

Official Journal

of the European Communities

ISSN 0378-6978

L 279

Volume 37

28 October 1994

English edition

Legislation

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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 2608/94**of 27 October 1994****fixing the minimum levies on the importation of olive oil and levies on the importation of other olive oil sector products**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by Regulation (EC) No 3179/93⁽²⁾, and in particular Article 16 (2) thereof,

Having regard to Council Regulation (EEC) No 1514/76 of 24 June 1976 on imports of olive oil originating in Algeria⁽³⁾, as last amended by Regulation (EEC) No 1900/92⁽⁴⁾, and in particular Article 5 thereof,

Having regard to Council Regulation (EEC) No 1521/76 of 24 June 1976 on imports of olive oil originating in Morocco⁽⁵⁾, as last amended by Regulation (EEC) No 1901/92⁽⁶⁾, and in particular Article 5 thereof,

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

Having regard to Council Regulation (EEC) No 1180/77 of 17 May 1977 on imports into the Community of certain agricultural products originating in Turkey⁽⁹⁾, as last amended by Regulation (EEC) No 1902/92⁽¹⁰⁾, and in particular Article 10 (2) thereof,

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

Whereas by Regulation (EEC) No 3131/78⁽¹²⁾, as amended by the Act of Accession of Greece, the Commission decided to use the tendering procedure to fix levies on olive oil;

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

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

Whereas, pursuant to Article 101 (1) of Council Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community⁽¹⁴⁾, no levies shall apply on imports of products originating in the overseas countries and territories;

Whereas application of the rules recalled above to the levy rates indicated by tenderers on 24 and 25 October 1994 leads to the minimum levies being fixed as indicated in Annex I to this Regulation;

Whereas the import levy on olives falling within CN codes 0709 90 39 and 0711 20 90 and on products falling within CN codes 1522 00 31, 1522 00 39 and 2306 90 19 must be calculated from the minimum levy applicable on the olive oil contained in these products; whereas, however, the levy charged for olive oil may not be less than an amount equal to 8 % of the value of the

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

⁽²⁾ OJ No L 285, 20. 11. 1993, p. 9.

⁽³⁾ OJ No L 169, 28. 6. 1976, p. 24.

⁽⁴⁾ OJ No L 192, 11. 7. 1992, p. 1.

⁽⁵⁾ OJ No L 169, 28. 6. 1976, p. 43.

⁽⁶⁾ OJ No L 192, 11. 7. 1992, p. 2.

⁽⁷⁾ OJ No L 169, 28. 6. 1976, p. 9.

⁽⁸⁾ OJ No L 48, 26. 2. 1986, p. 1.

⁽⁹⁾ OJ No L 142, 9. 6. 1977, p. 10.

⁽¹⁰⁾ OJ No L 192, 11. 7. 1992, p. 3.

⁽¹¹⁾ OJ No L 181, 21. 7. 1977, p. 4.

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

⁽¹³⁾ OJ No L 331, 28. 11. 1978, p. 6.

⁽¹⁴⁾ OJ No L 263, 19. 9. 1991, p. 1.

imported product, such amount to be fixed at a standard rate ; whereas application of these provisions leads to the levies being fixed as indicated in Annex II to this Regulation,

Article 2

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

HAS ADOPTED THIS REGULATION :

Article 1

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

Article 3

This Regulation shall enter into force on 28 October 1994.

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

Done at Brussels, 27 October 1994.

For the Commission

René STEICHEN

Member of the Commission

ANNEX I

Minimum import levies on olive oil ⁽¹⁾

(ECU/100 kg)

CN code	Non-member countries
1509 10 10	79,00 ⁽²⁾
1509 10 90	79,00 ⁽²⁾
1509 90 00	92,00 ⁽²⁾
1510 00 10	77,00 ⁽²⁾
1510 00 90	122,00 ⁽²⁾

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

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

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

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

(c) Turkey : ECU 22,36 per 100 kg provided that the operator furnishes proof of having paid the export tax applied by that country ; however, the repayment may not exceed the amount of the tax in force ;

(d) Algeria and Morocco : ECU 24,78 per 100 kg provided that the operator furnishes proof of having paid the export tax applied by that country ; however, the repayment may not exceed the amount of the tax in force.

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

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

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

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

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

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

ANNEX II

Import levies on other olive oil sector products ⁽¹⁾

(ECU/100 kg)

CN code	Non-member countries
0709 90 39	17,38
0711 20 90	17,38
1522 00 31	39,50
1522 00 39	63,20
2306 90 19	6,16

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

COMMISSION REGULATION (EC) No 2609/94
of 26 October 1994
concerning the stopping of fishing for Norway lobster by vessels flying the flag of France

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

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy⁽¹⁾, and in particular Article 21 (3) thereof,

Whereas Council Regulation (EC) No 3676/93 of 21 December 1993 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1994 and certain conditions under which they may be fished⁽²⁾, provides for Norway lobster quotas for 1994;

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

Whereas, according to the information communicated to the Commission, catches of Norway lobster in the waters of ICES division VIII c by vessels flying the flag of France or registered in France have reached the quota allocated for 1994; whereas France has prohibited fishing for this

stock as from 7 October 1994; whereas it is therefore necessary to abide by that date,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of Norway lobster in the waters of ICES division VIII c by vessels flying the flag of France or registered in France are deemed to have exhausted the quota allocated to France for 1994.

Fishing for Norway lobster in the waters of ICES division VIII c by vessels flying the flag of France or registered in France is prohibited, as well as the retention on board, the transhipment and the landing of such stock captured by the abovementioned vessels after the date of application of this Regulation.

Article 2

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

It shall apply with effect from 7 October 1994.

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

Done at Brussels, 26 October 1994.

For the Commission
Yannis PALEOKRASSAS
Member of the Commission

⁽¹⁾ OJ No L 261, 20. 10. 1993, p. 1.

⁽²⁾ OJ No L 341, 31. 12. 1993, p. 1.

COMMISSION REGULATION (EC) No 2610/94**of 27 October 1994****amending Regulation (EC) No 2112/94 and increasing to 245 290 tonnes the amount of cereals held by the United Kingdom intervention agency for which a standing invitation to tender for resale on the internal market has been opened**

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

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals ⁽¹⁾, as amended by Regulation (EC) No 1866/94 ⁽²⁾, and in particular Article 5 thereof,

Whereas Commission Regulation (EEC) No 2131/93 ⁽³⁾, as amended by Regulation (EC) No 120/94 ⁽⁴⁾, lays down the procedures and conditions governing the offer for sale of cereals held by intervention agencies;

Whereas Commission Regulation (EC) No 2112/94 ⁽⁵⁾, opened a standing invitation to tender for the resale on the internal market of 145 290 tonnes of cereals held by the United Kingdom intervention agency;

Whereas in the present situation on the market the quantity of maize held by the United Kingdom intervention agency put up for sale on the internal market of the Community should be increased to 245 290 tonnes;

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

HAS ADOPTED THIS REGULATION:

Article 1

In Article 1 of Regulation (EC) No 2112/94 'of 100 000 tonnes of barley' is replaced by 'of 200 000 tonnes of barley'.

Article 2

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

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

Done at Brussels, 27 October 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ No L 197, 30. 7. 1994, p. 1.

⁽³⁾ OJ No L 191, 31. 7. 1993, p. 76.

⁽⁴⁾ OJ No L 21, 26. 1. 1994, p. 1.

⁽⁵⁾ OJ No L 224, 30. 8. 1994, p. 1.

COMMISSION REGULATION (EC) No 2611/94

of 27 October 1994

amending Regulation (EC) No 2117/94 and increasing to 639 858 tonnes the amount of cereals held by the Spanish intervention agency for which a standing invitation to tender for resale on the internal market has been opened

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

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1866/94 ⁽²⁾, and in particular Article 5 thereof,

Whereas Commission Regulation (EEC) No 2131/93 ⁽³⁾, as amended by Regulation (EC) No 120/94 ⁽⁴⁾, lays down the procedures and conditions governing the offer for sale of cereals held by intervention agencies;

Whereas Commission Regulation (EC) No 2117/94 ⁽⁵⁾, as last amended by Regulation (EC) No 2460/94 ⁽⁶⁾, opened a standing invitation to tender for the resale on the internal market of 489 858 tonnes of cereals held by the Spanish intervention agency;

Whereas in the present situation on the market the quantity of cereals held by the Spanish intervention agency put

up for sale on the internal market of the Community should be increased to 639 858 tonnes;

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

HAS ADOPTED THIS REGULATION:

Article 1

In Article 1 of Regulation (EC) No 2117/94 '400 000 tonnes of barley' is replaced by '550 000 tonnes of barley'.

Article 2

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

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

Done at Brussels, 27 October 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.
⁽²⁾ OJ No L 197, 30. 7. 1994, p. 1.
⁽³⁾ OJ No L 191, 31. 7. 1993, p. 76.
⁽⁴⁾ OJ No L 21, 26. 1. 1994, p. 1.
⁽⁵⁾ OJ No L 224, 30. 8. 1994, p. 7.
⁽⁶⁾ OJ No L 263, 13. 10. 1994, p. 1.

COMMISSION REGULATION (EC) No 2612/94**of 27 October 1994****opening quantitative import quotas for textile products in categories 127 B and 145 from the People's Republic of China and amending Annexes IV and V of Council Regulation (EC) No 517/94 on common rules for imports of textile products from certain third countries**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 517/94 of 7 March 1994 on common rules for imports of textile products from certain third countries not covered by bilateral agreements, protocols or other arrangements, or by other specific Community import rules⁽¹⁾, as last amended by Regulation (EC) No 1756/94⁽²⁾, and in particular Article 3 (3) and (5) thereof in conjunction with Article 25 (4) thereof,

Whereas Article 3 (3) of Regulation (EC) No 517/94 stipulates that the textile products set out in Annex V originating in the countries listed may only be imported if an annual quantitative limit has been set in accordance with the appropriate procedure provided for by Article 25 ;

Whereas a request has been put to the Commission by two Member States for the introduction of import quotas covering products in categories 127 B and 145 from the People's Republic of China in order to meet certain market demands ; whereas the committee set up by Article 25 has, after discussion, deemed it appropriate in view of the state of the Community industry to decide upon 5 and 7 tonnes respectively as the annual quantitative limits to which imports into the Community of products in categories 127 B and 145 originating in the People's Republic of China shall be subject as from the date on which this Regulation comes into force ; whereas it is therefore necessary to amend Annexes IV and V to Regulation (EC) No 517/94 and to stipulate, in the

interests of legal security that the quota shall be administered in accordance with the procedure set out in Article 17 of the said Regulation ;

Whereas these measures are in line with the opinion of the Committee established by Regulation (EC) No 517/94,

HAS ADOPTED THIS REGULATION :

Article 1

Imports into the Community of textile products in categories 127 B and 145 from the People's Republic of China shall be subject to annual quantitative limits of 5 and 7 tonnes respectively to be administered in accordance with the procedure provided for in Article 17 of Regulation (EC) No 517/94.

Article 2

Annexes IV and V to Council Regulation (EC) No 517/94 shall be amended as shown in the Annex to this Regulation.

Article 3

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

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

Done at Brussels, 27 October 1994.

For the Commission

Leon BRITTAN

Member of the Commission

⁽¹⁾ OJ No L 67, 10. 3. 1994, p. 1.

⁽²⁾ OJ No L 183, 19. 7. 1994, p. 9.

*ANNEX**ANNEX IV***Annual Community quantitative limits referred to in Article 3 (1)**

(The product descriptions of the categories listed in this Annex are to be found in Annex I A to this Regulation)

CHINA

Category	Unit	Quantity
ex 13 ⁽¹⁾	1 000 pieces	150
ex 18 ⁽¹⁾	tonnes	98
ex 20 ⁽¹⁾	tonnes	10
ex 24 ⁽¹⁾	1 000 pieces	120
ex 39 ⁽¹⁾	tonnes	10
ex 78 ⁽¹⁾	tonnes	3
115	tonnes	450
117	tonnes	450
118	tonnes	950
120	tonnes	63
122	tonnes	130
123	tonnes	5
124	tonnes	600
125 B	tonnes	8
127 B	tonnes	5
ex 136 ⁽¹⁾ ⁽²⁾	tonnes	285
140	tonnes	100
145	tonnes	7
146 C	tonnes	270
156	tonnes	760
157	tonnes	5 400
159	tonnes	3 020
160	tonnes	30
161	tonnes	10 777

⁽¹⁾ Categories marked by "ex" cover products other than those of wool or fine hairs, cotton or synthetic or artificial textile materials.

⁽²⁾ This category only covers woven fabrics and other silk products other than unbleached, scoured or bleached falling within CN codes 5007 20 19, 5007 20 31, 5007 20 39, 5007 20 41, 5007 20 59, 5007 20 61, 5007 20 69, 5007 20 71, 5007 90 30, 5007 90 50, 5007 90 90.

*ANNEX V***referred to in Article 3 (3)**

(The product descriptions of the categories listed in this Annex are to be found in Annex I A to this Regulation)

CHINA

Categories : 121, 125 A, 126, 127 A, 133, 137, 141, 146 A, 146 B, 151 B.

COMMISSION REGULATION (EC) No 2613/94

of 27 October 1994

on the issue of import licences on 30 October 1994 for sheepmeat and goatmeat products originating in certain non-member countries

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European 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 (EC) No 1886/94⁽²⁾,Having regard to Council Regulation (EEC) No 3643/85 of 19 December 1985 concerning the import system applicable to certain non-member countries in the sheepmeat and goatmeat sector, as from 1986⁽³⁾, as last amended by Regulation (EEC) No 3890/92⁽⁴⁾, and in particular Article 3 thereof,Whereas Commission Regulation (EEC) No 3653/85⁽⁵⁾, as last amended by Regulation (EEC) No 2779/93⁽⁶⁾, laid down detailed rules for implementing the import system provided for in Regulation (EEC) No 3643/85; whereas provision should be made, pursuant to Article 2 (5) of Regulation (EEC) No 3653/85, for determining the extent to which import licences may be issued in connection with applications lodged in respect of the fourth quarter of 1994;

Whereas, in cases where the quantities in respect of which licence applications have been lodged exceed the quantities which may be imported pursuant to Article 1 of Regulation (EEC) No 3653/85, such quantities should be reduced by a single percentage figure in accordance with Article 2 (5) (b) of that Regulation;

Whereas all the licence applications may be granted in cases where the quantities in respect of which licence

applications have been lodged do not exceed the quantities provided for in Regulation (EEC) No 3653/85,

HAS ADOPTED THIS REGULATION:

Article 1

Member States shall, on 30 October 1994, issue the import licences provided for in Regulation (EEC) No 3653/85 and applied for from 1 to 10 October 1994 subject to the following conditions:

- (a) for products falling within CN codes 0204 10 00, 0204 21 00, 0204 22 10, 0204 22 30, 0204 22 50, 0204 22 90, 0204 23 00, 0204 50 11, 0204 50 13, 0204 50 15, 0204 50 19, 0204 50 31 and 0204 50 39, the quantities applied for, originating in other non-member countries, shall be granted in full;
- (b) for products falling within CN codes 0204 30 00, 0204 41 00, 0204 42 10, 0204 42 30, 0204 42 50, 0204 42 90, 0204 43 10, 0204 43 90, 0204 50 51, 0204 50 53, 0204 50 55, 0204 50 59, 0204 50 71 and 0204 50 79, the quantities applied for originating:
 - in Chile, shall be granted in full,
 - in other non-member countries, shall be granted in full;
- (c) for products falling within CN codes 0104 10 30, 0104 10 80 and 0104 20 90, the quantities applied for, originating in other non-member countries, shall be granted in full.

Article 2

This Regulation shall enter into force on 30 October 1994.

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

Done at Brussels, 27 October 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 289, 7. 10. 1989, p. 1.
⁽²⁾ OJ No L 197, 30. 7. 1994, p. 30.
⁽³⁾ OJ No L 348, 24. 12. 1985, p. 2.
⁽⁴⁾ OJ No L 391, 31. 12. 1992, p. 51.
⁽⁵⁾ OJ No L 348, 24. 12. 1985, p. 21.
⁽⁶⁾ OJ No L 252, 9. 10. 1993, p. 10.

COMMISSION REGULATION (EC) No 2614/94**of 27 October 1994****on the issue of import licences on 30 October 1994 for sheepmeat and goatmeat products originating in Bosnia-Herzegovina, Croatia, Slovenia, and the former Yugoslav Republic of Macedonia**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European 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 (EC) No 1886/94⁽²⁾,

Having regard to Council Regulation (EEC) No 3125/92 of 26 October 1992 on the arrangements applicable to the importation into the Community of sheepmeat and goatmeat products originating in Bosnia-Herzegovina, Croatia, Slovenia, Montenegro, Serbia and the former Yugoslav Republic of Macedonia⁽³⁾, and in particular Article 3 thereof,

Whereas Commission Regulation (EC) No 267/94⁽⁴⁾ laid down detailed rules for implementing the import system provided for in Regulation (EEC) No 3125/92; whereas provision should be made, pursuant to Article 5 (2) of Regulation (EC) No 267/94, for determining the extent to which import licences may be issued in connection with applications lodged in respect of the fourth quarter of 1994;

Whereas, in cases where the quantities in respect of which licence applications have been lodged exceed the quantities which may be imported pursuant to Article 1 of Regulation (EC) No 267/94, such quantities should be reduced by a single percentage figure in accordance with Article 5 (2) (b) of that Regulation;

Whereas all the licence applications may be granted in cases where the quantities in respect of which licence applications have been lodged do not exceed the quantities provided for in Regulation (EC) No 267/94;

Whereas applications relating to products originating in the former Yugoslav Republic of Macedonia have been lodged only in Italy,

HAS ADOPTED THIS REGULATION :

Article 1

Italy shall, on 30 October 1994, issue the import licences provided for in Regulation (EC) No 267/94 for the full quantities of :

- products falling within CN codes 0204 10 00, 0204 21 00, 0204 22 10, 0204 22 30, 0204 22 50, 0204 22 90, 0204 23 00, 0204 50 11, 0204 50 13, 0204 50 15, 0204 50 19, 0204 50 31 and 0204 50 39, originating in the former Yugoslav Republic of Macedonia, applied for from 1 to 10 October 1994.

Article 2

This Regulation shall enter into force on 30 October 1994.

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

Done at Brussels, 27 October 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 289, 7. 10. 1989, p. 1.

⁽²⁾ OJ No L 197, 30. 7. 1994, p. 30.

⁽³⁾ OJ No L 313, 30. 10. 1992, p. 3.

⁽⁴⁾ OJ No L 32, 5. 2. 1994, p. 13.

COMMISSION REGULATION (EC) No 2615/94

of 27 October 1994

on the issue of import licences for garlic originating in China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 3669/93 ⁽²⁾,

Having regard to Council Regulation (EC) No 1213/94 of 27 May 1994 concerning a protective measure applicable to imports of garlic from China ⁽³⁾, as amended by Regulation (EC) No 1992/94 ⁽⁴⁾, and in particular Article 1 (4) thereof,

Whereas Council Regulation (EEC) No 2707/72 ⁽⁵⁾ lays down the conditions for applying protective measures for fruit and vegetables;

Whereas pursuant to Commission Regulation (EEC) No 1859/93 ⁽⁶⁾, as amended by Regulation (EC) No 1662/94 ⁽⁷⁾, the release for free circulation in the Community of garlic imported from third countries is subject to presentation of an import licence;

Whereas Article 1 (2) of Commission Regulation (EC) No 1213/94, restricts the issue of import licences for garlic originating in China to a maximum monthly quantity in the case of applications lodged from 25 August 1994 to 24 May 1995;

Whereas, given the criteria laid down in Article 1 (3) of that Regulation and the import licences already issued, the quantity applied for at 25 October 1994 is in excess of the maximum monthly quantity for November 1994; whereas it is therefore necessary to determine to what extent import licences may be issued in response to these applications; whereas the issue of licences in response to these applications; whereas the issue of licences in response to applications lodged after 25 October 1994 and before 23 November 1994 should be refused,

HAS ADOPTED THIS REGULATION:

Article 1

Import licences applied for under Article 1 of Regulation (EEC) No 1859/93 at 25 October 1994 for garlic falling within CN code 0703 20 00 originating in China shall be issued for 0,56221 % of the quantity applied for, having regard to the information available to the Commission on 26 October 1994.

For the abovementioned products applications for import licences lodged after 25 October and before 23 November 1994 shall be refused.

Article 2

This Regulation shall enter into force on 28 October 1994.

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

Done at Brussels, 27 October 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 118, 20. 5. 1972, p. 1.
⁽²⁾ OJ No L 338, 31. 12. 1993, p. 26.
⁽³⁾ OJ No L 133, 28. 5. 1994, p. 36.
⁽⁴⁾ OJ No L 200, 3. 8. 1994, p. 11.
⁽⁵⁾ OJ No L 291, 28. 12. 1972, p. 3.
⁽⁶⁾ OJ No L 170, 13. 7. 1993, p. 10.
⁽⁷⁾ OJ No L 176, 9. 7. 1994, p. 1.

COMMISSION REGULATION (EC) No 2616/94

of 27 October 1994

fixing the export refunds on milk and milk products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EC) No 1880/94 ⁽²⁾, and in particular Article 17 (4) thereof,

Whereas Article 17 of Regulation (EEC) No 804/68 provides that the difference between prices in international trade for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund;

Whereas Council Regulation (EEC) No 876/68 of 28 June 1968 laying down general rules for granting export refunds on milk and milk products and criteria for fixing the amount of such refunds ⁽³⁾, as last amended by Regulation (EC) No 776/94 ⁽⁴⁾, provides that when the refunds on the products listed in Article 1 of Regulation (EEC) No 804/68, exported in the natural state, are being fixed account must be taken of:

- the existing situation and the future trend with regard to prices and availabilities of milk and milk products on the Community market and prices for milk and milk products in international trade,
- marketing costs and the most favourable transport charges from Community markets to ports or other points of export in the Community, as well as costs incurred in placing the goods on the market of the country of destination,
- the aims of the common organization of the market in milk and milk products which are to ensure equilibrium and the natural development of prices and trade on this market,
- the need to avoid disturbances on the Community market, and
- the economic aspect of the proposed exports;

Whereas Article 3 (1) of Regulation (EEC) No 876/68 provides that when prices within the Community are being determined account should be taken of the ruling

prices which are most favourable for exportation, and that when prices in international trade are being determined particular account should be taken of:

- (a) prices ruling on third country markets;
- (b) the most favourable prices in third countries of destination for third country imports;
- (c) producer prices recorded in exporting third countries, account being taken, where appropriate, of subsidies granted by those countries; and
- (d) free-at-Community-frontier offer prices;

Whereas Article 4 of Regulation (EEC) No 876/68 provides that the world market situation or the specific requirements of certain markets may make it necessary to vary the refund on the products listed in Article 1 of Regulation (EEC) No 804/68 according to destination;

Whereas Article 5 (1) of Regulation (EEC) No 876/68 provides that the list of products on which export refunds are granted and the amount of such refunds should be fixed at least once every four weeks; whereas the amount of the refund may, however, remain at the same level for more than four weeks;

Whereas, in accordance with Article 2 of Commission Regulation (EEC) No 1098/68 of 27 July 1968 on detailed rules for the application of export refunds on milk and milk products ⁽⁵⁾, as last amended by Regulation (EEC) No 2767/90 ⁽⁶⁾, the refund granted for milk products containing added sugar is equal to the sum of the two components, one of which is intended to take account of the quantity of milk products and the other is intended to take account of the quantity of added sucrose; whereas, however, the latter component is applied only if the added sucrose was produced from sugar beet or cane harvested in the Community; whereas, for products falling within CN codes ex 0402 99 11, ex 0402 99 19, ex 0404 90 51, ex 0404 90 53, ex 0404 90 91 and ex 0404 90 93, with a fat content by weight not exceeding 9,5 % and a non-fatty milk content in the dry matter equal to or greater than 15 % by weight, the former abovementioned component is fixed for 100 kilograms of the whole product; whereas, for the other products containing added sugar falling within CN codes 0402 and 0404, that component is calculated by multiplying the basic amount by the milk products content of the product concerned; whereas that basic amount is equal to the refund to be fixed for one kilogram of milk products contained in the whole product;

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 197, 30. 7. 1994, p. 21.

⁽³⁾ OJ No L 155, 3. 7. 1968, p. 1.

⁽⁴⁾ OJ No L 91, 8. 4. 1994, p. 6.

⁽⁵⁾ OJ No L 184, 29. 7. 1968, p. 10.

⁽⁶⁾ OJ No L 267, 29. 9. 1990, p. 14.

Whereas the second component is calculated by multiplying the sucrose content of the product by the basic amount of the refund valid on the day of exportation for the products listed in Article 1 (1) (d) of 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 (EC) No 133/94⁽²⁾;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92⁽³⁾, as amended by Regulation (EC) No 3528/93⁽⁴⁾, are used to convert amounts expressed in third country currencies and are used as the basis for determining the agricultural conversion rates of the Member States' currencies; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93⁽⁵⁾, as amended by Regulation (EC) No 547/94⁽⁶⁾;

Whereas the level of refund for cheeses is calculated for products intended for direct consumption; whereas the cheese rinds and cheese wastes are not products intended for this purpose; whereas, to avoid any confusion in interpretation, it should be specified that there will be no refund for cheeses of a free-at-frontier value less than ECU 150 per 100 kilograms;

Whereas Austria will be a member of the European Union as from 1 January 1995; whereas experience shows that there is a risk of speculative exports to that country until the end of 1994, in particular as regards cheese; whereas the refunds on cheese exported to Austria should accordingly be discontinued;

Whereas Commission Regulation (EEC) No 896/84⁽⁷⁾, as last amended by Regulation (EEC) No 222/88⁽⁸⁾, laid down additional provisions concerning the granting of refunds on the change from one milk year to another; whereas those provisions provide for the possibility of varying refunds according to the date of manufacture of the products;

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

Done at Brussels, 27 October 1994.

Whereas for the calculation of the refund for processed cheese provision must be made where casein or caseinates are added for that quantity not to be taken into account;

Whereas it follows from applying the rules set out above to the present situation on the market in milk and in particular to quotations or prices for milk products within the Community and on the world market that the refund should be as set out in the Annex to this Regulation;

Whereas Council Regulation (EEC) No 990/93⁽⁹⁾ prohibits trade between the European Community and the Federal Republic of Yugoslavia (Serbia and Montenegro); whereas this prohibition does not apply in certain situations as comprehensively listed in Articles 2, 4, 5 and 7 thereof; whereas account should be taken of this fact when fixing the refunds;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. The export refunds referred to in Article 17 of Regulation (EEC) No 804/68 on products exported in the natural state shall be as set out in the Annex.
2. There shall be no refunds for exports to Zone E for products falling within CN codes 0401, 0402, 0403, 0404, 0405 and 2309.

Article 2

This Regulation shall enter into force on 28 October 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 22, 27. 1. 1994, p. 7.

⁽³⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 320, 22. 12. 1993, p. 32.

⁽⁵⁾ OJ No L 108, 1. 5. 1993, p. 106.

⁽⁶⁾ OJ No L 69, 12. 3. 1994, p. 1.

⁽⁷⁾ OJ No L 91, 1. 4. 1984, p. 71.

⁽⁸⁾ OJ No L 28, 1. 2. 1988, p. 1.

⁽⁹⁾ OJ No L 102, 28. 4. 1993, p. 14.

ANNEX

to the Commission Regulation of 27 October 1994 fixing the export refunds on milk and milk products

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund (**)	Product code	Destination (*)	Amount of refund (**)
0401 10 10 000		5,18	0402 21 91 500		118,10
0401 10 90 000		5,18	0402 21 91 600		128,54
0401 20 11 100		5,18	0402 21 91 700		134,75
0401 20 11 500		8,00	0402 21 91 900		141,68
0401 20 19 100		5,18	0402 21 99 100		105,31
0401 20 19 500		8,00	0402 21 99 200		106,08
0401 20 91 100		10,65	0402 21 99 300		107,46
0401 20 91 500		12,41	0402 21 99 400		115,39
0401 20 99 100		10,65	0402 21 99 500		118,10
0401 20 99 500		12,41	0402 21 99 600		128,54
0401 30 11 100		15,94	0402 21 99 700		134,75
0401 30 11 400		24,58	0402 21 99 900		141,68
0401 30 11 700		36,93	0402 29 15 200		0,6000
0401 30 19 100		15,94	0402 29 15 300		0,9158
0401 30 19 400		24,58	0402 29 15 500		0,9682
0401 30 19 700		36,93	0402 29 15 900		1,0450
0401 30 31 100		43,98	0402 29 19 200		0,6000
0401 30 31 400		68,67	0402 29 19 300		0,9158
0401 30 31 700		75,72	0402 29 19 500		0,9682
0401 30 39 100		43,98	0402 29 19 900		1,0450
0401 30 39 400		68,67	0402 29 91 100		1,0531
0401 30 39 700		75,72	0402 29 91 500		1,1539
0401 30 91 100		86,30	0402 29 99 100		1,0531
0401 30 91 400		126,85	0402 29 99 500		1,1539
0401 30 91 700		148,02	0402 91 11 110		5,18
0401 30 99 100		86,30	0402 91 11 120		10,65
0401 30 99 400		126,85	0402 91 11 310		18,15
0401 30 99 700		148,02	0402 91 11 350		22,42
0402 10 11 000		60,00	0402 91 11 370		27,47
0402 10 19 000		60,00	0402 91 19 110		5,18
0402 10 91 000		0,6000	0402 91 19 120		10,65
0402 10 99 000		0,6000	0402 91 19 310		18,15
0402 21 11 200		60,00	0402 91 19 350		22,42
0402 21 11 300		91,58	0402 91 19 370		27,47
0402 21 11 500		96,82	0402 91 31 100		21,05
0402 21 11 900		104,50	0402 91 31 300		32,47
0402 21 17 000		60,00	0402 91 39 100		21,05
0402 21 19 300		91,58	0402 91 39 300		32,47
0402 21 19 500		96,82	0402 91 51 000		24,58
0402 21 19 900		104,50	0402 91 59 000		24,58
0402 21 91 100		105,31	0402 91 91 000		86,30
0402 21 91 200		106,08	0402 91 99 000		86,30
0402 21 91 300		107,46	0402 99 11 110		0,0518
0402 21 91 400		115,39	0402 99 11 130		0,1065

Product code	Destination (*)	Amount of refund (**)	Product code	Destination (*)	Amount of refund (**)
0402 99 11 150		0,1769	0403 90 61 100		0,0518
0402 99 11 310		20,94	0403 90 61 300		0,0800
0402 99 11 330		25,30	0403 90 63 000		0,1065
0402 99 11 350		33,90	0403 90 69 000		0,1594
0402 99 19 110		0,0518	0404 90 11 100		60,00
0402 99 19 130		0,1065	0404 90 11 910		5,18
0402 99 19 150		0,1769	0404 90 11 950		18,15
0402 99 19 310		20,94	0404 90 13 120		60,00
0402 99 19 330		25,30	0404 90 13 130		91,58
0402 99 19 350		33,90	0404 90 13 140		96,82
0402 99 31 110		0,2282	0404 90 13 150		104,50
0402 99 31 150		35,31	0404 90 13 911		5,18
0402 99 31 300		0,4398	0404 90 13 913		10,65
0402 99 31 500		0,7572	0404 90 13 915		15,94
0402 99 39 110		0,2282	0404 90 13 917		24,58
0402 99 39 150		35,31	0404 90 13 919		36,93
0402 99 39 300		0,4398	0404 90 13 931		18,15
0402 99 39 500		0,7572	0404 90 13 933		22,42
0402 99 91 000		0,8630	0404 90 13 935		27,47
0402 99 99 000		0,8630	0404 90 13 937		32,47
0403 10 22 100		5,18	0404 90 13 939		33,95
0403 10 22 300		8,00	0404 90 19 110		105,31
0403 10 24 000		10,65	0404 90 19 115		106,08
0403 10 26 000		15,94	0404 90 19 120		107,46
0403 10 32 100		0,0518	0404 90 19 130		115,39
0403 10 32 300		0,0800	0404 90 19 135		118,10
0403 10 34 000		0,1065	0404 90 19 150		128,54
0403 10 36 000		0,1594	0404 90 19 160		134,75
0403 90 11 000		60,00	0404 90 19 180		141,68
0403 90 13 200		60,00	0404 90 31 100		60,00
0403 90 13 300		91,58	0404 90 31 910		5,18
0403 90 13 500		96,82	0404 90 31 950		18,15
0403 90 13 900		104,50	0404 90 33 120		60,00
0403 90 19 000		105,31	0404 90 33 130		91,58
0403 90 31 000		0,6000	0404 90 33 140		96,82
0403 90 33 200		0,6000	0404 90 33 150		104,50
0403 90 33 300		0,9158	0404 90 33 911		5,18
0403 90 33 500		0,9682	0404 90 33 913		10,65
0403 90 33 900		1,0450	0404 90 33 915		15,94
0403 90 39 000		1,0531	0404 90 33 917		24,58
0403 90 51 100		5,18	0404 90 33 919		36,93
0403 90 51 300		8,00	0404 90 33 931		18,15
0403 90 53 000		10,65	0404 90 33 933		22,42
0403 90 59 110		15,94	0404 90 33 935		27,47
0403 90 59 140		24,58	0404 90 33 937		32,47
0403 90 59 170		36,93	0404 90 33 939		33,95
0403 90 59 310		43,98	0404 90 39 110		105,31
0403 90 59 340		68,67	0404 90 39 115		106,08
0403 90 59 370		75,72	0404 90 39 120		107,46
0403 90 59 510		86,30	0404 90 39 130		115,39
0403 90 59 540		126,85			
0403 90 59 570		148,02			

Product code	Destination (*)	Amount of refund (")	Product code	Destination (*)	Amount of refund (")
0404 90 39 150		118,10	0405 00 19 500		156,10
0404 90 51 100		0,6000	0405 00 19 700		160,00
0404 90 51 910		0,0518	0405 00 90 100		160,00
0404 90 51 950		20,94	0405 00 90 900		206,00
0404 90 53 110		0,6000	0406 10 20 100		—
0404 90 53 130		0,9158	0406 10 20 230	028	—
0404 90 53 150		0,9682		032	—
0404 90 53 170		1,0450		038	—
0404 90 53 911		0,0518		400	31,80
0404 90 53 913		0,1065		404	—
0404 90 53 915		0,1594		...	39,07
0404 90 53 917		0,2458	0406 10 20 290	028	—
0404 90 53 919		0,3693		032	—
0404 90 53 931		20,94		038	—
0404 90 53 933		25,30		400	31,80
0404 90 53 935		33,90		404	—
0404 90 53 937		35,31		...	39,07
0404 90 59 130		1,0531	0406 10 20 610	028	11,00
0404 90 59 150		1,1539		032	11,00
0404 90 59 930		0,5279		036	—
0404 90 59 950		0,7572		038	—
0404 90 59 990		0,8630		400	71,05
0404 90 91 100		0,6000		404	—
0404 90 91 910		0,0518		...	72,89
0404 90 91 950		20,94	0406 10 20 620	028	16,29
0404 90 93 110		0,6000		032	16,29
0404 90 93 130		0,9158		036	—
0404 90 93 150		0,9682		038	—
0404 90 93 170		1,0450		400	78,34
0404 90 93 911		0,0518		404	—
0404 90 93 913		0,1065		...	79,92
0404 90 93 915		0,1594	0406 10 20 630	028	19,55
0404 90 93 917		0,2458		032	19,55
0404 90 93 919		0,3693		036	—
0404 90 93 931		20,94		038	—
0404 90 93 933		25,30		400	89,03
0404 90 93 935		33,90		404	—
0404 90 93 937		35,31		...	90,24
0404 90 99 130		1,0531	0406 10 20 640	028	—
0404 90 99 150		1,1539		032	—
0404 90 99 930		0,5279		036	—
0404 90 99 950		0,7572		038	—
0404 90 99 990		0,8630		400	105,89
0405 00 11 200		120,98		404	—
0405 00 11 300		152,20		...	105,89
0405 00 11 500		156,10	0406 10 20 650	028	22,40
0405 00 11 700		160,00		032	22,40
0405 00 19 200		120,98		036	—
0405 00 19 300		152,20		038	—
				400	52,94
				404	—
				...	110,24

Product code	Destination (*)	Amount of refund (**)	Product code	Destination (*)	Amount of refund (**)
0406 10 20 660		—	0406 30 10 200	028	—
0406 10 20 810	028	—		032	—
	032	—		036	—
	036	—		038	—
	038	—		400	35,44
	400	17,16		404	—
	404	—		...	39,65
	...	17,16	0406 30 10 250	028	—
0406 10 20 830	028	—		032	—
	032	—		036	—
	036	—		038	—
	038	—		400	35,44
	400	29,30		404	—
	404	—		...	39,65
	...	29,30	0406 30 10 300	028	—
0406 10 20 850	028	—		032	—
	032	—		036	—
	036	—		038	—
	038	—		400	52,04
	400	35,53		404	—
	404	—		...	58,18
	...	35,53	0406 30 10 350	028	—
0406 10 20 870		—		032	—
0406 10 20 900		—		036	—
0406 20 90 100		—		038	—
0406 20 90 913	028	—		400	35,44
	032	—		404	—
	038	—		...	39,65
	400	69,19	0406 30 10 400	028	—
	404	—		032	—
	...	69,19		036	—
0406 20 90 915	028	—		038	—
	032	—		400	52,04
	038	—		404	—
	400	92,25		...	58,18
	404	—	0406 30 10 450	028	—
	...	92,25		032	—
0406 20 90 917	028	—		036	—
	032	—		038	—
	038	—		400	75,77
	400	98,00		404	—
	404	—		...	84,66
	...	98,00	0406 30 10 500	028	—
0406 20 90 919	028	—	0406 30 10 550	032	—
	032	—		036	—
	038	—		038	—
	400	109,54		400	35,44
	404	—		404	16,29
	...	109,54		...	39,65
0406 20 90 990		—	0406 30 10 600	028	—
0406 30 10 100		—		032	—
0406 30 10 150	028	—		036	—
	032	—		038	—
	036	—		400	52,04
	038	—		404	22,81
	400	16,32		...	58,18
	404	—			
	...	18,60			

Product code	Destination (*)	Amount of refund (")	Product code	Destination (*)	Amount of refund (")
0406 30 10 650	028	—	0406 30 31 730	028	—
	032	—		032	—
	036	—		036	—
	038	—		038	—
	400	75,77		400	52,04
	404	—		404	—
	***	84,66		***	58,18
0406 30 10 700	028	—	0406 30 31 910	028	—
	032	—		032	—
	036	—		036	—
	038	—		038	—
	400	75,77		400	35,44
	404	—		404	—
	***	84,66		***	39,65
0406 30 10 750	028	—	0406 30 31 930	028	—
	032	—		032	—
	036	—		036	—
	038	—		038	—
	400	92,48		400	52,04
	404	—		404	—
	***	103,34		***	58,18
0406 30 10 800	028	—	0406 30 31 950	028	—
	032	—		032	—
	036	—		036	—
	038	—		038	—
	400	92,48		400	75,77
	404	—		404	—
	***	103,34		***	84,66
0406 30 31 100	028	—	0406 30 39 100	028	—
	032	—		032	—
	036	—		036	—
	038	—		038	—
	400	92,48		400	35,44
	404	—		404	16,29
	***	103,34		***	39,65
0406 30 31 300	028	—	0406 30 39 300	028	—
	032	—		032	—
	036	—		036	—
	038	—		038	—
	400	16,32		400	52,04
	404	—		404	22,81
	***	18,60		***	58,18
0406 30 31 500	028	—	0406 30 39 500	028	—
	032	—		032	—
	036	—		036	—
	038	—		038	—
	400	35,44		400	52,04
	404	—		404	22,81
	***	39,65		***	58,18
0406 30 31 710	028	—	0406 30 39 700	028	—
	032	—		032	—
	036	—		036	—
	038	—		038	—
	400	35,44		400	75,77
	404	—		404	—
	***	39,65		***	84,66
0406 30 31 710	028	—	0406 30 39 930	028	—
	032	—		032	—
	036	—		036	—
	038	—		038	—
	400	35,44		400	75,77
	404	—		404	—
	***	39,65		***	84,66

Product code	Destination (*)	Amount of refund (")	Product code	Destination (*)	Amount of refund (")
0406 30 39 950	028	—	0406 90 21 900	028	—
	032	—		032	—
	036	—		036	—
	038	—		038	—
	400	92,48		400	105,89
	404	—		404	—
	***	103,34		***	123,56
0406 30 90 000	028	—	0406 90 23 900	028	—
	032	—		032	—
	036	—		036	—
	038	—		038	—
	400	92,48		400	52,94
	404	—		404	—
	***	103,34		***	110,24
0406 40 50 000	028	—	0406 90 25 900	028	—
	032	—		032	—
	038	—		036	—
	400	97,75		038	—
	404	—		400	52,94
	***	103,04		404	—
				***	110,24
0406 40 90 000	028	—	0406 90 27 900	028	—
	032	—		032	—
	038	—		036	—
	400	97,75		038	—
	404	—		400	45,72
	***	103,04		404	—
				***	93,42
0406 90 13 000	028	—	0406 90 31 119	028	—
	032	—		032	—
	036	—		036	—
	038	—		038	—
	400	105,89		400	50,89
	404	—		404	13,03
	***	129,78		***	73,27
0406 90 15 100	028	—	0406 90 31 151	028	—
	032	—		032	—
	036	—		036	—
	038	—		038	—
	400	105,89		400	47,57
	404	—		404	12,19
	***	129,78		***	68,29
0406 90 15 900		—	0406 90 31 159	028	—
0406 90 17 100	028	—		032	—
	032	—		036	—
	036	—		038	—
	038	—		400	50,89
	400	105,89		404	13,03
	404	—		***	73,27
	***	129,78			
0406 90 17 900		—			

Product code	Destination (*)	Amount of refund (")	Product code	Destination (*)	Amount of refund (")
0406 90 33 151	028	—	0406 90 69 910	028	—
	032	—		032	—
	036	—		036	57,02
	038	—		038	—
	400	47,57		400	122,18
	404	12,19		404	65,16
	***	68,29		***	134,39
0406 90 33 919	028	—	0406 90 73 900	028	—
	032	—		032	—
	036	—		036	34,75
	038	—		038	—
	400	50,89		400	123,00
	404	13,03		404	97,75
	***	73,27		***	123,00
0406 90 33 951	028	—	0406 90 75 900	028	—
	032	—		032	—
	036	—		036	—
	038	—		038	—
	400	47,57		400	52,94
	404	12,19		404	—
	***	68,29		***	102,60
0406 90 35 190	028	—	0406 90 76 100	028	19,55
	032	—		032	19,55
	036	34,75		036	—
	038	—		038	—
	400	129,13		400	47,87
	404	73,31		404	—
	***	129,13		***	90,24
0406 90 35 990	028	—	0406 90 76 300	028	—
	032	—		032	—
	036	—		036	—
	038	—		038	—
	400	105,89		400	52,94
	404	—		404	—
	***	105,89		***	110,24
0406 90 61 000	028	—	0406 90 76 500	028	—
	032	—		032	—
	036	73,31		036	—
	038	—		038	—
	400	150,68		400	61,09
	404	114,03		404	—
	***	150,68		***	110,24
0406 90 63 100	028	—	0406 90 78 100	028	19,55
	032	—		032	19,55
	036	85,55		036	—
	038	—		038	—
	400	172,77		400	47,87
	404	130,32		404	—
	***	172,77		***	90,24
0406 90 63 900	028	—	0406 90 78 300	028	—
	032	—		032	—
	036	57,02		036	—
	038	—		038	—
	400	122,18		400	52,94
	404	65,16		404	—
	***	134,39		***	110,24
0406 90 69 100		—			

Product code	Destination (*)	Amount of refund (**)	Product code	Destination (*)	Amount of refund (**)
0406 90 78 500	028	—	0406 90 86 300	028	16,29
	032	—		032	16,29
	036	—		036	—
	038	—		038	—
	400	61,09		400	78,34
	404	—		404	—
	***	110,24		***	79,92
0406 90 79 900	028	—	0406 90 86 400	028	19,55
	032	—		032	19,55
	036	—		036	—
	038	—		038	—
	400	45,72		400	89,03
	404	—		404	—
	***	93,42		***	90,24
0406 90 81 900	028	—	0406 90 86 900	028	—
	032	—		032	—
	036	—		036	—
	038	—		038	—
	400	105,89		400	105,89
	404	—		404	—
	***	105,89		***	105,89
0406 90 85 910	028	—	0406 90 87 100		—
	032	—			—
	036	34,75	0406 90 87 200	028	11,00
	038	—		032	11,00
	400	129,13		036	—
	404	73,31		038	—
	***	129,13		400	72,89
0406 90 85 991	028	—	0406 90 87 300	404	—
	032	—		***	72,89
	036	—		028	16,29
	038	—		032	16,29
	400	105,89		036	—
	404	—		038	—
	***	105,89		400	78,34
0406 90 85 995	028	22,40	0406 90 87 400	404	—
	032	22,40		***	79,92
	036	—		028	19,55
	038	—		032	19,55
	400	52,94		036	—
	404	—		038	—
	***	110,24		400	89,03
0406 90 85 999		—	0406 90 87 951	404	—
0406 90 86 100		—		***	90,24
0406 90 86 200	028	11,00		028	—
	032	11,00		032	—
	036	—		036	34,75
	038	—		038	—
	400	72,89		400	123,00
	404	—		404	73,31
	***	72,89		***	123,00

Product code	Destination (*)	Amount of refund (")	Product code	Destination (*)	Amount of refund (")
0406 90 87 971	028	22,40	2309 10 19 010		—
	032	22,40	2309 10 19 100		—
	036	—	2309 10 19 200		0,22
	038	—	2309 10 19 300		0,29
	400	60,28	2309 10 19 400		0,37
	404	—	2309 10 19 500		0,45
	***	110,24	2309 10 19 600		0,52
0406 90 87 972	028	—	2309 10 19 700		0,55
	032	—	2309 10 19 800		0,59
	038	—	2309 10 70 010		—
	400	31,80	2309 10 70 100		17,10
	404	—	2309 10 70 200		22,80
	***	39,07	2309 10 70 300		28,50
			2309 10 70 500		34,20
0406 90 87 979	028	22,40	2309 10 70 600		39,90
	032	22,40	2309 10 70 700		45,60
	036	—	2309 10 70 800		50,16
	038	—	2309 90 35 010		—
	400	60,28	2309 90 35 100		—
	404	—	2309 90 35 200		0,22
	***	110,24	2309 90 35 300		0,29
0406 90 88 100		—	2309 90 35 400		0,37
0406 90 88 200	028	11,00	2309 90 35 500		0,45
	032	11,00	2309 90 35 700		0,52
	036	—	2309 90 39 010		—
	038	—	2309 90 39 100		—
	400	72,89	2309 90 39 200		0,22
	404	—	2309 90 39 300		0,29
	***	72,89	2309 90 39 400		0,37
0406 90 88 300	028	16,29	2309 90 39 500		0,45
	032	16,29	2309 90 39 600		0,52
	036	—	2309 90 39 700		0,55
	038	—	2309 90 39 800		0,59
	400	78,34	2309 90 70 010		—
	404	—	2309 90 70 100		17,10
	***	79,92	2309 90 70 200		22,80
2309 10 15 010		—	2309 90 70 300		28,50
2309 10 15 100		—	2309 90 70 500		34,20
2309 10 15 200		0,22	2309 90 70 600		39,90
2309 10 15 300		0,29	2309 90 70 700		45,60
2309 10 15 400		0,37	2309 90 70 800		50,16
2309 10 15 500		0,45			
2309 10 15 700		0,52			

(*) The code numbers for the destinations are those set out in the Annex to Commission Regulation (EC) No 3478/93 (OJ No L 317, 18. 12. 1993, p. 32). For destinations other than those indicated for each 'product code', the amount of the refund applying is indicated by ***.

Where no destination is indicated, the amount of the refund is applicable for exports to any destination other than those referred to in Article 1 (2).

(**) Refunds on exports to the Federal Republic of Yugoslavia (Serbia and Montenegro) may be granted only where the conditions laid down in Regulation (EEC) No 990/93 are observed.

NB: The product codes and the footnotes are defined in Commission Regulation (EEC) No 3846/87 (OJ No L 366, 24. 12. 1987, p. 1), as amended.

COMMISSION REGULATION (EC) No 2617/94**of 27 October 1994****introducing a countervailing charge on fresh lemons originating in Argentina**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Regulation (EEC) No 249/93⁽⁵⁾, the prices to be taken into consideration must be recorded on the representative markets or, in certain circumstances, on other markets ;

Having regard to the Treaty establishing the European Community,

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

Having regard to Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables⁽¹⁾, as last amended by Regulation (EC) No 3669/93⁽²⁾, and in particular the second subparagraph of Article 27 (2) thereof,Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92⁽⁶⁾, as amended by Regulation (EC) No 3528/93⁽⁷⁾, are used to convert amounts expressed in third country currencies and are used as the basis for determining the agricultural conversion rates of the Member States' currencies ; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93⁽⁸⁾, as amended by Regulation (EC) No 547/94⁽⁹⁾,

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

HAS ADOPTED THIS REGULATION :

Whereas Commission Regulation (EC) No 1254/94 of 31 May 1994 fixing for the 1994/95 marketing year the reference prices for fresh lemons⁽³⁾ fixed the reference October 1994 price for products of class I for the month of October 1994 at ECU 50,57 per 100 kilograms net ;*Article 1*

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

A countervailing charge of ECU 8,46 per 100 kilograms net is applied to fresh lemons (CN code 0805 30 10) originating in Argentina.

*Article 2*Whereas, in accordance with Article 3 (1) of Commission Regulation (EEC) No 2118/74⁽⁴⁾, as last amended by

This Regulation shall enter into force on 29 October 1994.

⁽¹⁾ OJ No L 118, 20. 5. 1972, p. 1.⁽²⁾ OJ No L 338, 31. 12. 1993, p. 26.⁽³⁾ OJ No L 137, 1. 6. 1994, p. 47.⁽⁴⁾ OJ No L 220, 10. 8. 1974, p. 20.⁽⁵⁾ OJ No L 28, 5. 2. 1993, p. 45.⁽⁶⁾ OJ No L 387, 31. 12. 1992, p. 1.⁽⁷⁾ OJ No L 320, 22. 12. 1993, p. 32.⁽⁸⁾ OJ No L 108, 1. 5. 1993, p. 106.⁽⁹⁾ OJ No L 69, 12. 3. 1994, p. 1.

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

Done at Brussels, 27 October 1994.

For the Commission

René STEICHEN

Member of the Commission

COMMISSION REGULATION (EC) No 2618/94
of 27 October 1994
fixing the import levies on white sugar and raw sugar

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European 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 (EC) No 133/94 ⁽²⁾, and in particular Article 16 (8) thereof,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy ⁽³⁾, as amended by Regulation (EC) No 3528/93 ⁽⁴⁾, and in particular Article 5 thereof,

Whereas the import levies on white sugar and raw sugar were fixed by Commission Regulation (EC) No 1957/94 ⁽⁵⁾, as last amended by Regulation (EC) No 2605/94 ⁽⁶⁾;

Whereas it follows from applying the detailed rules contained in Commission Regulation (EC) No 1957/94 to the information known to the Commission that the levies

at present in force should be altered to the amounts set out in the Annex hereto;

Whereas, in order to make it possible for the levy arrangements to function normally, the representative market rate established during the reference period from 26 October 1994, as regards floating currencies, should be used to calculate the levies,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 28 October 1994.

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

Done at Brussels, 27 October 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 22, 27. 1. 1994, p. 7.

⁽³⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 320, 22. 12. 1993, p. 32.

⁽⁵⁾ OJ No L 198, 30. 7. 1994, p. 88.

⁽⁶⁾ OJ No L 276, 27. 10. 1994, p. 16.

ANNEX**to the Commission Regulation of 27 October 1994 fixing the import levies on white sugar and raw sugar***(ECU/100 kg)*

CN code	Levy ⁽²⁾
1701 11 10	33,17 ⁽¹⁾
1701 11 90	33,17 ⁽¹⁾
1701 12 10	33,17 ⁽¹⁾
1701 12 90	33,17 ⁽¹⁾
1701 91 00	40,44
1701 99 10	40,44
1701 99 90	40,44 ⁽²⁾

⁽¹⁾ The levy applicable is calculated in accordance with the provisions of Article 2 or 3 of Commission Regulation (EEC) No 837/68 (OJ No L 151, 30. 6. 1968, p. 42), as last amended by Regulation (EEC) No 1428/78 (OJ No L 171, 28. 6. 1978, p. 34).

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

⁽³⁾ No import levy applies to OCT originating products according to Article 101 (1) of Decision 91/482/EEC.

COMMISSION REGULATION (EC) No 2619/94**of 27 October 1994****altering the basic amount of the import levies on syrups and certain other products in the sugar sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European 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 (EC) No 133/94 ⁽²⁾, and in particular Article 16 (8) thereof,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy ⁽³⁾, as amended by Regulation (EC) No 3528/93 ⁽⁴⁾, and in particular Article 5 thereof,

Whereas the import levies on syrups and certain other sugar products were fixed by Commission Regulation (EC) No 2363/94 ⁽⁵⁾, as last amended by Regulation (EC) No 2606/94 ⁽⁶⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EC) No 2363/94 to the informa-

tion known to the Commission that the basic amount of the levy on syrups and certain other sugar products at present in force should be altered;

Whereas, in order to make it possible for the levy arrangements to function normally, the representative market rate established during the reference period from 26 October 1994, as regards floating currencies, should be used to calculate the levies,

HAS ADOPTED THIS REGULATION:

Article 1

The basic amounts of the import levy on the products listed in Article 1 (1) (d) of Regulation (EEC) No 1785/81, as fixed in the Annex to amended Regulation (EC) No 2363/94, are hereby altered to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 28 October 1994.

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

Done at Brussels, 27 October 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 22, 27. 1. 1994, p. 7.

⁽³⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 320, 22. 12. 1993, p. 32.

⁽⁵⁾ OJ No L 255, 1. 10. 1994, p. 19.

⁽⁶⁾ OJ No L 276, 27. 10. 1994, p. 18.

ANNEX

**to the Commission Regulation of 27 October 1994 altering the basic amount of the import
levy on syrups and certain other products in the sugar sector**

(ECU)

CN code	Basic amount per percentage point of sucrose content and per 100 kg net of the product in question ⁽¹⁾	Amount of levy per 100 kg of dry matter ⁽¹⁾
1702 20 10	0,4044	—
1702 20 90	0,4044	—
1702 30 10	—	50,12
1702 40 10	—	50,12
1702 60 10	—	50,12
1702 60 90 10 ⁽²⁾	—	95,23
1702 60 90 90 ⁽³⁾	0,4044	—
1702 90 30	—	50,12
1702 90 60	0,4044	—
1702 90 71	0,4044	—
1702 90 90 10 ⁽⁴⁾	—	95,23
1702 90 90 90 ⁽⁵⁾	0,4044	—
2106 90 30	—	50,12
2106 90 59	0,4044	—

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

⁽²⁾ Taric code : Inulin syrup. For the purposes of classification under this subheading, 'Inulin syrup' means the immediate product obtained by hydrolysis of inulin or oligofructoses.

⁽³⁾ Taric code : CN code 1702 60 90, other than inulin syrup.

⁽⁴⁾ Taric code : Inulin syrup. For the purposes of classification under this subheading, 'Inulin syrup' means the immediate product, other than that falling within subheading 1702 60 90, obtained by hydrolysis of inulin or oligofructoses, containing by weight in the dry state at least 10 % fructose in free form or as sucrose.

⁽⁵⁾ Taric code : CN code 1702 90 90, other than inulin syrup.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 6 July 1994

concerning increase in capital, credit guarantees and tax exemption in favour of
TAP (Transportes Aéreos Portugueses)

(Only the Portuguese text is authentic)

(Text with EEA relevance)

(94/698/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93 (2) thereof,

Having given notice in accordance with the above Article to interested parties to submit their comments and having regard to those comments,

Whereas :

I

By letter of 26 January 1994, registered with the Commission Secretariat-General on 31 January 1994, the Portuguese authorities notified to the Commission, under Article 93 (3) of the Treaty, their intention to increase the capital of the national airline Transportes Aéreos Portugueses, SA (hereinafter referred to as TAP). The aid was registered as notified aid No N 122/94 on 24 February 1994 with the Commission. The Portuguese authorities enclosed with the notification a copy of a restructuring programme, called 'Strategic, Economic and Financial Restructuring Plan' (hereinafter referred to as 'the plan'). The Portuguese authorities and TAP had previously announced their intention to grant aid to Tap, in a meeting held with the relevant officials of the Commission's Directorate-General VII (Transport) on 25 January 1994 in Brussels. During this meeting the Portuguese Government invited the Commission to request from TAP the information necessary for assessing the aid application. TAP later provided, additional information and a

Portuguese and English version of a report by Banco Português de Investimento (BPI) and Barclays de Zoete Wedd Ltd (BZW) (hereinafter 'the consultants'), on the restructuring and strategic options of TAP.

By letter of 19 May 1993 ⁽¹⁾ the Commission proposed to the Portuguese Government, under Article 93 (1) of the Treaty, that it should adopt appropriate measures to abolish TAP's exemption from taxation. The Commission stated in its proposal that should the Portuguese Government fail to adopt the appropriate measures it might open the Article 93 (2) procedure with regard to the tax exemption. The Portuguese Government informed the Commission that they intended to address this question in the framework of the forthcoming restructuring programme. In fact, in the abovementioned plan the Portuguese Government suggests the abolition of the tax exemption by the end of the restructuring, that is to say, by the end of 1997.

The Commission decided to open the Article 93 (2) procedure with regard to the abovementioned aid measures and informed the Portuguese Government of this decision by letter of 21 March 1994. This letter was published in the *Official Journal of the European Communities* ⁽²⁾ and third parties were invited to comment within 30 days of the publication. The Portuguese authorities replied to the Commission's letter by letter of 21 April 1994, registered with the Commission on 22 April 1994. The United Kingdom, Sweden,

⁽¹⁾ OJ No C 163, 15. 6. 1993, p. 5.

⁽²⁾ OJ No C 93, 30. 3. 1994, p. 12.

Finland, Denmark, Norway, a number of European airlines, mainly established in the United Kingdom, and TAP's trade unions submitted their comments within the procedure. All the comments were duly transmitted to the Portuguese Government. On 1 June 1994 the Portuguese authorities held a meeting in Brussels with the competent officials of the Commission Directorate-General VII; during this meeting they provided a letter by which they replied to the third parties' comments. Further information was transmitted by letter of 20 June 1994, registered with the Commission on 21 June 1994.

II

The plan was approved by the Portuguese Government as the sole shareholder of the airline, at the General Shareholders' meeting of 17 January 1994. The plan aims at restoring the economic and financial structure of the company over a period of four years (from 1994 to the end of 1997). The plan provides that the company shall be recapitalized through an increase in capital of Esc 180 billion (ECU 913,7 million) to be carried out in four tranches. The Government will, in particular, increase the airline's capital by taking responsibility for its outstanding loans up to the amount of:

- Esc 50 billion in 1994 (ECU 255 426 530),
- Esc 50 billion in 1995 (ECU 255 426 530),
- Esc 40 billion in 1996 (ECU 204 341 122),
- Esc 50 billion in 1997 (ECU 204 341 122).

The granting of the aid by the Portuguese Government to TAP is subject to the following conditions:

- (a) approval by the Commission of the capital increase;
- (b) realization of measures foreseen in the plan relating to the achievement of the forecast operating results;
- (c) rigorous control of costs;
- (d) termination, at the end of the period of application of the plan, of the range of tax exemptions which TAP enjoys.

Moreover, the Portuguese Government will guarantee during the plan the airline's credit operations up to the following total amounts:

- up to Esc 162 billion until 1994 (ECU 827 581 970),
- up to Esc 169 billion until 1995 (ECU 863 341 690),
- up to Esc 129 billion until 1996 (ECU 659 000 460),
- up to Esc 70 billion until 1997 (ECU 357 597 150).

According to the Portuguese authorities the granting of these credit guarantees is necessary because of TAP's ailing financial position. The increase in capital will be

spread over a four-year period and it is only at the end of this period that TAP will achieve a financial situation credible to banking institutions.

According to TAP, the total amount of the forecast tax exemptions (mainly exemption from income tax and stamp duty) will be, for the period 1994 to 1997, about Esc 8 billion (ECU 40 868 245).

III

Since its nationalization in 1975 TAP has been owned by the Portuguese Government. TAP, which is the most important Portuguese air carrier, is, with 38 aeroplanes (including the non-scheduled fleet), 9 691 employees (end 1993), and a turnover for 1993 of Esc 162 232 000 000 (ECU 808 330 000), one of the smallest of the 'national' airlines of the Community.

TAP's activities mainly consist of air transport, handling and maintenance. The company's most important business by far is air transport. In 1992 air transport turnover represented 86 % of the total operating revenues.

In 1993 TAP started to focus on the three abovementioned main business activities. It has been selling or closing down loss-making associated companies (the airline Air Atlantis ceased its activities in May 1993 and is at present in liquidation, the airline Euroair was declared insolvent at the end of 1993, the tour-operator RN Tours was sold by the end of January 1994). At present TAP's most relevant participation is a stake in the catering company Cateringpor, 49 % of whose capital (previously 100 % owned by TAP) was sold in November 1993.

Within the Community, TAP's home market is a peripheral and relatively small one. Portugal is mainly a leisure destination characterized by low-yield traffic and in which TAP faces competition from charter airlines as well as from scheduled airlines. Despite its limited size TAP operates a very heterogeneous network. Its most important market is Europe, where over 80 % of its operations are concentrated. The domestic market mainly comprises routes to the Atlantic autonomous regions of the Azores and Madeira, upon which the Portuguese Government has imposed public service obligations. In addition, TAP operates a number of North Atlantic routes, which are generally loss-making, and some routes to Central and South America. An important sector of the airline's network is the African one, which consists mainly of the routes to the former Portuguese colonies. No routes to the Far East are at present operated by TAP.

To serve such a varied network TAP has a mixed fleet of aircraft; it operated by the end of 1993, five different types of aeroplanes in a fleet of 38 aircraft (10 B-737-200s, 10 B-737-300s, six AB-320s, five AB-310-300s, seven L-1011-500s); the average age of the fleet which is leased in its entirety, is about 6,8 years. The fact that such a small fleet consists of so many different types of aircraft is a cause of inefficiency because it creates problems in crew flexibility, training and investment in spares and specialized equipment.

TAP is an airline which has three main problems: first, its network still relies heavily on the traditional markets within Portugal and overseas. However, its domestic market is, as stated above, characterized by low-yield traffic; the routes to the former Portuguese colonies are, because of their political instability, generally very risky markets and have in any case lost most of their former lucrativeness. The route structure has not been properly adapted to the developments in the market. Second, as mentioned above, the airline has an inefficient mix of aircraft. Third, the airline suffers from low productivity. The Portuguese authorities expressly recognized that 'from whichever the angle we analyse the present TAP productivity ratios, their figures are consistently below those of its main European competitors — a situation that obviously puts the company at a clear disadvantage'.

Even taking account of the average journey length, which is a factor having a direct bearing on an airline's productivity ratios, TAP's productivity is well below that of its competitors.

TAP's poor productivity is generated by its high cost/low revenue structure. The company has been overstaffed, badly organized, and operates too many types of aircraft.

In the past, TAP has not pursued a sound commercial policy with regard to the pricing of its product. The success of the airline was sought by high-load factors rather than through profit-oriented tariffs. It appeared more important to fill the plane (often through consolidators at marginal prices) than to optimize the operating result.

TAP's handling sector which employs some 2 100 employees, still benefits from a monopoly of third-party business, except in Madeira. In the majority of Portuguese airports, non-Portuguese airlines are only allowed to self-handle (ramp and passenger).

TAP's maintenance operation has some 2 000 employees. About 50 % of its activities are devoted to the airline itself. The sector has been suffering in recent years from the general depression in the aviation industry. Again, there appears to be room for efficiency improvements and refocusing of the business in line with the company's overall business plan.

TAP is experiencing a serious financial crisis. At the end of 1992 the airline's total assets were Esc 130,7 million while total liabilities were Esc 147,3 million. Equity has been negative since 1980 (minus Esc 16 493 000 in the financial year 1992). The situation further deteriorated in 1993. The equity at the end of this financial year was minus Esc 53 044 000. The ratio of equity plus long-term liabilities against the fixed assets, which in a balanced financial situation should be higher than 1, was 0,65; this demonstrates that TAP's capital structure is fundamentally weak; investments in fixed assets, which cannot easily be converted into cash, are financed through short-term borrowings.

Because of its negative equity TAP's gearing ratio is much worse than those of its European competitors.

Such a weak financial structure is mainly due to the heavy accumulated losses which have eroded the airline's capital. It must be stressed that since its nationalization in 1975 TAP has been consistently loss making and has had negative operating results. TAP makes losses on the majority of its network. In 1992 TAP made a profit on only 11 of its routes, while 30 routes showed a loss that exceeded 50 % of their revenues. TAP's financial difficulties began in 1974 when the company lost the transport monopoly on the routes to the former Portuguese colonies in Africa, which were characterized by intense traffic and high load factors and yields.

As regards profitability, TAP is in a worse situation than the majority of its European competitors.

The only way to overcome this situation is the adoption of a serious restructuring plan which should redress the economic viability of the company and bring its financial ratios within more prudent limits. The Portuguese authorities are perfectly aware that the present situation cannot be indefinitely maintained because it would lead to the irreversible collapse of the activity 'even with a strong effort of recapitalization, as long as this effort is not accompanied by strong measures of restructuring and redimensioning'.

IV

The new Board of Directors of TAP, which was appointed at the end of 1992, has already undertaken several measures in order to initiate the recovery process of the airline.

In particular :

- as regards the restructuring of the organization : the ground handling, maintenance and engineering departments have recently been transformed and are managed as autonomous profit centres. The activities of some minor services and departments have been incorporated in a Secretariat-General which should allow for economies of scale in the acquisition of goods and services. The administrative services of some overseas offices were transferred to the head office,
- regarding personnel, the Portuguese Government has issued in March 1993 an instrument setting out a new Administrative Labour Regulation (a measure provided for under Portuguese law), which sets out the working conditions and relations between TAP and its staff as from 1 April 1993. It is estimated that the implementation of this regulation will be to bring about an annual reduction of labour costs close to Esc 3 billion. Moreover, wages have been frozen in 1993 and 1994, and in 1993 some 1 200 jobs were eliminated (in 1993 these measures have the effect of reducing costs by some Esc 4 billion),
- regarding their fleet, TAP renegotiated successfully the terms of some aircraft lease contracts ; after the liquidation of its affiliate Air Atlantis, four aircraft returned on lease to TAP (of which two were leased to Air Atlantis with TAP's warranty and the other two were leased to TAP which subsequently subleased them to the subsidiary). This increase in its fleet was offset by disposing of two B737-200s and terminating the lease contract of two B737-300s,
- regarding the associate companies, as pointed out above, TAP is reanalysing its policy of ownership by disposing of the unprofitable ones.

The restructuring plan, which has been forwarded to the Commission for examination, represents a further development of the measures already undertaken in 1993. The Portuguese Government informed the Commission that this document had been established on the basis of a consultants' report which has been sent to the Commission (see Chapter I above). This report analyses eight stra-

tegic scenarios developed by the Board of Directors and the Government, for the future of TAP. These options range from a scenario of continuity, leading to the collapse of the operations, to a scenario of reduction which provides for a drastic decrease of over 5 000 employees and a shrinkage of 16 aircraft over the 1994 to 1997 period. Each option foresees TAP serving a different set of geographical markets.

The consultants' report includes, amongst others, a financial analysis of each of the scenarios and an estimate of the scale of the recapitalization required for each scenario. The Portuguese Government has based its plan on 'Scenario No 2' which has been presented by the consultants as the best available option. This scenario aims at redressing the airline's economic and financial situation within a period of four years (1994 to 1997). The productivity target of the plan consists in reaching a ratio of 242 000 available tonne kilometres (ATK)/employee, over all TAP's employees, or 366 000 ATK/employee, excluding the employees of the maintenance and handling divisions working for third parties. As regards the flight personnel the plan aims at reaching, for the cockpit crew, as upper target ratio, the value of 780 revenue hours per annum for the technical staff, and, for the cabin crew, the target of 13 450 available passenger kilometres (APK)/cabin crew.

According to the Government's plan those targets should be achieved by :

- (a) reorganizing the company and implementing a decentralized structure to reduce bureaucracy and improve the company's capacity for reaction. This objective should be attained through :
 - focusing on TAP's core business — that is, air transport,
 - running other activities (initially the maintenance and handling sectors) as autonomous profit centres,
 - implementing an integrated management of all the companies owned by TAP ;
- (b) reducing the personnel via schemes of early retirement, pre-retirements or severance of labour contracts by mutual consent. The plan foresees a reduction of personnel from 9 691 employees in 1993 to 7 110 employees in 1997 (a loss of 2 581 people) ;
- (c) creating a spirit of austerity by reducing all unnecessary expenses. In this respect :
 - work regulations should be modified to achieve more flexibility,

- investment will be made only in the main areas of operation and with direct outcome on the results. According to the plan TAP should close its branches in North America, with the sole exception of New York, and this would bring about an elimination of 90 jobs and cost cuts of over Esc 340 million per year. TAP intends to keep investing in the former Portuguese colonies in Africa (namely in Mozambique, São Tome-, and Guinea-Bissau) where it has important 'frozen' funds which probably could not be otherwise invested. As regards the former Portuguese colony Macao, TAP is planning to buy a 25 % stake in the local airline, Air Macao, which should start operating at the beginning of 1996 ;
 - wishes to implement in full, as soon as possible, a yield management system, which was acquired at the end of 1990, in order to maximize revenues,
 - intends to use in full and possibly improve the capacity of its computer reservation system, with regard to sales management and market analysis ;
- (f) introducing a coherent system of analytical accounting ;
- (g) reorganizing the accounting system of traffic revenue which will allow an improvement in the quality of the daily revenue control.
- (d) adapting the commercial activity to the new market conditions in order to offer a more competitive product. In this respect TAP will rationalize its network, abandoning a number of routes and focusing its activity on some others. In the European sector TAP will eliminate from its network the chronically unprofitable routes which might be operated either only seasonally or by non-scheduled carriers. In the North Atlantic sector, which is traditionally loss-making for TAP, the airline will discontinue all routes except New York ; TAP is contemplating entering into an association agreement with an American carrier which could continue serving the routes abandoned by TAP. In the central and southern Atlantic and the African sectors TAP will generally maintain its present network. As regards the Far East TAP wishes to start flying to the former Portuguese colony of Macao.
- Under the chosen scenario TAP will reduce the fleet from 38 aircraft in 1993 to 32 in 1997 ;
- (e) making full use of TAP's sales capacity through a number of newly acquired computer systems which, by improving the airline's internal organization, should improve revenues and reduce costs. In particular TAP :
- has developed a cash management system to centralize the management of its banking department. The complete implementation of this system should *inter alia* minimize financial expenses, and optimize the management of account balances,
- Regarding the recapitalization the consultants stress that a key element of any recovery plan is to provide TAP with a financial strength sufficient 'to service current and future debt with a margin for safety, and to enable it to borrow on a stand-alone basis, without Government support'. The consultants, assuming that wages were to keep pace with the projected Portuguese inflation rate of 5 %, consider that a capital injection of at least Esc 180 billion, which was planned to take place in June 1994, plus Esc 15,7 billion to fund TAP's unfunded pension liability, would be required.
- In their conclusions the consultants state that 'the successful implementation of the measures assumed in each scenario will still not be sufficient to achieve the efficiency levels needed for survival'. The consultants point out that TAP does not have the critical mass to survive in the new competitive environment established with the creation of the common aviation market. Therefore TAP should, in the longer term, be compelled to seek a strategic alliance or alliances with a foreign industrial partner. This alliance may be sought only after TAP has repaired its financial situation as a consequence of the successful implementation of the planned restructuring measures. In this respect it must be stressed that the restructuring plan does not exclude the possibility of TAP's entering in future into joint ventures or other kinds of association agreements with other international carriers and states that contacts are already being made to identify the most suitable European or American partner.
- As stated above, the plan provides that, because of budget difficulties, the Esc 180 billion increase in capital should take place in four tranches and that the Government guarantees the airline's borrowing up to the amounts indicated above. As a consequence of the recapitalization, the plan forecasts that TAP will achieve in 1997 a financial autonomy ratio (equity against total assets) of around 28 %. The equity and the operating results will become positive from 1996, and the airline will make the first profit in 1997.

V

The Commission decided to open the Article 93 (2) procedure because it had some doubts or needed further clarifications on the following points:

1. that the plan is adequate to enable TAP to eliminate its problems and become, within the restructuring period, an efficient air carrier. The productivity and efficiency targets of the plan, which some of TAP's competitors have already achieved, appeared to be insufficient to restore viability;
2. that the recapitalization as set out in the plan is sufficient to bring the airline's financial ratios into more prudent limits;
3. that some changes (a more gradual reduction of personnel and the payment of the capital injection in four tranches instead of a one-off capital increase) made to the scenario submitted by the consultants do not jeopardize the objectives of the plan;
4. that the possible under-compensation of the deficit incurred by fulfilling the public service obligation requirements on the routes to the Atlantic islands of Azores and Madeira does not lead to substantial losses which might impair the success of the plan;
5. that the aid does not affect trading conditions to an extent contrary to the common interest.

VI

The interested third parties that have commented on the case have mainly expressed doubts on the adequacy of the restructuring measures in the plan and concerns that the aid may be used by TAP for anticompetitive purposes. In particular, with the aid TAP may dump fares and capacity on European routes to the detriment of its competitors. Moreover, the Portuguese authorities shall encourage competition by opening up handling activities to third parties at Portuguese airports.

The comments submitted by the Portuguese authorities, which provided useful information on the development of the plan, as well as the replies to the different points raised in the opening of the procedure, may be summarized as follows:

1. As regards the productivity targets, the value of 242 ATK/employee ATK-employee to be achieved by the last year of the plan represents a growth of nearly 50 % over the four years of the plan. However, if one

excludes from the total number of personnel those employees (34 % of the total workforce) who in 1997 will be working exclusively for third parties in the maintenance and handling areas, this figure would reach 366 000.

2. With regard to the adequacy of the recapitalization and its modalities, some of the assumptions of the plan and the consultants' study would be different. The plan is based on more recent and accurate data. In particular, the consultants, in recommending a one-off capital injection of Esc 180 billion, were considering a scenario based on an average wage increase of 5 % per year. Instead, the plan is based on a wage freeze in 1993 and 1994 and an average yearly increase of 3 % in the period 1995 to 1997. The savings expected from these measures and Esc 13 billion at 1994 prices. Moreover, further savings expected from these measures are Esc 13 billion at 1994 prices. Moreover, further savings are expected from TAP's pre-retirement scheme. According to the consultants the cost resulting from the negotiated reduction of TAP's workforce by 2 581 employees (2 000 in 1994 and 581 in the following three years) amounts to Esc 28,9 billion. Because of the pre-retirement scheme the actual cost expected by TAP is only Esc 21 billion, which is Esc 7,9 billion lower than that forecast by the consultants. Using a 10 % discount factor⁽¹⁾, the net present value of Esc 180 billion to be injected in four tranches, as forecast in the plan, is Esc 159 billion at June 1994 prices. By adding to this amount the differences of Esc 13 billion and Esc 7,9 billion, resulting from the wage freeze and the use of the pre-retirement scheme, one obtains a total value of Esc 179,9 billion, which is very similar to that forecast by the consultants. This shows that the one-off injection and the payment of the aid in four tranches are equivalent solutions.

With regard to the timing of the capital injection, it is important to reconcile the company's needs with the financial capacity of the owner, which means that the recapitalization could not be carried out on a one-off basis, but only in four instalments and by the assumption of debts. The Portuguese Government considers that the capitalization level which would be attained is sufficient to support the structural changes, enabling the company to attain gradually a self-sustained and balanced situation. This conviction relies upon the

⁽¹⁾ The rate of 10 % represents TAP's marginal cost of borrowing. The Portuguese authorities informed the Commission that, in the last financial transactions entered into by TAP with Portuguese banking institutions; the Portuguese airline succeeded in obtaining an interest rate of around 9,8 %.

forecast evolution of the operating results, an indicator that reflects the company's real performance. The operating result, which is at present negative, improves gradually over the restructuring period and becomes positive in 1996 (Esc 5.5 billion) and increases three-fold during the next year. The above considerations would show that the differences in the implementation of the plan compared with the scenario assumed by the consultants would not affect the achievement of the final targets as laid down in the consultants' study.

3. With regard to the possible adverse effects of the aid on trade and competition, TAP would not be able to use the aid to pursue an expansionist strategy by increasing capacity or dumping tariffs. TAP will not increase its market share in the areas which it is at present operating and its fleet will even be reduced from 38 aircraft in 1993 to 32 in 1997. The acquisition of four AB 340 aircraft will not have any impact on the company's supply in the European market since these aircraft will be operated only on long-haul routes. In the European market, supply (measured in seats) will be reduced from 3 499 seats in 1993 to 3 168 seats in 1997. This reduction represents a decrease of 9,5 % in the supply on the European market at a time when this market is expected to grow by 6,6 % per year. Moreover, TAP intends to discontinue some routes, including the routes which were operated by Air Atlantis. During the restructuring period TAP does not intend to open any new European routes, its only objective being to rationalize its network.

In response to the United Kingdom competitors, Portugal maintains that TAP's market share between Portugal and the United Kingdom is relatively small (in 1993 TAP carried only 17,4 % of the total number of passengers carried between Portugal and the United Kingdom, and 2,6 % of the non-scheduled traffic). TAP is not the price leader on the routes between Portugal and the United Kingdom but it has matched some of the tariffs applied by some of the United Kingdom airlines.

In the general TAP has about a 3 % share of the total European passengers carried by the airline members of AEA (Association of European Airlines). With such a small market share, and considering that TAP has planned to discontinue the operation of several European routes, has forecast an increase in capacity below the average forecast by International Air Transport Association (IATA) over the restructuring period and does not intend to open new routes in the European

market, it is virtually impossible to maintain that TAP's recovery is going to affect the competitive situation of its European competitors.

The Portuguese authorities have also submitted the following clarifications regarding handling and slot allocation :

- TAP does not have a handling monopoly at the Portuguese airports, where every airline is allowed to self-handle,
 - the Portuguese authorities have never received any complaint concerning slot allocation. In Portugal the airports are not coordinated. DGAC (Directorate-General for Civil Aviation), and not TAP, is in charge of supervising the coordination of the timetables and airport capacity.
4. With regard to the public service obligations on the routes to the Atlantic islands of the Azores and Madeira, such obligations could not jeopardize the future recovery since the State has given a commitment to compensating TAP. However, the Portuguese Government is prepared to follow a public tender procedure, pursuant to the criteria laid down in Article 4 of Council Regulation (EEC) No 2408/92⁽¹⁾ on market access, for selecting the airline that from January 1996 will provide transport services between the mainland and the Azores and Madeira. It is worth noting that although the Azores are excluded from the scope of the abovementioned Regulation, the Portuguese Government intends to submit the corresponding public service obligations to the same scheme of public tendering, as mentioned above. To this end the Portuguese Government will inform the Commission, during the first half of 1995, about the contents of these public service obligations for publication in the *Official Journal of the European Communities*. Moreover, Portugal will authorize all types of non-scheduled flights on the routes between third countries and the Azores, despite the fact that these islands are excluded from the abovementioned Regulation. In this connection Portugal has confirmed that liberalization of non-scheduled air transport between all Community airports and the Azores refers to all the services that are not covered by the definition of 'scheduled air services', pursuant to Regulation (EEC) No 2408/92, including seat-only charter and one-way charter. Non-scheduled flights between the Portuguese mainland and Madeira and the Azores are authorized, provided that they do not conflict with the exclusive concession for scheduled flights, which is still valid by virtue of Article 5 of the abovementioned Regulation.

⁽¹⁾ OJ No L 240, 24. 8. 1992, p. 8.

5. Portugal has given the commitment not to authorize total or partial acquisition of shareholdings in any EEA airlines during the restructuring period. This commitment is without prejudice to the airline's continuing its endeavours to find one or more airline partners, through an association or cooperation agreement, to complement its network.
6. With regard to the inefficiency of TAP's mixed fleet, in the medium term this inefficiency will be attenuated. The fleet will mainly consist of Boeings to operate medium-range routes and Airbus on the long-range ones, which is the situation of most of European airlines.
7. Portugal will initiate in 1997 the procedures leading to the partial privatization of TAP's capital, in accordance with a model yet to be defined.

VII

Article 92 (1) of the Treaty and Article 61 (1) of the EEA Agreement (hereinafter referred to as 'the Agreement') provide that any aid granted by a State or through State resources in any form whatsoever which distorts or threatens to distort competition between the Member States, by favouring certain undertakings or the production of certain goods, is incompatible with the common market and the Agreement, in so far as it affects trade between the Member States and the contracting parties.

The Treaty and the Agreement establish the principle of neutrality with regard to the system of property ownership existing in the Member States and the principle of equality between public and private undertakings (Article 222 of the Treaty and 125 of the Agreement). As a consequence of those principles the Commission's action cannot prejudice or promote public entities when they inject capital into undertakings. However, the Commission must investigate financial intervention from public funds into companies to prevent the Member States from using State aid to harm fair competition within the common market.

In the present case the Portuguese Government intends to increase TAP's capital by Esc 180 billion and wishes to guarantee TAP's credit operations up to certain defined amounts over the four-year restructuring period. The Portuguese Government has already issued a credit guarantee to enable TAP to renegotiate a credit facility. Moreover, TAP benefits from an exemption from some taxes applicable in Portugal. It is opportune to examine

separately the capital increase, the guarantees and the tax exemption under the relevant provisions of the Treaty.

A. Increase in capital

In determining whether State aid is involved in capital injections out of public funds the Commission bases its assessment on the market economy investor principle. According to this principle no State aid is involved when fresh capital is contributed in circumstances that would be acceptable to a private investor operating under normal market economy conditions ⁽¹⁾.

The Court of Justice has specified that the behaviour of a private investor, with which the intervention of the public investor has to be compared, has to be at least that of a private holding or of a private group which follows a structural, global or sectoral policy and which is guided by profitability perspectives in the longer term ⁽²⁾.

The Portuguese authorities have duly notified to the Commission, pursuant to Article 93 of the Treaty, the projected capital increase as aid in favour of TAP. However, in the notification they maintain that 'a private investor, in the conditions of a market economy and having a long-range outlook, could be willing to make an investment identical to that which the State proposes to make, given that there are consistent perspectives of profitability after the period of implementation of the restructuring programme'. The Commission does not share the Portuguese Government's opinion. In the present case the Commission considers that the rational private investor, taking into due account the ailing financial structure of the Portuguese airline, would not have agreed to invest money in TAP. It must be recalled that, according to the plan, the operating results will become positive in 1996 and the company will attain its first positive net result in 1997 only. This profitability outlook, together with the huge amount of debts and accumulated losses burdening the airline's financial accounts, as described above (Chapter III), would dissuade a private investor from investing any money in TAP because it is impossible to expect a normal return on the investment within a reasonable period of time. Therefore the Commission considers that the notified capital increase is an aid.

⁽¹⁾ See Commission communication of 17 September 1984 concerning public authorities holdings *op. cit.*; Court of Justice, Joined Cases 296 and 318/82, *The Netherlands and Leeuwarder Papierwarenfabriek v. Commission*, [1985] ECR 809, paragraph 17, p. 823.

⁽²⁾ See Case C-305/89, *Italy v. Commission*, [1991] ECR 1603, paragraph 20, p. 1641.

B. *Guarantees*

By a letter of 5 April 1989 sent to the Member States, the Commission informed them of its attitude towards State guarantees. The Commission considers that all borrowing guarantees given by the State directly or given by the State delegation through financial contribution fall within the scope of Article 92 (1) of the Treaty. The Commission will accept the guarantees only if they are contractually linked to specific conditions which may go as far as the compulsory declaration of insolvency of the recipient undertaking or any similar procedure. The Commission informed the Member States that each instance of the granting of State guarantees has to be notified under Article 93 (3) of the Treaty, whether the grant is made pursuant to an existing general guarantee scheme or of a specific measure. Moreover, as regards the guarantee scheme the Commission has made it clear that it intends only to examine schemes establishing guarantees and not every case in which a guarantee is granted under a scheme (see letter of 12 October 1989).

The Portuguese Government has notified to the Commission its intention to guarantee TAP's borrowings up to certain maximum amounts during the restructuring period. Those guarantees are not granted under a scheme but are specific aids which would enable TAP to borrow the money necessary to continue operating and to survive. As regards State guarantees, the Commission is of the opinion that the aid element involved is normally the difference between the rate which the borrower would pay under normal commercial conditions and that actually obtained under the guarantee, net of any premium paid for the guarantee. However, in the light of the airline's financial difficulty, the Commission considers that no financial or banking institution would lend money to TAP without a State guarantee. The Portuguese authorities, in justifying the need for the guarantees, confirm that 'only at the end of the period will the company show a credible financial situation with the banking institutions'. It follows from the above that TAP would not be able to borrow money if the banks could not rely on the Government's commitment to TAP. Therefore, the amount of the aid involved in the State guarantee could be equal to the amount of money borrowed with the help of the guarantee. In 1993 the Portuguese Government issued five comfort letters to cover several bank loans.

Those comfort letters have enabled TAP to obtain credit facilities from some Portuguese and foreign credit institutions. The comfort letters, by assuring the lenders that the Government is behind the airline,

improve TAP's borrowing position and may be considered as guarantees. This character is undisputed by the Portuguese Government.

C. *Tax exemption*

TAP enjoys a tax exemption. This fiscal privilege was established before the accession of Portugal to the Community. The tax exemption is an individual aid because it reduces the burdens which an undertaking should normally bear. Because of the tax exemption the undertaking benefits from a competitive advantage over its competitors which do not benefit from similar privileges. The Portuguese Government informed the Commission that it will abolish the tax exemption at the end of the restructuring period only. The company estimates the total amount of the exemption, for the period 1994 to 1997, at about Esc 8 billion. Thus the tax exemption can now be considered to be another aid measure in the framework of the restructuring plan.

TAP is an airline which operates several European routes on which, as a consequence of the liberalization of the common air transport market, competition is intense. Because of the projected capital increase and the credit guarantees, TAP receives a direct competitive advantage over its competitors who do not enjoy such facilities; thus the aid distorts competition within the common market. Moreover, the aid affects trade in the EEA because it is granted to a company which operates in the air transport sector which involves by its nature trans-border operations.

Accordingly, the Commission believes that the notified capital increase and credit guarantees (including the non-notified guarantees in the form of comfort letters) as well as the tax exemption are aid within the scope of Article 92 (1) of the Treaty and Article 61 (1) of the Agreement. The latter guarantees should have been notified to the Commission pursuant to Article 93 (3) of the Treaty.

The aid to TAP cannot be considered compatible with the common market pursuant to Article 92 (2) of the Treaty and Article 61 (2) of the Agreement, since the aid does not correspond to any of the hypotheses under those provisions.

Article 92 (3) (a) and (c) of the Treaty and Article 61 (3) (a) and (c) of the Agreement provide for exceptions in respect of aid to promote or facilitate the development of certain regions. The Portuguese authorities maintain in their notification that the aid could be considered compatible with the common market as regional aid because aid to air transport is fundamental in the context of regional development.

Portugal, which is a peripheral, less-favoured country in the context of the Community, would be left, as a consequence of the disappearance of its flag carrier, highly dependent on carriers based abroad and this would seriously compromise the strengthening of economic and social cohesion. Moreover, the disappearance of TAP would add to the increase in the number of unemployed people in Portugal at a time when the protection of employment is a priority policy of the Community itself. The Commission cannot accept the Portuguese Government's arguments, because the aid in favour of TAP is not an open regional scheme which is accessible to every undertaking operating in Portugal. The capital increase and the guarantees are *ad hoc* measures aimed at financing the restructuring measures. The same is true for the tax exemption which does not have any regional character.

As regards the derogations pursuant to Article 92 (3) (b) and (d) of the Treaty and Article 61 (3) (b) of the Agreement, it is apparent that the aids are neither intended to promote the execution of an important project of common European interest nor to promote culture and heritage conservation. Indeed, the Portuguese Government has not invoked these provisions in the notification.

VIII

With regard to the exception pursuant to Article 92 (3) (c) of the Treaty and Article 61 (3) (c) of the Agreement for aid to facilitate the development of certain economic activities, the Commission may consider some restructuring aid to be compatible with the common market if it meets a number of conditions (see the *Eighth Report on Competition Policy* (1978), point 176). Those conditions must be seen in the context of the two principles enunciated in the abovementioned Articles: the aid must be required for developing the activity from the standpoint of the Community and the aid may not adversely affect trading conditions to an extent contrary to the common interest⁽¹⁾.

Those criteria have been interpreted in a sectoral (aviation) context in memorandum No 2 of 15 March 1984 on the development of Community policy on air transport (COM(84) 72 final), which stipulates that the Commission may, in certain cases, decide in accordance with Article

92 that aid may be granted to individual airlines which have serious financial difficulties, provided certain conditions are met:

- (a) the aid must form part of a programme, to be approved by the Commission, to restore the airline's commercial viability, so that it can, within a reasonable short period, be expected to operate viably without further aid;
- (b) the aid in question must not transfer the difficulties from that Member State to the rest of the Community;
- (c) any such aid must be structured so that it is transparent and can be verified.

Taking into account increased competition, and in particular progressive liberalization of air transport, following the adoption of the third liberalization package (Council Regulations (EEC) No 2407/92⁽²⁾, (EEC) No 2408/92⁽³⁾ and (EEC) No 2409/92⁽⁴⁾), the Commission must follow a strict policy of controlling State aid in order to avoid its having effects contrary to the common interest.

As regards Article 92 (3) (c) the Portuguese Government maintains that the aid might qualify for this derogation because the plan is a programme aimed at restoring the viability of the company. The company would at the end of the restructuring be financially autonomous and would then be partly privatized. The plan would not transfer TAP's difficulties to its competitors because it would be impossible for it to pursue a policy of expansion. In addition, the company would decrease its supply as a whole because it would reduce its fleet and abandon a number of routes in Europe.

TAP's problems are mainly caused, was explained by the Portuguese Government, by inefficient management in the past, as well as the obligation of the airline to comply with onerous public requirements conflicting with its commercial interests. A well-structured restructuring programme could restore the airline's viability in the medium term and help it to adapt to the new competitive environment created by the achievement of the Community liberalization process.

The Commission verified whether the conditions laid down in Article 92 (3) (c) of the Treaty and Article 61 (3) (c) of the Agreement are fulfilled, to assess whether the aid is compatible with the common market.

⁽¹⁾ See the judgment of the Court of Justice in Case No 730/79, Philip Morris BV v. Commission, [1980] ECR 2671.

⁽²⁾ OJ No L 240, 24. 8. 1992, p. 1.

⁽³⁾ OJ No L 240, 24. 8. 1992, p. 8.

⁽⁴⁾ OJ No L 240, 24. 8. 1992, p. 15.

1. The Commission verified the present situation of the civil aviation industry.

In the first half of 1994, the civil aviation industry appears to have virtually recovered from the economic crisis triggered by the Gulf war in the second half of 1990. Passenger traffic increased by 14 and 9 % in 1992 and 1993 respectively (source AEA). This strong growth trend had been confirmed by the results recorded in the first months of 1994 (January to March), when passenger traffic grew by 9,1, 9,9 and 14,1 %, respectively, over the corresponding period last year. Despite these positive results some of the European airlines are still loss-making. One of the main causes of the losses lies with the worldwide economic recession, which has amplified the effects of the Gulf crisis and has had tremendous effects in the air transport sector, which is particularly sensitive to changes in the general level of economic activity. Many passengers travelling in business class, which is traditionally a high-yield sector of activity, are seeking lower tariffs and this contributes to the poor financial results of the airlines. Another factor which has negatively affected the results of the companies is represented by investments in aircraft at the end of the 1980s on the basis of optimistic commercial programmes. The delivery of those aeroplanes has caused overcapacity because the important increase in supply has not been matched by a corresponding increase in demand. For many airlines load factors are still not sufficient to achieve commercially viable operation and thus, in order to fill the aircraft, they are obliged to offer promotional fares even in the winter season.

However, the prospects for the European aviation industry in the medium term are (1994 to 1997) quite positive. (The forecast annual increase in traffic is around 6 % ; see IATA annual report for 1993.) Overcapacity would appear to be, in the light of these dates, a temporary phenomenon that might be overcome by 1995. (See communication from the Commission, the way forward for civil aviation in Europe, COM (94) 218 final, p. 7). This is confirmed by the steady increase in load factors during the first months of 1994.

In the light of the above, the Commission considers that the European air transport market is not affected by a structural over-capacity crisis and that the state of the aviation industry does not require general capacity cut-backs.

2. The Commission assessed the plan pursuant to Article 92 (3) (c) of the Treaty and Article 61 (3) (c) of the Agreement.

On the basis of the further evidence provided by the Portuguese authorities (see Chapter VI), the Commis-

sion considers that the restructuring of TAP will contribute to the development of the air transport activity in a peripheral area of the EEA.

In this respect the Commission fully understands TAP's role as the largest Portuguese air carrier, which is entrusted, among others, with the operation of the routes between Portugal, the rest of the EEA, and the former Portuguese colonies.

On the basis of the information and clarifications provided by the Portuguese authorities in the course of the Article 93 (2) procedure, the Commission has reached the conclusion that the plan is sufficiently well structured and, if correctly implemented, could bring about a genuine restructuring.

This is substantiated by the fact that as regards the efficiency and productivity targets the Commission is of the opinion that the productivity target of 366 000 ATK/employee (excluding the employees responsible for the third-party maintenance and ground-handling activities) is an objective that is both necessary and realistic and represents a very acceptable figure. In this respect it should be recalled that TAP's handling and maintenance departments are very large and that TAP provides maintenance and handling services, in particular to third parties, to a very large degree. On the basis of information on third-party work done by other European airlines in the maintenance and handling sector, it is possible to compare the efficiency of TAP's aviation business (excluding all maintenance and handling) with the same core business of other European airlines, using averages. In fact, TAP aims at increasing its efficiency (measured in ATK/employee, excluding handling and maintenance) to 625 000. This appears to be a very acceptable target compared with the average level of efficiency of major European airlines who achieved in 1992 about 400 000 ATK/employee (again, excluding maintenance and handling). Even if one assumes that these airlines will considerably increase their productivity in the next four years TAP's efficiency target compares favourably with the developments to be expected in other Community carriers.

The Commission acknowledges that the plan presented by the Government and the scenario examined by the consultants are based in part on different, but not necessarily incompatible, assumptions. In particular the plan is based on the assumption of no yearly wage increase in 1993 and 1994 and an average yearly increase of 3 % in the period 1995 to 1997, while the consultants assumed an average wage increase of 5 % per year. Another important factor is represented by the savings from TAP's pre-retirement scheme, which are not taken into account by the consultants. The pre-retirement scheme will entail a

cost of only Esc 21 billion, which is Esc 7,9 billion lower than the cost forecast by the consultants (Esc 28,9 billion). The paper drawn up by the consultants must be regarded as a preliminary study which has been taken into account by the Portuguese authorities when drafting the plan.

The company will greatly improve its operating results, which reflects the real operating performance, over the restructuring period. The operating result, which was negative in 1993, shows steady improvements during the period of restructuring to become positive in 1996. The fact that the net result reaches a positive value only in 1997 is mainly explained by the financial charges that TAP will bear in the first three years of the plan. A successful implementation of the plan will allow TAP to wipe out its short-term liabilities and achieve an interest cover ratio (operating result/financial charges) of 1,72 by 1997. This figure appears to be acceptable under the terms of the restructuring which will only be finalized by the end of that year.

The overall aid under examination is to be granted to restore the financial balance and enable the airline to achieve a financial situation credible to financial institutions. It cannot be doubted that the recapitalization of a company which because of its negative net worth cannot borrow on a stand-alone basis, is an essential element of any restructuring plan. The Portuguese Government considers that the aid is proportional to the needs of the restructuring and is sufficient to finance return to commercial viability. Moreover, the tax exemption will be abolished by the end of the restructuring. The Commission takes note of this statement and points out that the aid must be the last for the duration of the plan⁽¹⁾. As regards the guarantees the Commission notes that they will allow TAP to raise part of the funds necessary to its restructuring and requires that the terms and conditions of its letter of 5 April 1989 be adhered to.

The Commission notes the commitment from the Portuguese authorities to initiate in 1997 the procedures leading to the partial privatization of TAP. The Portuguese Government has provided figures which show that TAP has already successfully implemented its plan during the first months of 1994 (for example : according to the plan the operating result for the first quarter of 1994 should have been minus Esc 7 985 million, whereas the actual operating result was minus Esc 6 944 million. As regards the implementation of the social measures of the plan, the Commission notes

that there is steady progress on job reduction as well as discussions with the unions.

On the basis of the above the Commission considers that it can positively assess the plan in question. However, the Commission needs to be assured that the plan will be correctly implemented in accordance with the abovementioned objectives. To this end, the Portuguese Government has agreed to report to the Commission on the progress of TAP's restructuring programme ; this report will be submitted to the Commission at least four weeks before the payment of the second, third and fourth instalments in 1995, 1996 and 1997, in order to give the Commission the opportunity to comment if necessary.

With regard to the method for calculating compensation of the deficit on the routes to the Atlantic islands, the Portuguese authorities have shown that this method involves compensation which is equal to or slightly lower than the deficit incurred. Consequently, the chosen method cannot lead to substantial losses and jeopardize the success of the restructuring.

In the light of the foregoing the Commission considers that TAP's restructuring contributes to the development of the air transport sector from a European point of view.

3. The Commission verified whether the aid does not affect trading conditions to an extent contrary to the common interest.

In the light of the state of the European air transport industry (see above) and the characteristics of the plan, the Commission has concluded that the possibility that the aid might adversely affect the competitive position of TAP's competitors is more speculative than real, as is explained below. The clarifications and assurances provided by the Portuguese Government (see Chapter VI.3) have enabled the Commission to rule out the possibility that the aid might have adverse effects on competition. With regard to commercial strategy, the Commission notes that TAP has no market share expansion objectives ; it does not intend to open any new European routes, its only objective being to rationalize its network. Furthermore, by abandoning a number of European routes, the airline should reduce its total market share, and capacity (measured in terms of seats) for the European market will be considerably reduced (from 3 499 seats in 1993 to 3 168 seats in 1997). This reduction reflects a decrease of 9,5 % in the supply on the European market at a time when this market is expected to grow by over 6 %. This is further substantiated by the fact that TAP, whose supply was 4 688 million APK in 1993, forecasts for the European market an increase in capacity of only 11,4 % :

⁽¹⁾ See Commission Decision 94/118/EC of 21 December 1993, *Aer Lingus* ; OJ No L 54, 25. 2. 1994, p. 30.

- 1994: 4 877 million APK,
- 1995: 4 949 million APK,
- 1996: 5 085 million APK,
- 1997: 5 225 million APK.

This growth, which is well below the forecast increase in traffic for the industry (according to the statistics of AEA/RB4-County Forecasting Models of 16 June 1993, traffic should increase by 6,8 % per year, which represents 30,1 % over the restructuring period), will be readjusted on an annual basis, in case the real growth of the relevant EEA market is lower than TAP's growth indicated above.

The Commission takes note of TAP's forecast of supply and considers that the abovementioned ceilings must be adhered to, so as to avoid any risk of the aid's being detrimental to the position of TAP's competitors.

Moreover, the Commission has obtained assurances from the Portuguese Government that the aid will be only used for the restructuring purpose and not to buy additional shareholdings in other EEA airlines.

The Commission takes duly note of the assurances and commitments given by the Portuguese Government regarding the implementation of the rules on access to the common aviation market and the interpretation to be given to certain provisions. The Commission is of the opinion that the removal of constraints protecting TAP from competition represents an appropriate compensatory justification for the granting of the aid, which serves the common interest pursuant to Article 92 (3) (c) of the Treaty and Article 61 (3) (c) of the Agreement. In particular, the Portuguese Government has :

- confirmed that the liberalization of the non-scheduled transport between all Community airports and the Archipelago of the Azores, refers to all the services, as expressed in Regulation (EEC) No 2408/92, including the 'seat-only charter' and 'one-way charter'. This means that these types of air services will be authorized notwithstanding that the Azores are temporarily excluded from the application of Regulation (EEC) No 2408/92,
- reaffirmed its determination and willingness to follow in 1995 a public tender procedure for the connections between the Portuguese mainland and the islands of Madeira and the Azores in accordance with Article 4 of Regulation (EEC) No 2408/92. Moreover, it is the intention of Portugal to inform the Commission during the first half of 1995 about the contents of the obligations of these public services, in order that they may be published in the *Official Journal of the European*

Communities. In that respect the Commission recalls that Article 4 of that Regulation means that the contents of the public service obligations are to be separately published in the *Official Journal of the European Communities*. Following publication, should no European carrier declare its readiness to fulfil these public service obligations, the right to operate such services shall be offered by public tender either singly or for a group of such routes to any European air carrier entitled to operate such air services.

With regard to TAP's monopoly on ground-handling, the Commission, given the lack of liberalization measures at a Community level, is satisfied with the fact that every airline may self-handle at Portuguese airports.

IX

In the light of the above, the aid to be granted by the Portuguese Government to TAP in the form of increase in capital, borrowing guarantees, and exemption from taxation over the restructuring period may benefit from an exemption pursuant to Article 92 (3) (c) of the Treaty and Article 61 (3) (c) of the Agreement, provided that certain conditions are fulfilled,

HAS ADOPTED THIS DECISION :

Article 1

The aid in favour of TAP, to be granted during the period 1994 to 1997, in the form of a capital increase of Esc 180 billion, to be paid in four tranches, borrowing guarantees up to a maximum of Esc 169 billion, and tax exemption, aimed at its restructuring in accordance with the plan and the commitments given by the Portuguese Government, including its partial privatization are compatible with the common market and the EEA Agreement pursuant to Article 92 (3) (c) of the Treaty and Article 61 (3) (c) of the Agreement, provided that :

- (a) the payment of the second, third and fourth tranches is subject to TAP's achieving the forecast operating results ;
- (b) the tax exemption in favour of TAP is abolished at the end of the restructuring period (31 December 1997) and the borrowing guarantees comply with the condition laid down in the Commission's letter to Member States of 5 April 1989 ;
- (c) TAP does not increase its supply beyond the figures provided to the Commission (see Chapter VIII, point 3), to be adjusted on an annual basis should the real growth of the relevant EEA market be lower than TAP's growth ;

- (d) the Portuguese Government will submit annual reports on the restructuring of TAP at least four weeks before the date of the payments in 1995, 1996 and 1997. Should the Commission decide, after consultation with the Portuguese Government, to appoint an independent expert to examine the progress of the restructuring plan and compliance with the conditions attached to the approval of the aid, the Portuguese Government will postpone the date of the payment by another four weeks in order to allow the Commission to make comments if necessary;
- (e) the Portuguese Government fulfils its commitment to apply Article 4 of Council Regulation (EEC) No 2408/92 to the Atlantic Islands of Madeira and the Azores as of 1 January 1996 at the latest, publishing public service obligations for the individual routes in question (see Chapter VIII, point 3);
- (f) the Portuguese Government honours its commitments that the liberalization of non-scheduled transports between all Community airports and the Azores refers to all services, as expressed in Regulation (EEC) No 2408/92, including the 'seats-only' and 'one-way charter';
- (g) the aid is used only for the restructuring purposes and not to acquire additional shareholdings in other carriers of the EEA;
- (h) the Portuguese Government refrains, in accordance with Community law, from granting any further aid to TAP.

Article 2

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 6 July 1994.

For the Commission

Marcelino OREJA

Member of the Commission

CORRIGENDA

Corrigendum to Decision of the EEA Joint Committee No 7/94 of 21 March 1994 amending Protocol 47 and certain Annexes to the EEA Agreement*(Official Journal of the European Communities No L 160 of 28 June 1994)*

On page 19 in Annex 2 (A) (28) in the indent under new point 31a:

for: '— 392 L 0018: ...',

read: '— 392 L 0118: ...'.

On page 40 in Annex 3 (G) (12), the fourth indent of 54b:

for: '— 392 R 2608: ...',

read: '— 393 R 2608: ...';

at the beginning of 54c:

for: '392 R 0001: ...',

read: '392 L 0001: ...'.

On page 41 at the beginning of 54l:

for: '393 L 1593: ...',

read: '393 R 1593: ...'.

On page 42 in Annex 3 (H) (6) at 6:

for: '6. The following indent shall ...',

read: '6. The following shall ...'.

On page 46 in Annex 3 (N) (4) at 3c:

for: '339 L 0068: ...',

read: '393 L 0068: ...'.

On page 50 in Annex 4 (2):

for: '2. The following new point shall ...',

read: '2. The following new points shall ...'.

On page 74 in Annex 9 (B) (2), second line:

for: '... Council Directive 92/350/EEC ...',

read: '... Council Directive 92/30/EEC ...'.

On page 79 in Annex 11 (B) (4), first line:

for: '4. The following new points shall ...',

read: '4. The following new point shall ...'.

On page 143 in Annex 18 (A) (1) at 2a:

for: '291 L 0692: ...',

read: '391 L 0692: ...'.
