commission Regulation (EEC) No 2539/92 ⁽⁴⁾, as last amended by Regulation (EEC) No 3470/92 ⁽⁵⁾;

Whereas it follows from applying the rules and other provisions contained in Regulation (EEC) No 2539/92 to the information at present available to the Commission that the amount of the aid at present in force should be altered as shown in Article 1 to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The aid for unginned cotton referred to in Article 5 of Regulation (EEC) No 2169/81 shall be ECU 73,461 per 100 kilograms.

Article 2

This Regulation shall enter into force on 3 December 1992.

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

Done at Brussels, 2 December 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 377, 31. 12. 1987, p. 49.

⁽²⁾ OJ No L 211, 31. 7. 1981, p. 2.

⁽³⁾ OJ No L 215, 30. 7. 1992, p. 12.

⁽⁴⁾ OJ No L 254, 1. 9. 1992, p. 47.

⁽⁵⁾ OJ No L 350, 1. 12. 1992, p. 80.

COMMISSION REGULATION (EEC) No 3493/92
of 2 December 1992
altering the export refunds on white sugar and raw sugar exported in the natural state

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

Whereas the refunds on white sugar and raw sugar exported in the natural state were fixed by Commission Regulation (EEC) No 3379/92 ⁽³⁾, as amended by Regulation (EEC) No 3451/92 ⁽⁴⁾;

Whereas it follows from applying the detailed rules contained in amended Regulation (EEC) No 3379/92 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 (1) (a) of Regulation (EEC) No 1785/81, undenatured and exported in the natural state, as fixed in the Annex to amended Regulation (EEC) No 3379/92 are hereby altered to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 3 December 1992.

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

Done at Brussels, 2 December 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 344, 26. 11. 1992, p. 9.

⁽⁴⁾ OJ No L 350, 1. 12. 1992, p. 32.

ANNEX

to the Commission Regulation of 2 December 1992 altering the export refunds on white sugar and raw sugar exported in the natural state

(ECU)

Product code	Amount of refund ⁽²⁾	
	per 100 kg	per percentage point of sucrose content and per 100 kg net of the product in question
1701 11 90 100	36,39 ⁽¹⁾	
1701 11 90 910	35,54 ⁽¹⁾	
1701 11 90 950	⁽²⁾	
1701 12 90 100	36,39 ⁽¹⁾	
1701 12 90 910	35,54 ⁽¹⁾	
1701 12 90 950	⁽²⁾	
1701 91 00 000		0,3956
1701 99 10 100	39,56	
1701 99 10 910	39,90	
1701 99 10 950	39,90	
1701 99 90 100		0,3956

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

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

⁽³⁾ 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.

COMMISSION REGULATION (EEC) No 3494/92

of 2 December 1992

applying the duty in the Common Customs Tariff to fresh lemons originating in Cyprus

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

Having regard to Council Regulation (EEC) No 1252/73 of 14 May 1973 on imports of citrus fruits originating in Cyprus⁽¹⁾, and in particular Article 5 thereof,

Whereas Article 5 (2) and (3) of Annex I to the Agreement establishing an Association between the European Economic Community and the Republic of Cyprus provides for a reduced rate of duty on imports into the Community of fresh lemons originating in Cyprus; whereas, during the period in which reference prices are applied, this reduction is dependent on the observance of a specified price on the Community market; whereas detailed rules for the application of this system are contained in Regulation (EEC) No 1252/73; whereas, in certain respects, these rules refer to provisions of Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables⁽²⁾ as last amended by Regulation (EEC) No 1754/92⁽³⁾;

Whereas Regulation (EEC) No 1252/73 provides that, where products are imported, the duty in the Common Customs Tariff is applied where quotations for that product, in accordance with the provisions of Article 24 (2) of Regulation (EEC) No 1035/72 recorded on the representative Community markets at the importer/wholesaler stage or converted to that stage, adjusted by the conversion factors and following deduction of import charges other than customs duties, remain lower than the reference price in force, plus the incidence of the Common Customs Tariff on that price and a standard amount fixed at 1,2 units of account (ECU 1,44) per 100 kilograms, for three consecutive market days on the representative markets of the Community with the lowest quotations;

Whereas the conversion factors and import charges other than customs duties are those used for the purpose of

calculating the entry price referred to in Regulation (EEC) No 1035/72; whereas the method of calculating import charges other than customs duties is, for certain cases, defined in Article 2 of Regulation (EEC) No 1252/73;

Whereas, if the system is to operate normally, it 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⁽⁴⁾, as last amended by Regulation (EEC) No 2205/90⁽⁵⁾,
- 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 application of these rules to quotations recorded for lemons imported into the Community and originating in Cyprus indicates that the conditions set out in the first paragraph of Article 4 of Regulation (EEC) No 1252/73 are fulfilled; whereas the duty in the Common Customs Tariff should, therefore, be applied to the products in question,

HAS ADOPTED THIS REGULATION:

Article 1

As from 4 December 1992, the duty in the Common Customs Tariff shall be applied to fresh lemons CN code ex 0805 30 10 imported into the Community and originating in Cyprus.

Article 2

This Regulation shall enter into force on 4 December 1992.

⁽¹⁾ OJ No L 133, 21. 5. 1973, p. 113.

⁽²⁾ OJ No L 118, 20. 5. 1972, p. 1.

⁽³⁾ OJ No L 180, 1. 7. 1992, p. 23.

⁽⁴⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁵⁾ 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, 2 December 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

COMMISSION REGULATION (EEC) No 3495/92
of 2 December 1992

fixing the maximum export refund for white sugar for the 31st partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EEC) No 920/92

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

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

Whereas Commission Regulation (EEC) No 920/92 of 10 April 1992 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar⁽³⁾, as amended by Regulation (EEC) No 1684/92⁽⁴⁾, requires partial invitations to tender to be issued for the export of this sugar;

Whereas, pursuant to Article 9 (1) of Regulation (EEC) No 920/92, a maximum export refund shall be fixed, as the case may be, account being taken in particular of the state and foreseeable development of the Community and world markets in sugar, for the partial invitation to tender in question;

Whereas, following an examination of the tenders submitted in response to the 31st partial invitation to tender, the provisions set out in Article 1 should be adopted;

Whereas Council Regulation (EEC) No 1432/92⁽⁵⁾, as amended by Regulation (EEC) No 2015/92⁽⁶⁾, prohibits trade between the Community and the Republics of Serbia and Montenegro; whereas this prohibition does not apply to certain situations as given in the limitative enumeration laid down in Articles 2 and 3; whereas this should be taken into account when refunds are fixed;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. For the 31st partial invitation to tender for white sugar issued pursuant to amended Regulation (EEC) No 920/92 the maximum amount of the export refund is fixed at ECU 42,430 per 100 kilograms.

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.

Article 2

This Regulation shall enter into force on 3 December 1992.

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

Done at Brussels, 2 December 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 98, 11. 4. 1992, p. 11.

⁽⁴⁾ OJ No L 176, 30. 6. 1992, p. 31.

⁽⁵⁾ OJ No L 151, 3. 6. 1992, p. 4.

⁽⁶⁾ OJ No L 205, 22. 7. 1992, p. 2.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 13 November 1992

amending Decision 76/228/ECSC on the granting of daily subsistence allowances and refunds of travel expenses to Members of the Consultative Committee of the European Coal and Steel Community

(92/550/ECSC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community and in particular Article 18 thereof,

Having regard to the Treaty establishing a Single Council and a Single Commission of the European Communities, and in particular Article 6 thereof,

Whereas the rates for the daily subsistence allowance payable to Members of the Consultative Committee of the European Coal and Steel Community should be adapted to take account of the increase in expenditure incurred by Members of the Committee on subsistence expenses,

HAS DECIDED AS FOLLOWS:

Article 1

Article 2 (1) of Decision 76/228/ECSC⁽¹⁾, is hereby replaced by the following:

'1. The daily subsistence allowance shall be:

- FB 5 700 for each day of attendance at meetings,
- FB 4 500 for each day of travel.'

Article 2

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

Done at Brussels, 13 November 1992.

For the Council

The President

V. BOTTOMLEY

⁽¹⁾ OJ No L 44, 20. 2. 1976, p. 33. (Last amended by Decision 89/334/ECSC (OJ No L 137, 20. 5. 1989, p. 36)).

COUNCIL DECISION
of 27 November 1992
providing further medium-term financial assistance for Romania

(92/551/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal of the Commission⁽¹⁾, submitted following consultation with the Monetary Committee,

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

Whereas Romania is undertaking fundamental political and economic reforms and has decided to adopt a market economy model;

Whereas the said reforms are under implementation with the financial support from the Community and whereas the reform process needs to be strengthened and broadened;

Whereas the financial support of the reforms from the Community will strengthen mutual confidence and bring Romania closer to the Community;

Whereas Romania and the Community have entered into negotiations for the conclusion of a European Agreement establishing a relationship of association;

Whereas, by Decision 91/384/EEC⁽³⁾, the Council decided to grant Romania a medium-term financial assistance of a maximum amount of ECU 375 million, with a view to ensuring a sustainable balance-of-payments situation in that country;

Whereas, however, despite the government of Romania's courageous implementation of adjustment measures and structural reforms, the stabilisation phase of the Romanian economy is still under way and whereas additional official support is required in order to support the balance of payments and consolidate the reserve position;

Whereas the Romanian authorities have requested financial assistance from the International Monetary Fund (IMF), the Group of 24 industrial countries (G-24) and the Community, and whereas, over and above the estimated financing which could be provided by the IMF and the World Bank and the carryover of financial assistance provided by the G-24 for 1991, a residual financial gap of some US \$ 180 million remains to be covered in 1992, in order to avoid an additional degree of import compression which could seriously jeopardise the achievement of the policy objectives underlying the government's reform effort;

Whereas the Commission as coordinator of assistance from the G-24 industrial countries has invited them to provide medium-term financial assistance to Romania;

Whereas the grant by the Community of a medium-term loan to Romania is an appropriate measure to support the balance of payments and to strengthen that country's reserve position;

Whereas the question of the risks linked to guarantees taken from the general budget of the European Communities will be examined in the context of the renewal in 1992 of the Interinstitutional Agreement on budgetary discipline and improvement of the budgetary procedure;

Whereas the Community loan should be managed by the Commission;

Whereas the Treaty does not provide for the adoption of this Decision, powers other than those of Article 235,

HAS DECIDED AS FOLLOWS:

Article 1

1. The Community shall grant to Romania a medium-term loan facility of a maximum amount of ECU 80 million in principal, with a maximum duration of seven years, with a view to ensuring a sustainable balance-of-payments situation and strengthening the reserve position.
2. To this end, the Commission is empowered to borrow, on behalf of the Community, the necessary resources that will be placed at the disposal of Romania in the form of a loan.
3. This loan will be managed by the Commission in full consultation with the Monetary Committee and in a manner consistent with any Agreement reached between the IMF and Romania.

Article 2

1. The Commission is empowered to negotiate with the Romanian authorities, after consultation with the Monetary Committee, the economic policy conditions attached to the loan. These conditions shall be consistent with the agreements referred to in Article 1 (3) and with arrangements made by the G-24.
2. The Commission shall verify at regular intervals, in collaboration with the Monetary Committee and in close coordination with G-24 and the IMF, that the economic policy in Romania is in accordance with the objectives of this loan and that its conditions are being fulfilled.

⁽¹⁾ OJ No C 164, 1. 7. 1992, p. 30.

⁽²⁾ Opinion delivered on 17 November 1992 (not yet published in the Official Journal).

⁽³⁾ OJ No L 208, 30. 7. 1991, p. 64.

Article 3

1. Subject to the provisions of Article 2 (2), the loan shall be made available to Romania in one instalment provided that satisfactory progress is made in the implementation of the 'stand-by arrangement' to be agreed between Romania and the IMF.

2. The funds shall be paid to the National Bank of Romania.

Article 4

1. The borrowing and lending operations referred to in Article 1 shall be carried out using the same value date and must not involve the Community in the transformation of maturities, in any exchange or interest-rate risk, or in any other commercial risk.

2. The Commission shall take the necessary steps, if Romania so decides, to include in the loan conditions, and also to exercise, an early repayment clause.

3. At the request of Romania, and if circumstances permit an improvement in the interest rate on the loans, the Commission may refinance all or part of its initial borrowings or restructure the corresponding financial conditions. Refinancing or restructuring operations shall be carried out in accordance with the conditions set out in paragraph 1 and shall not have the effect of extending

the average duration of the borrowing concerned or increasing the amount, expressed at the current exchange rate, of capital outstanding at the date of the refinancing of restructuring.

4. All related costs incurred by the Community in concluding and carrying out the operation under this Decision shall be borne by Romania.

5. The Monetary Committee shall be kept informed of developments in the operations referred to in paragraphs 2 and 3 at least once a year.

Article 5

At least once a year the Commission shall address to the European Parliament and to the Council a report, which will include an assessment on the implementation of this Decision.

Done at Brussels, 27 November 1992.

For the Council

The President

J. PATTEN

COMMISSION

COMMISSION DECISION

of 21 October 1992

examining, by virtue of Article 10 (4) of Council Regulation (EEC) No 2343/90 the application of Article 10 (3) of the same Regulation to the increase of frequencies on existing services on the route London (Heathrow)-Brussels

(Only the English, French and Dutch texts are authentic)

(92/552/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2343/90 of 24 July 1990 on access for air carriers to scheduled intra-Community air service routes and on the sharing of passenger capacity between air carriers on scheduled air services between Member States⁽¹⁾, and in particular Article 10 (4) thereof,

Having regard to the requests of the Belgian Government,

Having given notice to the Member States involved to submit their comments,

Whereas :

I

(1) By letters of 27 and 31 August and of 2 September 1992, respectively registered by the Commission on 3 and 4 September 1992, the Belgian authorities, under the provisions of Article 10 (4) of Regulation (EEC) No 2343/90 (hereinafter referred to as the Regulation), requested the Commission to examine the application of Article 10 (3) of the same Regulation and specifically :

- (a) to decide, that the Belgian authorities can refuse to increase the frequency of flights requested by British Midland for the route London (Heathrow)-Brussels-London (Heathrow), as long as Sabena is not authorized to increase, as

requested, the frequency of its service on the same route ;

to this end, to consider that Article 10 (3) of the Regulation includes a reciprocity clause implying on a teleological basis, *a fortiori*, that a Member State (in this case Belgium) may take countermeasures against the company at the origin of the discrimination (British Midland), and not authorize the air transport company of the other Member State to operate the requested additional flights ;

- (b) to rule immediately that the United Kingdom authorities are in contravention of the Regulation by refusing to act on the basis of Article 10 (3), and consequently to take all necessary measures to remedy such contravention or, more precisely, to oblige the United Kingdom authorities to apply the measure foreseen in Article 10 (3) ;
- (c) in the event that the Commission fails to have this measure applied by the United Kingdom authorities, to authorize the Belgian authorities to take the measure foreseen in Article 10 (3) in order to limit the damage and guarantee the realization of the objectives of the same Article.

Further to these letters, the Commission by letters of 8 and 14 September 1992 informed the United Kingdom authorities of the Belgian authorities' position and asked them to submit their comments, to enable the Commission to take the requested decision, within the one-month delay provided by the above Regulation.

- (2) By letters of 15 and 18 September 1992, registered by the Commission on 16 and 21 September 1992 respectively, the Permanent Representation of the

⁽¹⁾ OJ No L 217, 11. 8. 1990, p. 8.

United Kingdom replied to the Commission's letter. The position of the United Kingdom authorities may be summarized as follows :

- (a) Article 10 (3) of the Regulation does not provide for a reciprocity clause, implying that a Member State may take countermeasures against an air carrier licensed in the territory of another Member State.

Article 10 (3) of the Regulation should, therefore, be interpreted in the sense that it does not give scope for the Belgian authorities to deny access to British Midland in the manner they seek to do ;

- (b) the action by the Belgian authorities is *prima facie* contrary to Article 4 of the Regulation ;
- (c) the question whether the United Kingdom should be taking action to prevent British Midland from operating increased services to Brussels, does not fall within the competence of the Commission pursuant to Article 10 (4).

The facts of the case, as exposed by the United Kingdom authorities, do not support the Belgian authorities' contention that Sabena has been refused permission to increase frequencies on its London (Heathrow)-Brussels service in terms of Article 10 (3) ;

- (d) furthermore, the United Kingdom authorities have alleged that British Midland is designated to operate scheduled services on the route London (Heathrow)-Brussels-London (Heathrow) under the terms of the bilateral Air Services Agreement between Belgium and the United Kingdom, and not under the terms of the Regulation. The United Kingdom authorities further point out that, under the terms of Article 13 (2) of the Regulation, the provisions of this Regulation cannot be used to make bilateral arrangements on market access more restrictive.

- (3) By letter of 1 September British Midland complained to the Commission that the Belgian authorities had refused on 28 August 1992 to authorize the requested increase in daily frequency ; on 1 September 1992 the Belgian authorities had, however, cancelled their refusal pending the Commission's decision on the basis of Article 10 (4) of the Regulation.

- (4) Following their request, the Commission received on 23 September 1992 from the London Heathrow slot coordinator a copy of his correspondence with

Sabena regarding the slot increase requested for September/October 1992.

II

- (5) According to the information provided by the parties, British Midland and Sabena operate six and seven daily flights respectively between London (Heathrow) and Brussels. On 13 August 1992, the Belgian authorities learned from the press of British Midland's intention to increase its frequency from six to eight daily flights on the abovementioned route. For that purpose, British Midland planned to use slots at London (Heathrow) which were already at their disposal for other flights.
- (6) It is alleged that on 31 July 1992, British Midland sent a fax requesting the Belgian authorities to increase their daily frequency from London (Heathrow) to Brussels. The Belgian authorities claim that they did not receive this note and that they received a copy of the original request on 20 August only. However, the United Kingdom authorities have stated that they have understood from British Midland that the fax received a 'transmit confirmation report'.
- (7) Sabena also wished to increase their daily frequency on the same route, starting 31 August 1992. Accordingly, on 11 August, Sabena requested the London Heathrow airport coordinator to provide four additional slots (two in the morning and two in the late afternoon) in order to carry out one additional flight in the morning and one in the later afternoon. On the same day, the slot coordinator replied that he could not offer slots close to Sabena's requirements, but that he would keep on searching and might be able to offer some different slots. However, he acknowledged that these would not be close to Sabena's requirements.

According to the United Kingdom authorities, Sabena did not comply with Article 10 (1) of the Regulation since, under the appropriate published rules on slot allocation applying at London Heathrow, the deadline for initial submissions for summer season slots was 1 November 1991.

Following the reply of the Heathrow coordinator to Sabena, the Belgian authorities wrote to the United Kingdom authorities, requesting that the latter refuse the increase in frequency to British Midland on the basis of Article 10 (3) of the Regulation. The letter also indicated that if the United Kingdom authorities would not refuse, then the Belgian authorities would themselves take the decision to refuse the increase in frequency to British Midland.

On 26 August 1992, the Belgian authorities, having received no answer to their letter of 13 August 1992, wrote to the United Kingdom authorities seeking their decision on the increase of British Midland's slots. On the same day the United Kingdom authorities replied that there was no justification to refuse British Midland's request.

- (8) On 26 August Sabena was offered by the London Heathrow coordinator new slots for the late afternoon flight (three alternative pairs of slots as of 31 August and two pairs as of 27 September). The slot coordinator stated that the slots offered were the best available at Heathrow. The slot coordinator was unable to offer slots for the morning flight.

On 28 August the Belgian authorities refused British Midland's request to increase the daily frequency. The same day, Sabena asked the Heathrow slot coordinator to remove their request from the waiting list; on 31 August, however, Sabena asked to reinstate their initial request. On 1 September 1992 the Belgian authorities cancelled their refusal to British Midland pending the Commission's decision on the basis of Article 10 (4) of the Regulation.

On 7 September 1992, the slot coordinator confirmed that he was still holding Sabena's initial request and repeated the offer made on 26 August. On 9 September 1992 Sabena asked to hold these slots as a starting base.

On 23 September, the Heathrow coordinator offered to Sabena four additional slots for the morning flight for the period 27 September to 24 October. According to the airport coordinator, these slots are the best available at Heathrow.

III

- (9) The Commission considers that Article 10 (3) regulates the relations between a Member State and the air carriers it licensed. In fact, Article 10 (3) imposes, *inter alia*, the obligation on a Member State (A) to refrain from authorizing air carriers licensed on its territory to increase the frequency of an existing service between a specific airport of its territory and another Member State (B) for such time as an air carrier licensed by that other Member State (B) is not permitted, on the basis of paragraphs 1 and 2 of the same Article, to increase the frequency on an existing service to the airport concerned, pending the adoption by the Council

and the coming into force of a regulation on a code of conduct for slot allocation.

- (10) Article 10 (3) on the contrary does not provide for a Member State to take countermeasures against an air carrier licensed in another Member State (A), which has been authorized by the latter, in breach of the provisions of Article 10 (3), to operate additional flights to the first Member State (B). Such unilateral action carried out by a Member State (B) as a retortion measure against a decision taken by another Member State (A) in infringement of Article 10 (3) is not compatible with Community law. In such a case, in fact, besides the ordinary judicial remedy laid down in the EEC Treaty there is a specific action provided for by Article 10 (4) of the Regulation in defence of a Member State's rights which have been harmed by a measure adopted by another Member State in application of Article 10 (2) and (3).

Pursuant to Article 10 (4) it is the Commission's responsibility, upon request by a Member State, to examine the concrete application of the provisions of Article 10 (2) and (3), and decide whether another Member State's measure breaches the Regulation, and, therefore, has to be withdrawn.

The Belgian authorities' decision of 28 August 1992, consisting in not authorizing British Midland's increase in daily frequencies, clearly infringed the provisions of Articles 4 and 5 (1) of the Regulation.

IV

- (11) As a matter of fact, the United Kingdom authorities have authorized British Midland to increase its frequency on the London (Heathrow)-Brussels route. British Midland did not have any problems to get the necessary slots at Brussels airport to exploit the additional flights since Brussels airport is not a congested airport.

On the other hand, Sabena, learning of such authorization for British Midland, wanted to match this increase in frequency to the same extent on the same route. Therefore, after having obtained authorization from the Belgian authorities, Sabena applied to the airport coordinator of London Heathrow to obtain the necessary slots. Such a request was necessary since London Heathrow airport, because of congestion problems, is a coordinated airport.

However, the slot coordinator was unable to provide slots close to those required by Sabena.

- (12) In the light of the Regulation, this reply has to be interpreted as a limitation of the exercise of traffic rights, pursuant to Article 10 (2), on the grounds that the conditions in Article 10 (1), are not met.

Article 10 (1) provides that the exercise of traffic rights is subject, *inter alia*, to the allocation of slots, and to the condition that the airport or airport system concerned must have sufficient facilities to accommodate the service. The fact that the lack of slots is a condition under which a Member State may limit or refuse the exercise of traffic rights, pursuant to Article 10 (2), is substantiated by the letter of Article 10 (1): 'the exercise of traffic right is subject to ... rules relating to ... the allocation of slots'.

The wording 'subject to' is logically and grammatically equivalent to 'is conditioned by'. Furthermore, this interpretation is supported by the ninth and tenth recitals of the Regulation which respectively provide that problems relating to the availability of slots must be taken into account, and may cause limitation to the use of traffic rights, and that the exercise of traffic rights has to be consistent with the rules relating to the allocation of slots.

Moreover, the term 'sufficient facilities' in Article 10 (1) (a) includes certainly runway capacities, and therefore, even if indirectly, slot availability.

- (13) On the basis of Article 10 (2), the United Kingdom authorities, before limiting or refusing Sabena the additional slots it had requested, should then have informed the Commission, providing it with all necessary elements.

The United Kingdom authorities have therefore failed to comply with their obligations pursuant to Article 10 (2).

V

- (14) By virtue of Article 10 (3) of the Regulation :

'A Member State shall not authorize an air carrier :

(a) to establish a new service ;

or

(b) to increase the frequency of an existing service

between a specific airport in its territory and another Member State for such time as an air carrier licensed by that other Member State is not permitted, on the basis of paragraphs 1 and 2, to establish a new service or to increase frequencies on an existing service to the airport in question, pending the adoption by the Council and the coming into force of a Regulation on a code of conduct on slot allocation based on the general principle of non-discrimination on the grounds of nationality'.

- (15) In order to interpret correctly Article 10 (3), it is necessary to refer, on the one hand, to the letter of the paragraph concerned, and, on the other hand, to the general principles set out by the Regulation.

Article 4, in particular establishes that :

'Subject to this Regulation, Community air carriers shall be permitted to exercise third- and fourth-freedom air services between airports or airports systems in one Member State and airports or airports systems in another Member State when these airports or airports systems are open for traffic between Member States or for international services'.

Moreover, pursuant to Article 13 :

'This Regulation shall not prevent Member States from concluding between them arrangements which are more flexible than the provisions of Articles 6 (8) and 11 or from maintaining such arrangements in force.

This provisions of this Regulation shall not be used to make existing market access or capacity arrangements more restrictive.'

Finally, in the eight, tenth and fourteenth recitals of the Regulation, it is respectively stated that :

'Whereas increased market access will stimulate the development of the Community air transport sector and give rise to improved services for users; whereas as a consequence it is necessary to introduce more liberal provisions concerning multiple designation, third-, fourth- and fifth-freedom traffic rights ;'

'Whereas the exercise of traffic rights has to be consistent with rules relating to safety, protection of the environment, allocation of slots and conditions concerning airport access and has to be treated without discrimination on grounds of nationality ;'

'Whereas, taking into account the competitive market situation, provision should be made to prevent unjustifiable economic effects on air carriers ;'

- (16) In the light of the foregoing, Article 10 (3) is to be considered as an exception to the third- and fourth-freedoms expressly designated by the Regulation.

According to the general principles of the law, exceptions must be narrowly interpreted.

Article 10 (3) aims at balancing traffic rights between two carriers licensed by two different Member States and which operate the same route. The balance in traffic rights must be numerical. According to Article 10 (3), this numerical balance must be kept in the two situations envisaged in (a) and (b) of the same provision, respectively, the establishment of a new service, and the frequency increase of an existing service. In order to ensure the maintenance of such balance, Article 10 (3) must be interpreted as to embody the obligation for a Member State to withdraw the traffic rights already granted to an air carrier licensed by this State.

Article 10 (3) does not provide for a 'matching right' but for the right for an air carrier to see its competitor on a given route being refused the authorization '*inter alia*' to increase the frequency of an existing service if that carrier 'is not permitted ... to increase frequencies on an existing service to the airport in question'.

In practice this means that the air carrier *de quo* has, pursuant to Article 10 (3), no right to obtain a certain number of slots by the competent authority of the other Member State. This air carrier is entitled to claim that the authorities of that Member State refuse or withdraw the corresponding traffic rights that were granted to its competitor.

- (17) The complainant alleges that the United Kingdom authorities should not have authorized British Midland to increase frequencies on the London (Heathrow)-Brussels-London (Heathrow) route as long as Sabena was not permitted to increase its frequencies on the same route by the allocation of a sufficient number of slots at Heathrow airport thereby allowing the Belgian carrier to exercise its traffic rights on that route.
- (18) The complainant's request should therefore be accepted if it could be proved that either :

- (a) no sufficient slots had been allocated by the Heathrow airport coordinator so that Sabena could not increase the frequencies of its existing service to and from that airport ;

or

- (b) the slots allocated were not the best available at the time of Sabena's request to the Heathrow airport coordinator. In this case it could be shown that local rules on allocation of slots have been implemented in such a way as to infringe the general principle of non-discrimination on the ground of nationality between the air carriers concerned.

In fact, the rule of the numerical balance of traffic rights between the two carriers concerned would be by-passed if the offer of slots made by the competent authority of that Member State to the carrier licensed in another Member State was not linked to objective and transparent rules.

An offer of slots by the authority of a Member State that are not the best available at the time of the request will in fact amount to discrimination, possibly indirect, in favour of the competing carrier licensed in the same Member State.

- (19) As stated above, the United Kingdom authorities should have, pursuant to Article 10 (3) of the Regulation, offered in relation to the request, the best available slots to Sabena. Initially they did not make any concrete offer, but they stated that slots were available even if not near the requested time, waiting for Sabena's reaction. This reply can be considered as an offer. Concrete times were offered on 26 August with regard to the late afternoon slots, and on 23 September with regard to the morning slots.

VI

- (20) It has to be examined whether the slots offered are, as stated above, sufficient to permit an increase in frequency. The slots offered by the Heathrow airport coordinator are not those requested by Sabena. It has to be noted that the Regulation does not establish that the slots offered at the time of the requests be exactly the ones requested. Moreover, Article 10 (3) does not give any conditions or criteria that the slots offered must immediately be economically viable. In fact, as observed above, pursuant to Article 10 (3) it is sufficient that a Member State offers the best slots which are available at the time of the request.

However, the slots offered to Sabena do not completely meet the airline's needs for efficient commercial operation. The morning departure and arrival slots are about two hours out of line compared to Sabena's request. The late afternoon slots are for the arrival time acceptable for Sabena, but only one departure slot per week is acceptable for Sabena, whereas on the other days the plane would sit too long on the ground at Heathrow to allow for an economical operation. Therefore, Sabena is still in a more unfavorable position than British Midland, which is able, starting of 31 August 1992, to use in a profitable way all its slots on the London (Heathrow)-Brussels-London (Heathrow) route. This situation clearly may lead to a *de facto* discrimination against Sabena which is unacceptable under Community law. Therefore, the slots already offered to Sabena should be considered, comparable to the situation in a slot allocation conference, as a starting point for further improvements.

In practice, the British authorities should try, in cooperation with Sabena, to improve as soon as possible Sabena's situation at London (Heathrow) Airport. That would mean that the slot coordinator has to put Sabena in front of the waiting list in order to provide Sabena eventually with slots which permit a commercial operation of the frequency increase. For the time being, however, the best available offer is sufficient to fulfil the criteria of Article 10 (3) of the Regulation.

VII

- (21) The fact that Sabena had filed its request without observing the deadlines set forth in the published rules on slot allocation at London (Heathrow) airport is not relevant in the application of Article 10 (3), given that the interest of Sabena to increase its flights on the abovementioned route arose when it became acquainted with the authorization of British Midland to increase its flights to Brussels from London (Heathrow). Sabena's request was made in time before the starting point of the operation (31 August 1992).

VIII

- (22) The Commission has examined the statement of the United Kingdom authorities that the designation of British Midland on the route London (Heathrow)-Brussels was authorized on the basis of

a bilateral Air Services Agreement between Belgium and the United Kingdom.

The Commission recognizes that, pursuant to Article 13 (2) of the Regulation, the provisions of the Regulation cannot be used to make existing market access or capacity arrangements more restrictive. However, the parties have not provided the Commission with the text of this bilateral agreement and have not indicated or proved which clauses of the agreement make market access and capacity more liberal than the Regulation.

- (23) The Commission has been provided by a third party (British Midland) with the text of the agreement entered into between Belgium and the United Kingdom on 10 October 1985. The Commission does not know whether the arrangement is still in force and, if so, whether the arrangement is the only one concluded by the two Member States.

Notwithstanding the foregoing, the Commission has examined the provisions of the abovementioned agreement relating to market access and capacity. Part II of the agreement states that 'Each aeronautical authority will allow an airline designated by the other to mount such capacity as the airline considers appropriate on any route referred to in paragraph 3 so long as the principal objective of the service is to provide adequate capacity at a reasonable load factor for third/fourth freedom traffic between its own country and the other country. However, each authority will retain the right to require consultations with the other in the event that it considers that the interests of any of its own airlines on a particular route or routes are being seriously damaged as a result of the capacity being mounted by the airline or airlines of the other country.'

- (24) This agreement appears to include some stringent safeguard clauses (objective of the service is to provide adequate capacity at reasonable load factor), assuring that any increase in capacity must be based on a corresponding increase in traffic. Moreover, on the basis of its knowledge of the mechanisms for the resolution of airlines' conflicts, embodied in all the aeronautical bilateral agreements, the Commission is of the opinion that the part of the clause providing the right of each authority to require consultation with the other, is a reciprocity clause. Therefore, the Commission does not believe that the provisions of this arrangement are more liberal than those of the Regulation, and, therefore, Article 13 (2) does not apply to the present case.

IX

- (25) Pursuant to Article 10 (4) the Commission has to examine the application of paragraph 2 and/or paragraph 3 and within one month decide whether the Member State may continue to apply the measure. The last request of the Belgian authorities is dated 3 September and was registered with the Commission on 4 September 1992. The Commission has not been able to take its decision by 4 October 1992 for the reason that it referred the complaint to the United Kingdom authorities to enable them to exercise their right of defence. The last reply from the United Kingdom authorities was registered on 21 September. Moreover, complete information on the offers of slots made was only faxed by the Heathrow airport coordinator on 23 September. Therefore, the deadline has been exceeded for the time strictly necessary to the Commission to take its decision,

HAS ADOPTED THIS DECISION:

Article 1

Article 10 (3) of Council Regulation (EEC) No 2343/90 does not permit the Kingdom of Belgium to take countermeasures against an air carrier licensed in another Member State (in this case British Midland).

The Belgian authorities cannot refuse British Midland, on the basis of Article 10 (3) of Regulation (EEC) No 2343/90, permission to increase its frequency for the route London (Heathrow)-Brussels-London (Heathrow) irrespective of whether, on the basis of Article 10 (1) and

(2), Sabena is or its not permitted to increase frequencies on the same route.

Article 2

The United Kingdom authorities have not infringed Article 10 (3) of Council Regulation (EEC) No 2343/90 by not refusing British Midland to increase its frequency on the route London (Heathrow)-Brussels-London (Heathrow) so long as Sabena is unable to commercially operate the requested frequency increase.

The United Kingdom authorities shall consider the slots offered to Sabena as a starting basis and shall as soon as possible improve the offer in relation to Sabena's request.

Article 3

The United Kingdom authorities, by not communicating in due course to the Commission the limitation of the exercise of additional traffic rights requested by Sabena, have failed to fulfil their obligations pursuant to Article 10 (2) of the Regulation.

Article 4

The present decision is addressed to the United Kingdom and to the Kingdom of Belgium.

Done at Brussels, 21 October 1992.

For the Commission

Karel VAN MIERT

Member of the Commission.
