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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC, EURATOM, ECSC) No 2688/95

of 17 November 1995

introducing special measures to terminate the service of officials of the European Communities as a result of the accession of Austria, Finland and Sweden

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing a Single Council and a Single Commission of the European Communities, and in particular Article 24 thereof,

Having regard to the proposal made by the Commission after consulting the Staff Regulations Committee⁽¹⁾,

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

Having regard to the opinion of the Court of Justice⁽³⁾,

Having regard to the opinion of the Court of Auditors⁽⁴⁾,

Whereas, following the accession of Austria, Finland and Sweden, the composition of the Community civil service needs to be adjusted;

Whereas new posts have been granted to the institutions by the budgetary authority for this purpose;

Whereas, however, the European Parliament has made known that, as far as it is concerned, it intends to carry out this adjustment by resorting almost exclusively, as from 1996, to special measures to terminate service;

Whereas it is therefore appropriate to adopt such special measures for officials of the European Parliament,

HAS ADOPTED THIS REGULATION:

Article 1

In the interests of the service, and in order to take account of requirements resulting from the accession of

Austria, Finland and Sweden to the European Union, the European Parliament is hereby authorized, until 30 June 2000, to adopt measures terminating the service of officials who have reached the age of 55, with the exception of those in grades A1 and A2, under the conditions specified in this Regulation.

Article 2

1. The number of officials regarding whom the measures referred to in Article 1 may be taken shall be seventy.

2. The number of officials eligible for such termination of service measures in each of the following periods shall be as follows:

- 14 for the period from 1 July 1995 to 30 June 1996,
- 14 for the period from 1 July 1996 to 30 June 1997,
- 14 for the period from 1 July 1997 to 30 June 1998,
- 14 for the period from 1 July 1998 to 30 June 1999,
- 14 for the period from 1 July 1999 to 30 June 2000.

Article 3

In the interests of the service in connection with enlargement, the European Parliament shall, within the limits laid down in Article 2 and after consulting the Joint Committee, select officials to whom the measures terminating their service under Article 1 shall be applied, after giving staff the opportunity to express their interest.

For this purpose it shall take into consideration the age, ability, efficiency, conduct in the service, family situation and seniority of the officials. Minimum seniority of 10 years shall be required.

Under no circumstances may these measures be applied without the consent of the official concerned.

⁽¹⁾ OJ No C 246, 22. 9. 1995, p. 23.

⁽²⁾ OJ No C 287, 30. 10. 1995.

⁽³⁾ Opinion delivered on 25 September 1995 (not yet published in the Official Journal).

⁽⁴⁾ Opinion delivered on 26 October 1995 (not yet published in the Official Journal).

Article 4

1. A former official affected by the measure provided for in Article 1 shall be entitled to a monthly allowance equal to 70 % of the basic salary for the grade and step held at the time of departure, determined by reference to the table set out in Article 66 of the Staff Regulations, in force on the first day of the month for which the allowance is payable.

2. Entitlement to the allowance shall cease not later than the last day of the month in which the former official attains the age of 65 and in any event as soon as the former official, before reaching that age, is eligible for the maximum retirement pension.

At that point, the former official shall automatically receive a retirement pension, which shall take effect on the first day of the calendar month following the month in which the allowance was paid for the last time.

3. The allowance provided for in paragraph 1 shall be weighted at the rate fixed in accordance with the second subparagraph of Article 82 (1) of the Staff Regulations for the country situated inside the Community where the recipient proves he has his residence.

If the recipient of the allowance establishes his residence in a country outside the Community, the weighting of 100 shall be applied.

The allowance shall be expressed in Belgian francs. It shall be paid in the currency of the country of residence of the recipient. However, if it is subject to the weighting of 100 under the second subparagraph, it shall be paid in Belgian francs.

Allowances paid in a currency other than the Belgian franc shall be calculated on the basis of the exchange rates specified in the second subparagraph of Article 63 of the Staff Regulations.

4. Where gross income accruing to the former official from any new employment, when combined with the allowance provided for in paragraph 1, exceeds the total gross remuneration last received by the official, determined by reference to the salary scales in force on the first day of the month for which the allowance is payable, the amount of the excess shall be deducted from that allowance. That remuneration shall be weighted as provided for in paragraph 3.

Gross income and total gross remuneration last received, as referred to in the first subparagraph, shall mean sums paid after deduction of social security contributions but before deduction of tax.

The former official concerned shall provide any written proof which may be required and shall notify the institution of any factor which may affect his right to the allowance.

5. As set out in Article 67 of the Staff Regulations and Articles 1, 2 and 3 of Annex VII to the Staff Regulations, family allowances shall be paid either to the recipient of the allowance provided for in paragraph 1 or to the person or persons to whom custody of the child or children has been entrusted by law or by an order of court or of the competent administrative authority; the household allowance shall be calculated by reference to that allowance.

6. Recipients of the allowance shall be entitled, in respect of themselves and persons covered by their insurance, to benefits under the sickness insurance scheme provided for in Article 72 of the Staff Regulations, provided they pay the relevant contribution, calculated on the basis of the allowance provided for in paragraph 1, and are not covered by another sickness insurance scheme by virtue of legal or statutory provisions.

7. During the period for which he is entitled to receive the allowance, the former official shall continue to acquire further rights to retirement pension based on the salary attaching to his grade and step, provided that the contribution provided for in the Staff Regulations by reference to that salary is paid during that period and provided that the total pension does not exceed the maximum specified in the second subparagraph of Article 77 of the Staff Regulations. For the purposes of Article 5 of Annex VIII to the Staff Regulations and Article 108 of the former Rules and Regulations of the European Coal and Steel Community, such period shall be considered to be a period of service.

8. Subject to Articles 1 (1) and 22 of Annex VIII to the Staff Regulations, the surviving spouse of a former official who dies while in receipt of the monthly allowance provided for in paragraph 1 shall be entitled, provided that he or she has been his or her spouse for at least one year when the former official left the service of the institution, to a survivor's pension equal to 60 % of the retirement pension which, irrespective of length of service or age, would have been payable to the former official if he or she had qualified for it at the time of death.

The survivor's pension referred to in the first subparagraph shall not be less than the amounts specified in the second subparagraph of Article 79 of the Staff Regulations. However, in no case may it exceed the amount of the first payment of the retirement pension to which the former official would have been entitled had he survived and been granted a retirement pension when he ceased to be eligible for the allowance referred to above.

The duration of the marriage referred to in the first subparagraph shall not be taken into account if there are one or more children of a marriage contracted by the former official before he or she left the service, provided that the surviving spouse maintains, or has maintained, those children.

The same shall apply if the former official's death resulted from one of the circumstances referred to at the end of the second subparagraph of Article 17 of Annex VIII to the Staff Regulations.

9. On the death of a former official in receipt of the allowance provided for in paragraph 1, dependent children within the meaning of Article 2 of Annex VII to the Staff Regulations shall be entitled to an orphan's pension on the conditions set out in the first, second and third subparagraphs of Article 80 of the Staff Regulations and in Article 21 of Annex VIII to the Staff Regulations.

10. For the purposes of Article 107 of the Staff Regulations and of Article 102 (2) of the Staff Regulations of Officials of the European Coal and Steel Community, an official affected by the measure provided for in Article 1 shall be treated as an official who has remained in service until the age of 65 provided he continues to pay the contribution during the period of receipt of the allowance referred to in paragraph 1 of this Article.

Article 5

1. Officials referred to in the last subparagraph of Article 2 of Regulation (EEC, Euratom, ECSC) No 259/68

and in Article 102 (5) of the Staff Regulations, with the exception of those who occupied an established post in grades A1 or A2 under the Staff Regulations of the European Coal and Steel Community before 1 January 1962 and to whom the measures under Article 1 are applied, shall be entitled to ask for their pecuniary claims to be settled in accordance with Article 34 of the Staff Regulations of the European Coal and Steel Community and Article 50 of the Rules and Regulations of the European Coal and Steel Community.

2. Nevertheless, Article 4 (3) and (5) and (9) of this Regulation shall continue to apply to the officials referred to in this Article and their entitled beneficiaries.

Article 6

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, 17 November 1995.

For the Council

The President

P. SOLBES MIRA

**COUNCIL REGULATION (EC, EURATOM, ECSC) No 2689/95
of 17 November 1995**

**introducing special measures to terminate the service of temporary staff of the
European Communities as a result of the accession of Austria, Finland and
Sweden**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing a Single Council and a Single Commission of the European Communities, and in particular Article 24 thereof,

Having regard to the proposal made by the Commission after consulting the Staff Regulations Committee⁽¹⁾,

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

Having regard to the opinion of the Court of Justice⁽³⁾,

Having regard to the opinion of the Court of Auditors⁽⁴⁾,

Whereas, by Regulation (EC, Euratom, ECSC) No 2688/95⁽⁵⁾, the Council adopted special measures to terminate the service of officials of the European Communities as a result of the accession of Austria, Finland and Sweden;

Whereas, as a result of the said accession, it is also advisable to adopt similar measures in respect of certain temporary staff on contracts of indefinite duration, by means of a Regulation couched as far as possible in similar terms;

Whereas the purpose of these measures is to enable preference to be given to Austrian, Finnish and Swedish nationals when the posts thus released are filled;

Whereas it is clear that temporary staff carrying out their duties, as specified in Article 2 (c) of the Conditions of Employment of Other Servants of the European Communities, in the political groups in the European Parliament would not be eligible for termination of service in order to enable Austrian, Finnish and Swedish nationals to be recruited in sufficient numbers and with normal career prospects if the age limit were set at 55 as was the case for officials;

Whereas, in the interest of the institution and to take account of the particular situation of the European Parliament, a sufficient number of Austrian, Finnish and Swedish nationals should be recruited to fill, with normal

career prospects, the posts referred to in Article 2 (c); whereas the minimum age for termination of service of staff in that category should therefore be lowered to 50,

HAS ADOPTED THIS REGULATION:

Article 1

In the interests of the service, and in order to take account of requirements resulting from the accession of Austria, Finland and Sweden to the European Union, the European Parliament is authorized, until 30 June 2000, to adopt measures terminating the service of temporary staff within the meaning of Article 2 (c) of the Conditions of Employment of Other Servants of the European Communities as specified by this Regulation. The temporary staff in question, those on contracts for an indefinite period, must have a total of at least 15 years' service and be aged at least 50.

Article 2

The number of temporary staff in respect of whom the measures referred to in Article 1 may be taken shall be thirty.

This number shall be spread over the following periods:

- 2 for the period from 1 July 1995 to 30 June 1996,
- 7 for the period from 1 July 1996 to 30 June 1997,
- 6 for the period from 1 July 1997 to 30 June 1998,
- 9 for the period from 1 July 1998 to 30 June 1999,
- 6 for the period from 1 July 1999 to 30 June 2000.

Article 3

In the interests of the service in connection with enlargement, the European Parliament shall within the limits laid down in Article 2 and after consulting the Joint Committee, select temporary staff to whom the measures terminating their service under Article 1 shall be applied, after giving staff the opportunity to express their interest.

For this purpose it shall take into consideration their age, ability, efficiency, conduct in the service, family situation and seniority.

Under no circumstances may these measures be applied without the consent of the member of the temporary staff concerned.

⁽¹⁾ OJ No C 246, 22. 9. 1995, p. 26.

⁽²⁾ OJ No C 287, 30. 10. 1995.

⁽³⁾ Opinion delivered on 25 September 1995 (not yet published in the Official Journal).

⁽⁴⁾ Opinion delivered on 26 October 1995 (not yet published in the Official Journal).

⁽⁵⁾ See page 1 of this Official Journal.

Article 4

1. A former member of the temporary staff affected by the measure provided for in Article 1 shall be entitled to a monthly allowance equal to 70 % of the basic salary for the grade and step held at the time of departure, determined by reference to the table set out in Article 66 of the Staff Regulations in force on the first day of the month for which the allowance is payable.

2. Entitlement to the allowance shall cease not later than the last day of the month in which the former member of the temporary staff attains the age of 65 and in any event as soon as he becomes eligible, before that age, for the maximum retirement pension.

At that point, the former member of the temporary staff shall automatically receive a retirement pension calculated in accordance with Articles 39 and 40 of the Conditions of Employment, which shall take effect on the first day of the calendar month following the month in which the allowance was paid for the last time.

3. The allowance provided for in paragraph 1 shall be weighted at the rate fixed in accordance with the second subparagraph of Article 82 (1) of the Staff Regulations for the country situated inside the Community where the recipient proves he has his residence.

If the recipient of the allowance establishes his residence in a country outside the Community, the weighting of 100 shall be applied.

The allowance shall be expressed in Belgian francs. It shall be paid in the currency of the country of residence of the recipient. However, if it is subject to the weighting of 100 under the second subparagraph, it shall be paid in Belgian francs.

Allowances paid in a currency other than the Belgian franc shall be calculated on the basis of the exchange rates specified in the second subparagraph of Article 63 of the Staff Regulations.

4. Where gross income accruing to the former member of the temporary staff from any new employment, when combined with the allowance provided for in paragraph 1, exceeds the total gross remuneration last received by him, determined by reference to the salary scales in force on the first day of the month for which the allowance is payable, the amount of the excess shall be deducted from that allowance. That remuneration shall be weighted as provided for in paragraph 3.

Gross income and total gross remuneration last received, as referred to in the first subparagraph, shall mean sums paid after deduction of social security contributions but before deduction of tax.

The former member of the temporary staff shall provide any written proof which may be required and shall notify

the institution of any factor which may affect his right to the allowance.

5. As set out in Article 67 of the Staff Regulations and Articles 1, 2 and 3 of Annex VII to the Staff Regulations, family allowances shall be payable either to the recipient of the allowance provided for in paragraph 1 or to the person or persons to whom custody of the child or children has been entrusted by law or by an order of court or of the competent administrative authority; the household allowance shall be calculated by reference to that allowance.

6. Recipients of the allowance shall be entitled, in respect of themselves and persons covered by their insurance, to benefits under the sickness insurance scheme provided for in Article 72 of the Staff Regulations, provided they pay the relevant contribution, calculated on the basis of the allowance provided for in paragraph 1, and are not covered by another sickness insurance scheme by virtue of legal or statutory provisions.

7. During the period for which he is entitled to receive the allowance, the former member of the temporary staff shall continue to acquire further rights to retirement pension based on the salary attaching to his grade and step, provided that the contribution provided for in the Staff Regulations by reference to that salary is paid during that period and provided that the total pension does not exceed the maximum specified in Title II, Chapter 6 of the Conditions of Employment. For the purposes of Article 5 of Annex VIII to the Staff Regulations, such period shall be considered to be a period of service.

8. Subject to Articles 1 (1) and 22 of Annex VIII to the Staff Regulations, the surviving spouse of a former member of the temporary staff who dies while in receipt of the monthly allowance provided for in paragraph 1 shall be entitled, provided that he or she has been his or her spouse for at least one year when the former member of the temporary staff left the service of the institution, to a survivor's pension equal to 60 % of the retirement pension which, irrespective of length of service or of age, would have been payable to the former member of the temporary staff if he or she had qualified for it at the time of death.

The survivor's pension referred to in the first subparagraph shall not be less than the amounts specified in Title II, Chapter 6 of the Conditions of Employment. However, in no case may it exceed the amount of the first payment of the retirement pension to which the former member of the temporary staff would have been entitled had he survived and been granted a retirement pension when he ceased to be eligible for the allowance referred to above.

The duration of the marriage stipulated in the first subparagraph shall not be taken into account if there are one or more children of a marriage contracted by the former member of the temporary staff before he left the service, provided that the surviving spouse maintains, or has maintained, those children.

The same shall apply if the death of the former member of the temporary staff resulted from one of the circumstances referred to at the end of the second subparagraph of Article 17 of Annex VIII to the Staff Regulations.

9. On the death of a former member of the temporary staff in receipt of the allowance provided for in paragraph 1, dependent children within the meaning of Article 2 of Annex VII to the Staff Regulations shall be entitled to an

orphan's pension on the conditions set out in Title II, Chapter 6 of the Conditions of Employment and in Article 21 of Annex VIII to the Staff Regulations.

Article 5

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, 17 November 1995.

For the Council

The President

P. SOLBES MIRA

COUNCIL REGULATION (EC) No 2690/95

of 17 November 1995

opening a tariff quota for preserved mushrooms originating in China

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Whereas Council Regulation (EEC) No 1796/81 of 30 June 1981 on measures applicable to imports of mushrooms of the species *Agaricus* spp. falling within CN codes 0711 90 40, 2003 10 20 and 2003 10 30⁽¹⁾ provided for the levying of an additional amount on imports in excess of certain quantities laid down; whereas those arrangements applied *inter alia* to imports from China; whereas Council Regulation (EC) No 3290/94 of 22 December 1994 on the adjustments and transitional arrangements required in the agricultural sector in order to implement the agreements during the Uruguay Round of multilateral trade negotiations⁽²⁾ has repealed those arrangements with effect from 1 July 1995 in anticipation of the opening by the Commission of tariff quotas for imports of the products concerned;

Whereas, pending the outcome of the negotiations opened pursuant to Article XXIV.6 of GATT 1994 with members of the World Trade Organization on the adjustment of Community concessions following the latest enlargement of the Community, a tariff quota should be

opened for imports during the second half of 1995 as an autonomous measure,

HAS ADOPTED THIS REGULATION:

Article 1

1. A Community tariff quota is hereby opened for the importation without payment of the specific duty, during the period 1 July 1995 to 31 December 1995, of a net drained weight of 2 200 tonnes of preserved mushrooms of the species *Agaricus* falling within CN codes 0711 90 40, 2003 10 20 and 2003 10 30 and originating in China.

2. The common customs tariff applicable to the quota referred to in paragraph 1 shall be 12 % for products falling within CN code 0711 90 40 and 23 % for products falling within CN codes 2003 10 20 and 2003 10 30.

Article 2

The detailed rules for the application of this Regulation shall be laid down by the Commission in accordance with the procedure laid down in Article 22 of Regulation (EEC) No 426/86⁽³⁾.

Article 3

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

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

Done at Brussels, 17 November 1995.

For the Council

The President

P. SOLBES MIRA

⁽¹⁾ OJ No L 183, 4. 7. 1981, p. 1. Regulation as last amended by Regulation (EEC) No 1122/92 (OJ No L 117, 1. 5. 1992, p. 98).

⁽²⁾ OJ No L 349, 31. 12. 1994, p. 105.

⁽³⁾ OJ No L 49, 27. 2. 1986, p. 1. Regulation as last amended by Regulation (EC) No 1490/94 (OJ No L 161, 29. 9. 1994, p. 13).

COMMISSION REGULATION (EC) No 2691/95

of 22 November 1995

altering the export refunds on white sugar and raw sugar exported in the natural state

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European 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 1101/95 ⁽²⁾, and in particular the second subparagraph of Article 19 (4) thereof,Whereas the refunds on white sugar and raw sugar exported in the natural state were fixed by Commission Regulation (EC) No 2652/95 ⁽³⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EC) No 2652/95 to the informa-

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

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 (1) (a) of Regulation (EEC) No 1785/81, undenatured and exported in the natural state, as fixed in the Annex to Regulation (EC) No 2652/95 are hereby altered to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 23 November 1995.

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

Done at Brussels, 22 November 1995.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 110, 17. 5. 1995, p. 1.

⁽³⁾ OJ No L 273, 16. 11. 1995, p. 5.

ANNEX

to the Commission Regulation of 22 November 1995 altering the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Amount of refund ⁽¹⁾
	— ECU/100 kg —
1701 11 90 100	40,25 ⁽¹⁾
1701 11 90 910	38,83 ⁽¹⁾
1701 11 90 950	⁽²⁾
1701 12 90 100	40,25 ⁽¹⁾
1701 12 90 910	38,83 ⁽¹⁾
1701 12 90 950	⁽²⁾
	— ECU/1 % of sucrose × 100 kg —
1701 91 00 000	0,4376
	— ECU/100 kg —
1701 99 10 100	43,76
1701 99 10 910	42,21
1701 99 10 950	42,21
	— ECU/1 % of sucrose × 100 kg —
1701 99 90 100	0,4376

⁽¹⁾ Applicable to raw sugar with a yield of 92 % ; if the yield is other than 92 %, the refund applicable is calculated in accordance with the provisions of Article 17a (4) of Regulation (EEC) No 1785/81.

⁽²⁾ Fixing suspended by Commission Regulation (EEC) No 2689/85 (OJ No L 255, 26. 9. 1985, p. 12), as amended by Regulation (EEC) No 3251/85 (OJ No L 309, 21. 11. 1985, p. 14).

⁽³⁾ Refunds on exports to the Federal Republic of Yugoslavia (Serbia and Montenegro) may be granted only where the conditions laid down in amended Regulation (EEC) No 990/93 are observed.

COMMISSION REGULATION (EC) No 2692/95

of 22 November 1995

fixing the maximum export refund for white sugar for the 17th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1813/95

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 1101/95⁽²⁾, and in particular the second subparagraph of Article 17 (5) (b) thereof,

Whereas Commission Regulation (EC) No 1813/95 of 26 July 1995 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar⁽³⁾, requires partial invitations to tender to be issued for the export of this sugar;

Whereas, pursuant to Article 9 (1) of Regulation (EC) No 1813/95 a maximum export refund shall be fixed, as the case may be, account being taken in particular of the state and foreseeable development of the Community and world markets in sugar, for the partial invitation to tender in question;

Whereas, following an examination of the tenders submitted in response to the 17th partial invitation to tender, the provisions set out in Article 1 should be adopted;

Whereas Council Regulation (EEC) No 990/93⁽⁴⁾, as amended by Regulation (EC) No 1380/95⁽⁵⁾, 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 Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

1. For the 17th partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1813/95 the maximum amount of the export refund is fixed at ECU 45,330 per 100 kilograms.
2. Refunds on exports to the Federal Republic of Yugoslavia (Serbia and Montenegro) may be granted only where the conditions laid down in amended Regulation (EEC) No 990/93 are observed.

Article 2

This Regulation shall enter into force on 23 November 1995.

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

Done at Brussels, 22 November 1995.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 110, 17. 5. 1995, p. 1.

⁽³⁾ OJ No L 175, 27. 7. 1995, p. 12.

⁽⁴⁾ OJ No L 102, 28. 4. 1993, p. 14.

⁽⁵⁾ OJ No L 138, 21. 6. 1995, p. 1.

COMMISSION REGULATION (EC) No 2693/95

of 22 November 1995

fixing the representative prices and the additional import duties for molasses 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 market in sugar⁽¹⁾, as last amended by Regulation (EC) No 1101/95⁽²⁾,

Having regard to Commission Regulation (EC) No 1422/95 of 23 June 1995 laying down detailed rules of application for imports of molasses in the sugar sector and amending Regulation (EEC) No 785/68⁽³⁾, and in particular Articles 1 (2) and 3 (1) thereof,

Whereas Regulation (EC) No 1422/95 stipulates that the cif import price for molasses, hereinafter referred to as the 'representative price', should be set in accordance with Commission Regulation (EEC) No 785/68⁽⁴⁾; whereas that price should be fixed for the standard quality defined in Article 1 of the above Regulation;

Whereas the representative price for molasses is calculated at the frontier crossing point into the Community, in this case Amsterdam; whereas that price must be based on the most favourable purchasing opportunities on the world market established on the basis of the quotations or prices on that market adjusted for any deviations from the standard quality; whereas the standard quality for molasses is defined in Regulation (EEC) No 785/68;

Whereas, when the most favourable purchasing opportunities on the world market are being established, account must be taken of all available information on offers on the world market, on the prices recorded on important third-country markets and on sales concluded in international trade of which the Commission is aware, either directly or through the Member States; whereas, under Article 7 of Regulation (EEC) No 785/68, the Commission may for this purpose take an average of several prices as a basis, provided that this average is representative of actual market trends;

Whereas the information must be disregarded if the goods concerned are not of sound and fair marketable quality or

if the price quoted in the offer relates only to a small quantity that is not representative of the market; whereas offer prices which can be regarded as not representative of actual market trends must also be disregarded;

Whereas, if information on molasses of the standard quality is to be comparable, prices must, depending on the quality of the molasses offered, be increased or reduced in the light of the results achieved by applying Article 6 of Regulation (EEC) No 785/68;

Whereas a representative price may be left unchanged by way of exception for a limited period if the offer price which served as a basis for the previous calculation of the representative price is not available to the Commission and if the offer prices which are available and which appear not to be sufficiently representative of actual market trends would entail sudden and considerable changes in the representative price;

Whereas where there is a difference between the trigger price for the product in question and the representative price, additional import duties should be fixed under the conditions set out in Article 3 of Regulation (EC) No 1422/95; whereas should the import duties be suspended pursuant to Article 5 of Regulation (EC) No 1422/95, specific amounts for these duties should be fixed;

Whereas application of these provisions will have the effect of fixing the representative prices and the additional import duties for the products in question as set out in the Annex to this Regulation;

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

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and the additional duties applying to imports of the products referred to in Article 1 of Regulation (EC) No 1422/95 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 23 November 1995.

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 110, 17. 5. 1995, p. 1.

⁽³⁾ OJ No L 141, 24. 6. 1995, p. 12.

⁽⁴⁾ OJ No L 145, 27. 6. 1968, p. 12.

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

Done at Brussels, 22 November 1995.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

fixing the representative prices and additional import duties applying to imports of molasses in the sugar sector

CN code	Amount of the representative price in ECU per 100 kg net of the product in question	Amount of the additional duty in ECU per 100 kg net of the product in question	Amount of the duty to be applied to imports in ECU per 100 kg net of the product in question in the event of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 ⁽²⁾
1703 10 00 ⁽¹⁾	9,26	—	0,00
1703 90 00 ⁽¹⁾	9,86	—	0,00

⁽¹⁾ For the standard quality as defined in Article 1 of Regulation (EEC) No 785/68.

⁽²⁾ This amount replaces, in accordance with Article 5 of Regulation (EC) No 1422/95, the rate of the Common Customs Tariff duty fixed for these products.

COMMISSION REGULATION (EC) No 2694/95

of 21 November 1995

concerning the classification of certain goods in the combined nomenclature

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff⁽¹⁾, as last amended by Commission Regulation (EC) No 2588/95⁽²⁾, and in particular Article 9 thereof,

Whereas in order to ensure uniform application of the combined nomenclature annexed to the said Regulation, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation;

Whereas Regulation (EEC) No 2658/87 has set down the general rules for the interpretation of the combined nomenclature and those rules also apply to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific Community provisions, with a view to the application of tariff and other measures relating to trade in goods;

Whereas, pursuant to the said general rules, the goods described in column 1 of the table annexed to the present Regulation must be classified under the appropriate CN codes indicated in column 2, by virtue of the reasons set out in column 3;

Whereas it is accepted that binding tariff information issued by the customs authorities of Member States in respect of the classification of goods in the combined nomenclature and which do not conform to the rights

established by this Regulation, can continue to be invoked, under the provisions in Article 12 (6) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁽³⁾, as amended by Commission Regulation (EEC) No 2454/93⁽⁴⁾, for a period of three months by the holder;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Tariff and Statistical Nomenclature Section of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The goods described in column 1 of the annexed table are now classified within the combined nomenclature under the appropriate CN codes indicated in column 2 of the said table.

Article 2

Binding tariff information issued by the customs authorities of Member States which do not conform to the rights established by this Regulation can continue to be invoked under the provisions of Article 12 (6) of Regulation (EEC) No 2913/92 for a period of three months.

*Article 3*This Regulation shall enter into force on the 21st 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, 21 November 1995.

For the Commission

Mario MONTI

Member of the Commission⁽¹⁾ OJ No L 256, 7. 9. 1987, p. 1.⁽²⁾ OJ No L 264, 7. 11. 1995, p. 4.⁽³⁾ OJ No L 302, 19. 10. 1992, p. 1.⁽⁴⁾ OJ No L 253, 11. 10. 1993, p. 1.

ANNEX

Description of goods	Classification (CN code)	Reasons
Syrup with the following analytical characteristics (percentage by weight): — lactulose : 51,3, — lactose : 5,3, — galactose : 7,2, — tagatose : 1,6, — fructose : 0,1. The syrup contains only by-products from the synthesis of lactulose and very low quantities of preservative	1702 90 99	Classification is determined by the provisions of general rules 1 and 6 for the interpretation of the combined nomenclature and by the wording of CN codes 1702, 1702 90 and 1702 90 99. See also the HS Explanatory Notes to heading 17.02 (Part B).

COMMISSION REGULATION (EC) No 2695/95

of 21 November 1995

replacing the codes established on the basis of the Common Customs Tariff nomenclature in force on 31 December 1987 with those established on the basis of the combined nomenclature in certain Regulations concerning the classification of goods

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff⁽¹⁾, as last amended by Commission Regulation (EC) No 2588/95⁽²⁾, and in particular Article 15 thereof,

Whereas Council Regulation (EEC) No 950/68 of 28 June 1968 on the Common Customs Tariff⁽³⁾, repealed by Regulation (EEC) No 2658/87, established the nomenclature of the Common Customs Tariff on the basis of the Convention of 15 December 1950 on nomenclature for the classification of goods in customs tariffs;

Whereas there has been adopted a number of Regulations concerning the classification of goods in the nomenclature of the Common Customs Tariff on the basis of Regulation (EEC) No 97/69 of the Council of 16 January 1969 on measures to be taken for uniform application of the nomenclature of the Common Customs Tariff⁽⁴⁾, repealed by Regulation (EEC) No 2658/87;

Whereas Regulation (EEC) No 2658/87 established a goods nomenclature called the combined nomenclature, which simultaneously meets the requirements of the Common Customs Tariff and of the external trade statistics of the Community, and is based on the International Convention on the Harmonized Commodity Description

and Coding System, replacing the Convention of 25 December 1950;

Whereas Article 15 (1) of Regulation (EEC) No 2658/87, in laying down that the codes and descriptions of goods established on the basis of the combined nomenclature are to replace those established on the basis of the nomenclature of the Common Customs Tariff in force on 31 December 1987, also provides that Community acts which include the tariff nomenclature are to be amended by the Commission;

Whereas those Regulations which are still of practical significance and whose transposition will involve no changes of substance should be amended accordingly and so to complement an initial series of Regulations which has been adopted by Commission Regulations (EEC) No 646/89⁽⁵⁾, (EEC) No 2723/90⁽⁶⁾, and (EEC) No 2080/91⁽⁷⁾,

HAS ADOPTED THIS REGULATION:

Article 1

In the Regulations listed in column 1 of the Annex, which refer to the goods described in column 2, the codes based on the nomenclature of the Common Customs Tariff in column 3 shall be replaced by the codes based on the combined nomenclature listed in column 4.

Article 2

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

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

Done at Brussels, 21 November 1995.

For the Commission

Mario MONTI

Member of the Commission

⁽¹⁾ OJ No L 256, 7. 9. 1987, p. 1.

⁽²⁾ OJ No L 264, 7. 11. 1995, p. 4.

⁽³⁾ OJ No L 172, 22. 7. 1968, p. 1.

⁽⁴⁾ OJ No L 14, 21. 1. 1969, p. 1.

⁽⁵⁾ OJ No L 71, 15. 3. 1989, p. 20.

⁽⁶⁾ OJ No L 261, 25. 9. 1990, p. 24.

⁽⁷⁾ OJ No L 193, 17. 7. 1991, p. 6.

ANNEX

Regulation (EEC) No	Description of the goods	CCT heading number	CN code
(1)	(2)	(3)	(4)
3541/85 ⁽¹⁾	Mixtures of peat (containing not less than 75 % turf by weight) and other substances such as farm yard manure, lime, sand, rotted leaf mould, marl, and small quantities of other fertilizers, with a total content of potassium (calculated as K ₂ O), nitrogen, phosphorus (calculated as P ₂ O ₅), not exceeding 3 % by weight	27.03 A	2703 00 00
2053/83 ⁽²⁾	The product consisting of paprika extract having the following characteristics : — appearance : highly viscous liquid, deep red, high colouring strength, — odour and taste : aromatic, similar to paprika, not pungent, — ash : 0,49 % by weight, — essential oils : 0,15 ml/100g, — capsaicin : not detectable, — glucose : 0,01 % by weight, — sucrose : not detectable, — triglycerides : positive test, — capsanthin : about 2,2 g/kg (about 60 000 colour units 'EOA' (Essential Oil Association))	32.04 A IV	3203 00 19
3402/82 ⁽³⁾	Base preparations for chewing gum, in the form of cylindrical pieces consisting (by weight) of 34 % butyl rubber, 15 % polyethylene, 13 % poly(vinyl acetate), 28 % vegetable resin and 10 % calcium carbonate	38.19 X	3823 90 98
3149/81 ⁽⁴⁾	The product consisting of D-Glucitol (sorbitol) containing one part per thousand added 1,2-Benzisothiazol-3-one 1,1-dioxide (saccharin)	38.19 T	2106 90 92

⁽¹⁾ OJ No L 338, 17. 12. 1985, p. 1.⁽²⁾ OJ No L 202, 26. 7. 1983, p. 5.⁽³⁾ OJ No L 357, 18. 12. 1982, p. 16.⁽⁴⁾ OJ No L 314, 4. 11. 1981, p. 5.

COMMISSION REGULATION (EC) No 2696/95

of 21 November 1995

concerning the classification of certain goods in the combined nomenclature

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

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff⁽¹⁾, as last amended by Commission Regulation (EC) No 2588/95⁽²⁾, and in particular Article 9 thereof,

Whereas in order to ensure uniform application of the combined nomenclature annexed to the said Regulation, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation;

Whereas Regulation (EEC) No 2658/87 has set down the general rules for the interpretation of the combined nomenclature and those rules also apply to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific Community provisions, with a view to the application of tariff and other measures relating to trade in goods;

Whereas, pursuant to the said general rules, the goods described in column 1 of the table annexed to the present Regulation must be classified under the appropriate CN codes indicated in column 2, by virtue of the reasons set out in column 3;

Whereas it is accepted that binding tariff information issued by the customs authorities of Member States in respect of the classification of goods in the combined nomenclature and which do not conform to the rights

established by this Regulation, can continue to be invoked, under the provisions in Article 12 (6) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁽³⁾, as amended by Commission Regulation (EEC) No 2454/93⁽⁴⁾, for a period of three months by the holder;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Tariff and Statistical Nomenclature Section of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The goods described in column 1 of the annexed table are now classified within the combined nomenclature under the appropriate CN codes indicated in column 2 of the said table.

Article 2

Binding tariff information issued by the customs authorities of Member States which do not conform to the rights established by this Regulation can continue to be invoked under the provisions of Article 12 (6) of Regulation (EEC) No 2913/92 for a period of three months.

Article 3

This Regulation shall enter into force on the 21st 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, 21 November 1995.

For the Commission

Mario MONTI

Member of the Commission

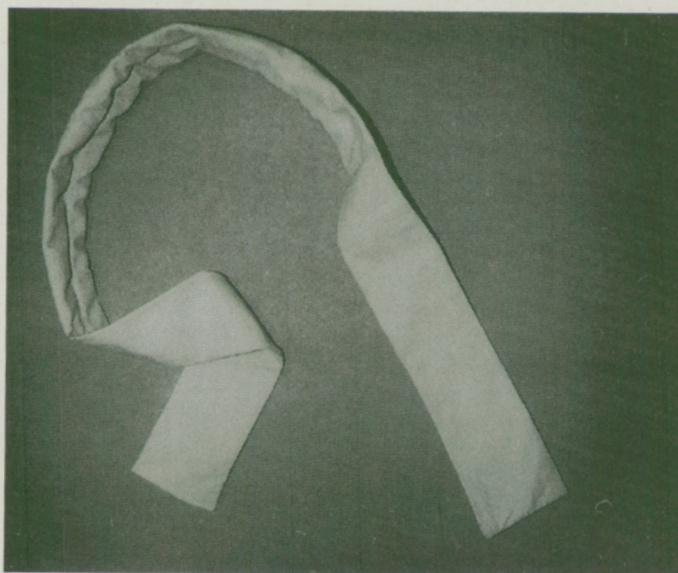
⁽¹⁾ OJ No L 256, 7. 9. 1987, p. 1.
⁽²⁾ OJ No L 264, 7. 11. 1995, p. 4.

⁽³⁾ OJ No L 302, 19. 10. 1992, p. 1.
⁽⁴⁾ OJ No L 253, 11. 10. 1993, p. 1.

ANNEX

Description of goods	Classification CN code	Reasons
(1)	(2)	(3)
1. Food preparation with the following composition : — water 55,9 %, — monoglycerides of fatty acids 23,5 %, — propylene glycol 7,3 %, — polyglycerol esters 5,9 %, — sorbitol 3,5 %, — soap 2,6 %, — diglycerides of fatty acids 1,1 %, — potassium propionate 0,1 % This product is an emulsifier used in the manufacture of various types of baker's wares.	2106 90 92	Classification is determined by the provisions of general rules 1 and 6 for the interpretation of the combined nomenclature, by Note 1 (b) to Chapter 38, and by the wording of CN codes 2106, 2106 90 and 2106 90 92. See also the Explanatory Notes to the HS, Chapter 38, General, fourth paragraph.
2. Product in the form of powder, granules or pellets, containing by weight approximately : — 48 % of calcium hydrogenorthophosphate ['dicalcium phosphate'], — 40 % of calcium bis(dihydrogenorthophosphate) ['monocalcium phosphate'] and — 12 % of calcium carbonate, of a kind used in animal-feeding.	2309 90 93	Classification is determined by the provisions of general rules 1 and 6 for the interpretation of the combined nomenclature and by the wording of CN codes 2309, 2309 90 and 2309 90 93. See also the Explanatory Notes to the HS, heading 23.09, Part II-C. The product does not answer to the descriptions given in note 3 (A) to Chapter 31.
3. Made-up textile article (dimensions : 5 cm × 80 cm), consisting of a textile tube containing polyacrylamide in the form of granules, which, when wet, is used for cooling the skin. [See photograph (1)]	3926 90 99	Classification is determined by the provisions of general rules 1, 3 (b) and 6 for the interpretation of the combined nomenclature and by the wording of CN codes 3926, 3926 90 and 3926 90 99. The product has the essential character of a polyacrylamide product.

(1) The photograph is purely for illustrative purposes.



COMMISSION REGULATION (EC) No 2697/95

of 21 November 1995

laying down rates of compensatory interest applicable during the first half of 1996 to customs debts incurred in relation to compensating products or goods in the unaltered state (inward processing relief arrangements and temporary importation)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽¹⁾,

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽²⁾, as last amended by Regulation (EC) No 1762/95 ⁽³⁾, and in particular Article 589 (4) (a) and Article 709 thereof,

Whereas Article 589 (4) (a) of Regulation (EEC) No 2454/93 provides that the Commission shall set rates of compensatory interest applicable to customs debts incurred in relation to compensating products or goods in the unaltered state, in order to make up for the unjustified financial advantage arising from the postponement of the date on which the customs debt is incurred in the case of non-exportation out of the customs territory of the Community; whereas the rates of compensatory interest for the first half of 1996 must be established in accordance with the rules laid down in that Regulation,

Article 1

The annual rates of compensatory interest referred to Articles 589 (4) (a) and 709 (3) (a) of Regulation (EEC) No 2454/93 applicable for the period from 1 January until 30 June 1996 are hereby established as follows:

Belgium	5,30 %
Denmark	6,57 %
Federal Republic of Germany	4,80 %
Greece	17,29 %
Spain	9,23 %
France	7,04 %
Ireland	6,60 %
Italy	10,15 %
Luxembourg	5,30 %
Netherlands	4,81 %
Austria	4,58 %
Portugal	10,37 %
Finland	5,96 %
Sweden	8,75 %
United Kingdom	6,66 %.

Article 2

This Regulation shall enter into force on 1 January 1996.

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

Done at Brussels, 21 November 1995.

For the Commission

Mario MONTI

Member of the Commission

⁽¹⁾ OJ No L 302, 19. 10. 1992, p. 1.

⁽²⁾ OJ No L 253, 11. 10. 1993, p. 1.

⁽³⁾ OJ No L 171, 21. 7. 1995, p. 8.

COMMISSION REGULATION (EC) No 2698/95

of 22 November 1995

introducing registration with regard to certain imports of
ferro-silico-manganese originating in South Africa

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community⁽¹⁾, as last amended by Regulation (EC) No 1251/95⁽²⁾, and in particular Article 10 (5) and 14 (5) thereof,

After consulting the Advisory Committee,

Whereas :

I. BACKGROUND

- (1) On 19 December 1994, the Commission, by Regulation (EC) No 3119/94⁽³⁾, imposed a provisional anti-dumping duty on imports of ferro-silico-manganese originating in Russia, Ukraine, Brazil and South Africa.
- (2) On 26 July 1995, the Commission, by Decision 95/418/EC⁽⁴⁾, accepted an undertaking offered by, *inter alia*, the South African producer, Highveld Steel and Vanadium Corporation Limited, thereby terminating the investigation with regard to this company.
- (3) On 6 October 1995, the Council, by Regulation (EC) No 2413/95⁽⁵⁾, imposed a definitive anti-dumping duty on imports of ferro-silico-manganese originating in Russia, Ukraine, Brazil and South Africa. That Regulation excludes from the application of the duty imports of ferro-silico-manganese produced and exported by, *inter alia* Highveld Steel and Vanadium Corporation Limited on the basis of the undertaking accepted by the Commission.
- (4) By correspondence sent to the Commission immediately prior to the adoption of Regulation (EC) No 2413/95, however, Highveld Steel and Vanadium Corporation Limited withdrew the undertaking. A proposal is accordingly being made to the Council to amend Regulation (EC) No 2413/95 by imposing a definitive anti-dumping duty on imports of ferro-silico-manganese produced and exported by this company.

II. REGISTRATION OF IMPORTS

A. Grounds for action

- (5) In light of the circumstances described above, it is considered appropriate that, pending a decision by the Council on the imposition of a definitive anti-dumping duty on imports of ferro-silico-manganese produced and exported by Highveld Steel and Vanadium Corporation Limited, such imports be made subject to registration pursuant to Article 10 (5), in conjunction with Article 14 (5), of Regulation (EC) No 3283/94. This will ensure that, should the Council impose a definitive anti-dumping duty on these imports, the duty can be levied retroactively from the date of entry into force of this Regulation. The amount of possible future liability cannot, however, be estimated at this stage of the procedure.

B. Imports subject to registration

- (6) The imports subject to registration are imports of ferro-silico-manganese, falling within CN Code 7202 30 00, originating in South Africa, produced and exported by Highveld Steel and Vanadium Corporation Limited (Taric additional code 8874),

HAS ADOPTED THIS REGULATION :

Article 1

Imports of ferro-silico-manganese falling within CN code 7202 30 00, originating in South Africa, produced and exported by Highveld Steel and Vanadium Corporation Limited (Taric additional code 8874) are hereby subject to registration in conformity with Article 14 (5) of Regulation (EC) No 3283/94.

Article 2

The customs authorities are directed, pursuant to Article 14 (5) of Regulation (EC) No 3283/94, to take the appropriate steps to register the imports referred to in Article 1.

Article 3

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

It shall expire nine months following the date of its entry into force or on the date of entry into force of a Council regulation amending Regulation (EC) No 2413/95 by imposing a definitive anti-dumping duty on the imports referred to in Article 1, whichever is the earlier.

⁽¹⁾ OJ No L 349, 31. 12. 1994, p. 1.

⁽²⁾ OJ No L 122, 2. 6. 1995, p. 1.

⁽³⁾ OJ No L 330, 21. 12. 1994, p. 15.

⁽⁴⁾ OJ No L 248, 14. 10. 1995, p. 56.

⁽⁵⁾ OJ No L 248, 14. 10. 1995, p. 1.

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

Done at Brussels, 22 November 1995.

For the Commission

Leon BRITTAN

Vice-President

COMMISSION REGULATION (EC) No 2699/95

of 22 November 1995

amending Regulation (EC) No 1222/94 laying down common detailed rules for the application of the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex II to the Treaty, and the criteria for fixing the amount of such refunds

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

delivered an opinion within the time limit set by its chairman,

Having regard to the Treaty establishing the European Community,

HAS ADOPTED THIS REGULATION:

Having regard to Council Regulation (EC) No 3448/93 of 6 December 1993 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products⁽¹⁾, and in particular the first subparagraph of Article 8 (3) thereof,

Article 1

Regulation (EC) No 1222/94 is hereby amended as follows:

Whereas Commission Regulation (EC) No 1222/94⁽²⁾, as last amended by Regulation (EC) No 1149/95⁽³⁾, provides for potato starch to be assimilated to maize starch; whereas the aim of that provision is to allow an export refund to be granted for that product and not necessarily to apply the same refund rate as that applicable to the export of maize starch;

1. In Article 1 (2) (a) the words 'shall be assimilated to maize starch falling within CN code 1108 12' are replaced by the words 'shall be assimilated to a product derived from the processing of maize'.

2. In Article 1 (2) (a) the second and third indents are repealed.

Whereas the application of the second subparagraph of Article 13 (1) of Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals⁽⁴⁾, as last amended by Regulation (EC) No 1863/95⁽⁵⁾, provides that the export refund for cereals exported in the form of goods listed in Annex B may not be greater than the refund applied to cereals exported without further processing; whereas this provision currently results in the lower of the two rates fixed for exports of potato starch and maize starch when exported without further processing to be applied to these products when exported in the form of goods not covered by Annex II to the Treaty; whereas it is therefore necessary to amend Regulation (EC) No 1222/94;

3. The following subparagraph shall be added to Article 4 (2):

'With regard to potato starch falling within CN code 1108 13, the refund rate shall be fixed separately, in terms of maize equivalent, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92 in compliance with the criteria set out above. The quantities of potato starch used shall be converted into equivalent quantities of maize in accordance with Article 3 (1) (b).'

Article 2

Whereas the Management Committee for horizontal questions relating to trade in processed agricultural products not covered by Annex II of the Treaty has not

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

⁽¹⁾ OJ No L 318, 20. 12. 1993, p. 18.

⁽²⁾ OJ No L 136, 31. 5. 1994, p. 5.

⁽³⁾ OJ No L 116, 23. 5. 1995, p. 1.

⁽⁴⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽⁵⁾ OJ No L 179, 29. 7. 1995, p. 1.

Article 1 (2) shall be applicable with effect from 1 January 1996.

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

Done at Brussels, 22 November 1995.

For the Commission

Martin BANGEMANN

Member of the Commission

COMMISSION REGULATION (EC) No 2700/95**of 22 November 1995**

correcting Regulation (EC) No 1802/95 amending the Regulations that fixed, prior to 1 February 1995, certain prices and amounts in the market in milk and milk products of which the value in ecus was adapted as a result of the abolition of the correcting factor for agricultural conversion rates

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 1538/95 ⁽²⁾, and in particular Article 5c ⁽⁷⁾ thereof,

Whereas one oversight should be corrected in the Annex to Commission Regulation (EC) No 1802/95 ⁽³⁾;

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

In the Annex to Regulation (EC) No 1802/95 the following line is inserted after Regulation (EEC) No 1158/91 and before Regulation (EEC) No 3378/91:

(ECU)

1	2	3	4	5
Regulation	References	Previous amount with switch-over	New amount without switch-over	New amount applicable from 1 September 1995
'(EEC) No 1637/91	Article 2 (5)	10	12,08	12,08'

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 to the amounts converted into national currency from the 1995/96 marketing year on.

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

Done at Brussels, 22 November 1995.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 148, 30. 6. 1995, p. 17.

⁽³⁾ OJ No L 174, 26. 7. 1995, p. 27.

COMMISSION REGULATION (EC) No 2701/95

of 22 November 1995

fixing the rates of the refunds applicable to certain cereal and rice-products
exported in the form of goods not covered by Annex II to the Treaty

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 1863/95⁽²⁾, and in particular Article 13 (3) thereof,

Having regard to Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice⁽³⁾, as last amended by Regulation (EC) No 1530/95⁽⁴⁾, and in particular Article 14 (3) thereof,

Whereas Article 13 (1) of Regulation (EEC) No 1766/92 and Article 17 (1) of Regulation (EEC) No 1418/76 provide that the difference between quotations of prices on the world market for the products listed in Article 1 of each of those Regulations and the prices within the Community may be covered by an export refund;

Whereas Commission Regulation (EC) No 1222/94 of 30 May 1994 laying down common implementing rules for granting export refunds on certain agricultural products exported in the form of goods not covered by Annex II to the Treaty, and the criteria for fixing the amount of such refunds⁽⁵⁾, as last amended by Regulation (EC) No 1149/95⁽⁶⁾, specifies the products for which a rate of refund should be fixed, to be applied where these products are exported in the form of goods listed in Annex B to Regulation (EEC) No 1766/92 or in Annex B to Regulation (EEC) No 1418/76 as appropriate;

Whereas, in accordance with the first subparagraph of Article 4 (1) of Regulation (EC) No 1222/94, the rate of the refund per 100 kilograms for each of the basic products in question must be fixed for each month;

Whereas, now that a settlement has been reached between the European Community and the United States of America on Community exports of pasta products to the

United States and has been approved by Council Decision 87/482/EEC⁽⁷⁾, it is necessary to differentiate the refund on goods falling within CN codes 1902 11 00 and 1902 19 according to their destination;

Whereas Council Regulation (EEC) No 990/93⁽⁸⁾, as amended by Regulation (EC) No 1380/95⁽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 Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

1. The rates of the refunds applicable to the basic products appearing in Annex A to Regulation (EC) No 1222/94 and listed either in Article 1 of Regulation (EEC) No 1766/92 or in Article 1 (1) of Regulation (EEC) No 1418/76, exported in the form of goods listed in Annex B to Regulation (EEC) No 1766/92 or in Annex B to Regulation (EEC) No 1418/76 respectively, are hereby fixed as shown in the Annex to this Regulation.

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.

Article 2

This Regulation shall enter into force on 23 November 1995.

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ No L 179, 29. 7. 1995, p. 1.

⁽³⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽⁴⁾ OJ No L 148, 30. 6. 1995, p. 5.

⁽⁵⁾ OJ No L 136, 31. 5. 1994, p. 5.

⁽⁶⁾ OJ No L 116, 23. 5. 1995, p. 1.

⁽⁷⁾ OJ No L 275, 29. 9. 1987, p. 36.

⁽⁸⁾ OJ No L 102, 28. 4. 1993, p. 14.

⁽⁹⁾ OJ No L 138, 21. 6. 1995, p. 1.

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

Done at Brussels, 22 November 1995.

For the Commission

Martin BANGEMANN

Member of the Commission

ANNEX

to the Commission Regulation of 22 November 1995 fixing the rates of the refunds applicable to certain cereals and rice products exported in the form of goods not covered by Annex II to the Treaty

CN code	Description of products ⁽¹⁾	Rate of refund per 100 kg of basic product ⁽²⁾
1001 10 00	Durum wheat : — used unprocessed : — on exports of goods falling within CN codes 1902 11 and 1902 19 to the United States of America — — in all other cases — — used in the form of : — pellets of CN code 1103, or grains otherwise worked (other than hulled, kibbled, or germ) of CN code 1104 — — hulled grains of CN code 1104 and starch of CN code 1108 — — germ of CN code 1104 — — gluten of CN code 1109 — — other (except flours of CN code 1101 and groats and meal of CN code 1103) —	
1001 90 99	Common wheat and meslin : — used unprocessed : — on exports of goods falling within CN code 1902 11 and 1902 19 to the United States of America — — in all other cases — — used in the form of : — pellets of CN code 1103, or grains otherwise worked (other than hulled, kibbled, or germ) of CN code 1104 — — hulled grains of CN code 1104 and starch of CN code 1108 — — germ of CN code 1104 — — gluten of CN code 1109 — — other (except flours of CN code 1101, and groats and meal of CN code 1103) —	
1002 00 00	Rye : — used unprocessed — — used in the form of : — groats, meal and pellets of CN code 1103, or pearled grains of CN code 1104 2,162 — rolled or flaked grains and hulled grains of CN code 1104 3,244 — germ of CN code 1104 1,640 — starch of CN code 1108 19 90 4,685 — gluten of CN code 2303 10 90 — — other (except flours of CN code 1102) 3,604	

CN code	Description of products ⁽¹⁾	Rate of refund per 100 kg of basic product ⁽²⁾
1003 00 90	Barley : — used unprocessed — used in the form of : — — flours of CN code 1102, groats and meal of CN code 1103, or rolled, flaked or pearled grains of CN code 1104 — — pellets of CN code 1103 — — germs of CN code 1104 — — starch of CN code 1108 19 90 — — gluten of CN code 2303 10 90 — — other	0,453 0,317 0,272 1,640 4,685 — 0,453
1004 00 00	Oats : — used unprocessed — used in the form of : — — pellets of CN code 1103, and pearled grains of CN code 1104 — — rolled or flaked grains and hulled grains of CN code 1104 — — germs of CN code 1104 — — starch of CN code 1108 19 90 — — gluten of CN code 2303 10 90 — — other	— 1,255 1,882 1,640 4,685 — 2,091
1005 90 00	Maize (Corn) : — used unprocessed — used in the form of : — — flours of CN codes 1102 20 10 and 1102 20 90 — — groats and meal of CN code 1103 and rolled or flaked grains of CN code 1104 — — pellets of CN code 1103 — — hulled or perled grains of CN code 1104 — — germs of CN code 1104 — — starch of CN code 1108 12 00 : — — — starch pursuant to Article 4(5) point (b) of Regulation (EC) No 1222/94 when goods listed in Annex I to amended Commission Regulation (EEC) No 1722/93 are exported ⁽⁴⁾ — — — starch pursuant to Article 7(2) of Regulation (EC) No 1222/94 when goods listed in Annex I to amended Regulation (EEC) No 1722/93 are exported — — — other — — potato starch of CN code 1108 13 : — — — potato starch pursuant to Article 4 (5) point (b) of Regulation (EC) No 1222/94 when goods listed in Annex I to amended Commission Regulation (EEC) No 1722/93 are exported — — — potato starch pursuant to Article 7 (2) of Regulation (EC) No 1222/94 when goods listed in Annex I to amended Regulation (EEC) No 1722/93 are exported — — — other — — gluten of CN code 2303 10 11 — — glucose, glucose syrup, maltodextrine, maltodextrine syrup of CN codes 1702 30 51, 1702 30 59, 1702 30 91, 1702 30 99, 1702 40 90, 1702 90 50, 1702 90 75, 1702 90 79, 2106 90 55 ⁽⁵⁾ — — other ⁽³⁾	4,685 3,280 3,748 2,811 4,217 1,640 4,685 — 4,685 3,279 — 3,279 1,874 3,514 4,685

CN code	Description of products ⁽¹⁾	Rate of refund per 100 kg of basic product ⁽²⁾
1006 20	Round grain husked rice	15,578
	Medium grains husked rice	13,869
	Long grain husked rice	13,869
ex 1006 30	Round grain wholly-milled rice	20,100
	Medium grain wholly-milled rice	20,100
	Long grain wholly-milled rice	20,100
1006 40 00	Broken rice :	
	— used unprocessed	4,600
	— used in the form of :	
	— — flour of CN code 1102 30, groats and meal or pellets of CN code 1103	4,600
	— — flaked grains of CN 1104 19 91	2,760
	— — starch of CN code 1108 19 10	4,600
	— — other	—
1007 00 90	Sorghum	0,453
1101 00	Wheat or meslin flour :	
	— on exports of goods falling within CN codes 1902 11 and 1902 19 to the United States of America	—
	— in all other cases	—
1102 10 00	Rye flour	2,500
1103 11 10	Groats and durum wheat meal :	
	— on exports of goods falling within CN codes 1902 11 and 1902 19 to the United States of America	—
	— in all other cases	—
1103 11 90	Common wheat groats and spelt :	
	— on exports of goods falling within CN codes 1902 11 and 1902 19 to the United States of America	—
	— in all other cases	—

⁽¹⁾ The quantities of semi-processed products used must be multiplied, as the case may be, by the coefficients shown in Annex I to amended Commission Regulation (EEC) No 1620/93 (OJ No L 155, 26. 6. 1993, p. 29).

⁽²⁾ Refunds on exports to the Federal Republic of Yugoslavia (Serbia and Montenegro) may be granted only where the conditions laid down in amended Regulation (EEC) No 990/93 are observed.

⁽³⁾ For syrups of CN codes 1702 30 99, 1702 40 90 and 1702 60 90, obtained from mixing glucose and fructose syrup, the export refund may be granted only for the glucose syrup.

⁽⁴⁾ (OJ No L 159, 1. 7. 1993, p. 112).

COMMISSION REGULATION (EC) No 2702/95

of 22 November 1995

amending Regulation (EC) No 1488/95 with regard to the detailed rules for
licence applications

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
Commission Regulation (EC) No 1363/95⁽²⁾, and in parti-
cular Article 26 (11) thereof,

Whereas, in order to prevent the submission of exagge-
rated applications for licences with advance fixing of the
refund, referred to in Article 3 of Commission Regulation
(EC) No 1488/95 of 28 June 1995 on implementing rules
for export refunds on fruit and vegetables⁽³⁾, as last
amended by Regulation (EC) No 2349/95⁽⁴⁾, a limit
should be placed on the total quantity of each product for
which applications can be accepted from an operator;
whereas, in the case of licences without advance fixing of
the refund, referred to in Article 5 of the abovementioned
Regulation, the period of one working day laid down for
submission of the licence application has been found to
be too short and should be extended; whereas, when
these new arrangements were introduced, it was laid down
that the licence application should be accompanied by
the lodging of a security; whereas it no longer seems
necessary to maintain this requirement;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1488/95 is hereby amended as
follows:

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

Done at Brussels, 22 November 1995.

1. The following paragraph 4 is inserted at the end of
Article 3:

'4. An exporter may not submit licence applications
in respect of a product for a quantity exceeding that
laid down for that product during the allocation period
concerned.

Member States shall reject all applications from any
exporter not fulfilling this condition for the applica-
tion period and product concerned.'

2. In Article 5:

(a) in paragraph 2, the words 'the working day fol-
lowing the date on which the export declaration for
the products was completed' are replaced by 'the
fifth working day following that on which the
export declaration for the products was accepted';

(b) paragraph 3 is deleted;

(c) in the final subparagraph of paragraph 5, the words
'and the securities released' are deleted.

3. In Article 8, the first indent is replaced by the fol-
lowing:

'— the quantities for which licences have been
applied for, with or without advance fixing of the
refund, with the exception of those covered by
applications rejected pursuant to Article 3 (4), or,
where applicable, the absence of applications'.

Article 2

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

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 118, 20. 5. 1972, p. 1.

⁽²⁾ OJ No L 132, 16. 6. 1995, p. 8.

⁽³⁾ OJ No L 145, 29. 6. 1995, p. 68.

⁽⁴⁾ OJ No L 239, 7. 10. 1995, p. 1.

COMMISSION REGULATION (EC) No 2703/95

of 22 November 1995

amending Regulation (EC) No 1489/95 setting export refunds on fruit and vegetables

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 Commission Regulation (EC) No 1363/95⁽²⁾, and in particular Article 26 (11) thereof,

Whereas Commission Regulation (EC) No 1489/95⁽³⁾, as amended by Regulation (EC) No 2490/95⁽⁴⁾, specifies the quantities for which applications may be submitted for export licences other than those applied for in connection with food aid;

Whereas as a result of the Greek export statistics having changed, the Community volumes of oranges provided for in the annexes to the said Regulation should be reallocated;

Whereas in view of the export prospects for apples the quantities of apples laid down for the forthcoming periods should be redistributed;

Whereas it would be appropriate to specify the application submission dates corresponding to each period of allocation of the licences with advance fixing of the refund;

Whereas Commission Regulation (EC) No 1488/95 of 28 June 1995 on implementing rules for export refunds on

fruit and vegetables⁽⁵⁾, as last amended by Regulation (EC) No 2702/95⁽⁶⁾, lays down the criteria for establishing the quantities for which export licences may be issued; whereas, in the interests of transparency, exporters should be informed of the updated position with regard to those quantities;

Whereas, on this occasion, it is appropriate to provide as of now for the opening of a quota for table grapes of a volume equivalent to the quantities not used previously;

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

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EC) No 1489/95 are hereby replaced by Annexes I and II respectively to this Regulation.

Article 2

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

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

Done at Brussels, 22 November 1995.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 118, 20. 5. 1972, p. 1.

⁽²⁾ OJ No L 132, 16. 6. 1995, p. 8.

⁽³⁾ OJ No L 145, 29. 6. 1995, p. 75.

⁽⁴⁾ OJ No L 256, 26. 10. 1995, p. 31.

⁽⁵⁾ OJ No L 145, 29. 6. 1995, p. 68.

⁽⁶⁾ See page 30 of this Official Journal.

ANNEX I

ANNEX I

RATES AND QUANTITIES LAID DOWN FOR THE ALLOCATION OF LICENCES WITH ADVANCE FIXING OF THE REFUND

Product	Product code	Destination code (1)	Refined rate (2) (BCU/t net)	Quantities provided for per licences issuing period (in tonnes)				
				licence issuing period	November/December 1995	January/February 1996	March/April 1996	May/June 1996
				period for submission of applications	from 25.10.1995 to 2.1.1995	from 3.1.1996 to 22.2.1996	from 23.2.1996 to 23.4.1996	from 24.4.1996 to 21.6.1996
Tomatoes	0702 00 15 100	F	50,8		3 879	1 664	7 886	15 407
	0702 00 20 100							
	0702 00 25 100							
	0702 00 30 100							
	0702 00 35 100							
	0702 00 40 100							
	0702 00 45 100							
	0702 00 50 100							
Shelled almonds	0802 12 90 000	F	109,3		336	161	371	494
Hazelnuts in shell	0802 21 00 000	F	127,7		87	12	11	15
Shelled hazelnuts	0802 22 00 000	F	246,3		1 766	860	694	779
Walnuts in shell	0802 31 00 000	F	158,3		241	16	7	2
Oranges	0805 10 01 200	A C	124,3		76 539	72 666	55 959	12 409
	0805 10 05 200							
	0805 10 09 200							
	0805 10 11 200							
	0805 10 15 200							
	0805 10 19 200							
	0805 10 21 200							
	0805 10 25 200							
	0805 10 29 200							
	0805 10 32 200							
	0805 10 34 200							
	0805 10 36 200							
	0805 10 42 200							
	0805 10 44 200							
	0805 10 46 200							
	0805 10 51 200							
	0805 10 55 200							
	0805 10 59 200							
	0805 10 61 200							
	0805 10 65 200							
	0805 10 69 200							

Product	Product code	Destination code ⁽¹⁾	Refined rate ⁽²⁾ (ECU/t net)	Quantities provided for per licences issuing period (in tonnes)				
				licence issuing period	November/December 1995	January/February 1996	March/April 1996	May/June 1996
				period for submission of applications	from 25.10.1995 to 2.1.1995	from 3.1.1996 to 22.2.1996	from 23.2.1996 to 23.4.1996	from 24.4.1996 to 21.6.1996
Lemons	0805 30 20 100 0805 30 30 100 0805 30 40 100	F	152,5		10 201	11 885	20 868	20 388
Table grapes	0806 10 21 200 0806 10 29 200 0806 10 30 200 0806 10 40 200 0806 10 50 200 0806 10 61 200 0806 10 69 200	F	54,7		1 097			
Apples	0808 10 51 910 0808 10 53 910 0808 10 59 910 0808 10 61 910 0808 10 63 910 0808 10 69 910 0808 10 71 910 0808 10 73 910 0808 10 79 910 0808 10 92 910 0808 10 94 910 0808 10 98 910	A B D	90,4		14 616	8 860	6 191	5 882
Peaches and nectarines	0809 30 11 100 0809 30 19 100 0809 30 21 100 0809 30 29 100 0809 30 31 100 0809 30 39 100 0809 30 41 100 0809 30 49 100 0809 30 51 100 0809 30 59 100	E	56,5					1 241

(1) The destination codes are defined as follows :

A : Norway, Iceland, Greenland, Poland, Hungary, Romania, Bulgaria, Albania, Estonia, Latvia, Lithuania, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan, Ukraine, Bosnia-Herzegovina, Croatia, Slovenia, Former Yugoslav Republic of Macedonia, Malta

B : Facades, African countries and territories except South Africa, countries of the Arabian Peninsula [Saudi Arabia, Bahrain, Qatar, Oman, United Arab Emirates (Abu Dhabi, Dubai, Sharjah, Ajman Umm al Qaiwain, Ras al Khaimah, Fujairah), Kuwait, Yemen], Syria, Iran, Jordan, Bolivia, Brazil, Venezuela, Peru, Panama, Ecuador, Colombia

C : Switzerland, Czech Republic, Slovakia

D : Hong Kong, Singapore, Malaysia, Indonesia, Thailand, Taiwan, Papua New Guinea, Laos, Cambodia, Vietnam, Uruguay, Paraguay, Argentina, Mexico, Costa Rica

E : All destinations except Switzerland

F : All destinations

(2) For refunds to be granted on exports to the Federal Republic of Yugoslavia (Serbia and Montenegro) the requirements of Regulation (EEC) No 990/93 must be met.

ANNEX II

ANNEX II

INDICATIVE RATES AND QUANTITIES LAID DOWN FOR THE ALLOCATION OF LICENCES WITHOUT ADVANCE FIXING OF THE REFUND

Product	Product code	Destination code (1)	Refund rate (2) (ECU/t net)	Quantities provided for per licence issuing period (in tonnes)			
				November/December 1995	January/February 1996	March/April 1996	May/June 1996
Tomatoes	0702 00 15 100	F	50,8			4 737	15 407
	0702 00 20 100						
	0702 00 25 100						
	0702 00 30 100						
	0702 00 35 100						
	0702 00 40 100						
Shelled almonds	0702 00 45 100	F	109,3	342	161	371	494
	0702 00 50 100						
	0802 12 90 000						
	0802 21 00 000			88	12	11	15
	0802 22 00 000			1 800	860	694	779
	0802 31 00 000			245	16	7	2
Oranges	0805 10 01 200	A C	124,3	76 987	72 654	55 950	12 407
	0805 10 05 200						
	0805 10 09 200						
	0805 10 11 200						
	0805 10 15 200						
	0805 10 19 200						
	0805 10 21 200						
	0805 10 25 200						
	0805 10 29 200						
	0805 10 32 200						
	0805 10 34 200						
	0805 10 36 200						
	0805 10 42 200						
	0805 10 44 200						
	0805 10 46 200						
	0805 10 51 200						
	0805 10 55 200						
	0805 10 59 200						
	0805 10 61 200						
	0805 10 65 200						
	0805 10 69 200						

Product	Product code	Destination code (¹)	Refund rate (%) (ECU/t net)	Quantities provided for per licence issuing period (in tonnes)			
				November/ December 1995	January/ February 1996	March/ April 1996	May/ June 1996
Lemons	0805 30 20 100 0805 30 30 100 0805 30 40 100	F	152,5	7 118	11 885	20 868	20 388
Table grapes	0806 10 21 200 0806 10 29 200 0806 10 30 200 0806 10 40 200 0806 10 50 200 0806 10 61 200 0806 10 69 200	F	54,7				
Apples	0808 10 51 910 0808 10 53 910 0808 10 59 910 0808 10 61 910 0808 10 63 910 0808 10 69 910 0808 10 71 910 0808 10 73 910 0808 10 79 910 0808 10 92 910 0808 10 94 910 0808 10 98 910	A B D	90,4			1 062	7 882
Peaches and nectarines	0809 30 11 100 0809 30 19 100 0809 30 21 100 0809 30 29 100 0809 30 31 100 0809 30 39 100 0809 30 41 100 0809 30 49 100 0809 30 51 100 0809 30 59 100	E	56,5				

(¹) The destination codes are defined as follows:

- A : Norway, Iceland, Greenland, Poland, Hungary, Romania, Bulgaria, Albania, Estonia, Latvia, Lithuania, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan, Ukraine, Bosnia-Herzegovina, Croatia, Slovenia, Former Yugoslav Republic of Macedonia, Malta
- B : Faeroes, African countries and territories except South Africa, countries of the Arabian Peninsula (Saudi Arabia, Bahrain, Qatar, Oman, United Arab Emirates (Abu Dhabi, Dubai, Sharjah, Ajman, Umm al Qaiwain, Ras al Khaimah, Fujairah), Kuwait, Yemen), Syria, Iran, Jordan, Bolivia, Brazil, Venezuela, Peru, Panama, Ecuador, Colombia
- C : Switzerland, Czech Republic, Slovakia
- D : Hong Kong, Singapore, Malaysia, Indonesia, Thailand, Taiwan, Papua New Guinea, Laos, Cambodia, Vietnam, Uruguay, Paraguay, Argentina, Mexico, Costa Rica
- E : All destinations except Switzerland
- F : All destinations

(²) For refunds to be granted on exports to the Federal of Yugoslavia (Serbia and Montenegro) the requirements of Regulation (EEC) No 990/93 must be met.

COMMISSION REGULATION (EC) No 2704/95

of 22 November 1995

amending Regulations (EC) No 2549/95 and (EC) No 2628/95 on the issue of export licences for fruit and vegetables with advance fixing of the refund

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1488/95 of 28 July 1995 on implementing rules for export refund on fruit and vegetables⁽¹⁾, as last amended by Regulation (EC) No 2702/95⁽²⁾, and in particular Articles 3 and 4 thereof,Whereas Commission Regulation (EC) No 1489/95⁽³⁾, as last amended by Regulation (EC) No 2703/95⁽⁴⁾, lays down the quantities for which applications may be submitted for export licences other than food aid operations; whereas it also fixes the periods during which applications for export licences with advance fixing of the refund may be lodged;Whereas Commission Regulation (EC) No 2549/95 on 30 October 1995 on the issue of export licences for fruit and vegetables with advance fixing of the refund⁽⁵⁾ lays down that licence applications for oranges and apples submitted after 25 October and before 22 December 1995 are to be rejected and licence applications for the table grapes submitted from 25 October to 21 December 1995 are to be rejected; whereas, in view of the increase in the quantities of oranges, apples and table grapes provided for in Annex I to Regulation (EC) No 1489/95 for the November/December allocation period, licence applications for those products should again be accepted;Whereas the above Regulation and Commission Regulation (EC) No 2628/95 of 10 November 1995 on the issue of export licences for fruit and vegetables with advance fixing of the refund⁽⁶⁾ both lay down that applications for

a number of products lodged before 22 December 1995 are to be rejected; whereas this date should be deferred to 3 January 1996,

HAS ADOPTED THIS REGULATION:

Article 1

The second and third paragraphs of Article 1 of Regulation (EC) No 2549/95 are hereby replaced by the following:

'Licence applications with advance fixing of the refund for tomatoes, hazelnuts in shell, walnuts in shell, lemons and apples submitted after 25 October 1995 and before 3 January 1996 shall be rejected.

Licence applications with advance fixing of the refund for oranges submitted after 25 October and before 30 November 1995 shall be rejected.

Licence applications with advance fixing of the refund for table grapes submitted after 25 October and before 30 November 1995 shall be rejected.'

Article 2

In the second paragraph of Article 1 of Regulation (EC) No 2628/95, '22 December 1995' is replaced by '3 January 1996'.

*Article 3*This Regulation shall enter into force on the seventh day following its publication in the *Official Journal of the European Communities*.

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

Done at Brussels, 22 November 1995.

For the Commission

Franz FISCHLER

Member of the Commission⁽¹⁾ OJ No L 145, 29. 6. 1995, p. 68.⁽²⁾ See page 30 of this Official Journal.⁽³⁾ OJ No L 145, 29. 6. 1995, p. 75.⁽⁴⁾ See page 31 of this Official Journal.⁽⁵⁾ OJ No L 260, 31. 10. 1995, p. 49.⁽⁶⁾ OJ No L 269, 11. 11. 1995, p. 8.

COMMISSION REGULATION (EC) No 2705/95

of 22 November 1995

fixing the import duties in the rice sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 1530/95 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1573/95 of 30 June 1995 laying down detailed rules for the application of Council Regulation (EEC) No 1418/76 as regards import duties in the rice sector ⁽³⁾, as amended by Regulation (EC) No 1818/95 ⁽⁴⁾, and in particular Article 4 (1) thereof,

Whereas Article 12 of Regulation (EEC) No 1418/76 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation; whereas, however, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention buying price valid for such products on importation and increased by a certain percentage according to whether it is Indica or Japonica rice and also husked or milled rice, minus the cif import price applicable to the consignment in question provided that duty does not exceed the rate of the Common Customs Tariff duties;

Whereas, pursuant to Article 12 (4) of Regulation (EEC) No 1418/76, the cif import prices are calculated on the basis of the prices for the product in question on the world market;

Whereas Regulation (EC) No 1573/95 lays down detailed rules for the application of Regulation (EEC) No 1418/76 as regards import duties in the rice sector;

Whereas the import duties are applicable until new duties are fixed and enter into force; whereas they also remain in force in cases where no quotation is available for the reference referred to in Annex I to Regulation (EC) No 1573/95 during the two weeks preceding the next periodical fixing;

Whereas, in order to allow the import duty system to function normally, the market rates recorded during a reference period should be used for calculating the duties;

Whereas application of Regulation (EC) No 1573/95 results in import duties being fixed as set out in the Annexes to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import duties in the rice sector referred to in Article 12 (1) and (2) of Regulation (EEC) No 1418/76 shall be those fixed in Annex I to this Regulation on the basis of the information given in Annex II.

Article 2

This Regulation shall enter into force on 23 November 1995.

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

Done at Brussels, 22 November 1995.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽²⁾ OJ No L 148, 30. 6. 1995, p. 5.

⁽³⁾ OJ No L 150, 1. 7. 1995, p. 53.

⁽⁴⁾ OJ No L 175, 27. 7. 1995, p. 25.

ANNEX I

to the Commission Regulation of 22 November 1995 fixing the import duties on rice and broken rice

(ECU/tonne)

CN code	Duties ⁽¹⁾				
	Third countries (except ACP and Bangladesh) ⁽²⁾ ⁽³⁾	ACP Bangladesh ⁽¹⁾ ⁽²⁾ ⁽³⁾ ⁽⁴⁾	Basmati India ⁽¹⁾ Article 4, Regulation (EC) No 1573/95	Basmati Pakistan ⁽²⁾ Article 4, Regulation (EC) No 1573/95	Arrangement in Regulation (EEC) No 3877/86 ⁽⁵⁾
1006 10 21	⁽³⁾	150,76			
1006 10 23	⁽³⁾	150,76			
1006 10 25	⁽³⁾	150,76			
1006 10 27	⁽³⁾	150,76			—
1006 10 92	⁽³⁾	150,76			
1006 10 94	⁽³⁾	150,76			
1006 10 96	⁽³⁾	150,76			
1006 10 98	⁽³⁾	150,76			—
1006 20 11	248,64	119,98			
1006 20 13	248,64	119,98			
1006 20 15	248,64	119,98			
1006 20 17	346,22	168,77	96,22	296,22	—
1006 20 92	248,64	119,98			
1006 20 94	248,64	119,98			
1006 20 96	248,64	119,98			
1006 20 98	346,22	168,77	96,22	296,22	—
1006 30 21	515,26	242,72			
1006 30 23	515,26	242,72			
1006 30 25	515,26	242,72			
1006 30 27	607,57	288,87			—
1006 30 42	515,26	242,72			
1006 30 44	515,26	242,72			
1006 30 46	515,26	242,72			
1006 30 48	607,57	288,87			—
1006 30 61	515,26	242,72			
1006 30 63	515,26	242,72			
1006 30 65	515,26	242,72			
1006 30 67	607,57	288,87			—
1006 30 92	515,26	242,72			
1006 30 94	515,26	242,72			
1006 30 96	515,26	242,72			
1006 30 98	607,57	288,87			—
1006 40 00	⁽³⁾	90,38			

⁽¹⁾ Subject to the application of the provisions of Articles 12 and 13 of amended Council Regulation (EEC) No 715/90 (OJ No L 84, 30. 3. 1990, p. 85).

⁽²⁾ In accordance with Regulation (EEC) No 715/90, the duties are not applied to products originating in the African, Caribbean and Pacific States and imported directly into the overseas department of Réunion.

⁽³⁾ The import levy on rice entering the overseas department of Réunion is specified in Article 12 (3) of Regulation (EEC) No 1418/76.

⁽⁴⁾ The duty on imports of rice not including broken rice (CN code 1006 40 00), originating in Bangladesh is applicable under the arrangements laid down in Council Regulation (EEC) No 3491/90 (OJ No L 337, 4. 12. 1990, p. 1) and Commission Regulation (EEC) No 862/91 (OJ No L 88, 9. 4. 1991, p. 7).

- (¹) Only for imports of rice of the long-grain aromatic Basmati variety under the arrangements laid down in amended Council Regulation (EEC) No 3877/86 (OJ No L 361, 20. 12. 1986, p. 1).
- (²) No import duty applies to products originating in the OCT pursuant to Article 101 (1) of amended Council Decision 91/482/EEC (OJ No L 263, 19. 9. 1991, p. 1).
- (³) For husked rice of the Basmati variety originating in India and not imported under the arrangements in Regulation (EEC) No 3877/86, a reduction of ECU 250 per tonne applies (Article 4, Regulation (EC) No 1573/95).
- (⁴) For husked rice of the Basmati variety originating in Pakistan and not imported under the arrangements in Regulation (EEC) No 3877/86, a reduction of ECU 50 per tonne applies (Article 4, Regulation (EC) No 1573/95).
- (⁵) Duties fixed in the Common Customs Tariff.

ANNEX II

Calculation of import duties for rice

	Paddy	Indica rice		Japonica rice		Broken rice
		Husked	Milled	Husked	Milled	
1. Import duty (ECU/tonne)(¹)	(²)	346,22	607,57	248,64	515,26	(²)
2. Elements of calculation :						
(a) Arag cif price (\$/tonne)	—	380,36	420,63	509,99	508,92	—
(b) fob price (\$/tonne)	—	—	—	479,99	478,92	—
(c) Sea freight (\$/tonne)	—	—	—	30	30	—
(d) Source	—	USDA	USDA	Operators	Operators	—

(¹) Where rice is imported during the month following fixing, these import duties must be adjusted in accordance with the fourth subparagraph of Article 4 (1) of Regulation (EC) No 1573/95.

(²) Duties fixed in the Common Customs Tariff.

COMMISSION REGULATION (EC) No 2706/95

of 22 November 1995

establishing the standard import values for determining the entry price of
certain fruit and vegetables

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

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables⁽¹⁾, as last amended by Regulation (EC) No 1740/95⁽²⁾, and in particular Article 4 (1) 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 last amended by Regulation (EC) No 150/95⁽⁴⁾, and in particular Article 3 (3) thereof,

Whereas Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multi-lateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from

third countries, in respect of the products and periods stipulated in the Annex thereto;

Whereas, in compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 23 November 1995.

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

Done at Brussels, 22 November 1995.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ No L 167, 18. 7. 1995, p. 10.

⁽³⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 22 November 1995 establishing the standard import values for determining the entry price of certain fruit and vegetables

(ECU/100 kg)			(ECU/100 kg)		
CN code	Third country code (1)	Standard import value	CN code	Third country code (1)	Standard import value
0702 00 45	052	68,3	0805 30 40	052	78,1
	060	80,2		388	67,5
	064	59,6		400	132,8
	066	41,7		512	54,8
	068	62,3		520	66,5
	204	48,6		524	100,8
	208	44,0		528	94,7
	212	117,9		600	84,5
	624	131,0		624	78,0
	999	72,6		999	84,2
0707 00 40	052	70,6	0808 10 92, 0808 10 94, 0808 10 98	064	78,6
	053	166,9		388	39,2
	060	61,0		400	64,1
	066	53,8		404	54,0
	068	60,4		508	68,4
	204	49,1		512	51,2
	624	125,6		524	57,4
	999	83,9		528	48,0
				800	78,0
				804	21,0
				999	56,0
0709 90 79	052	96,3	0808 20 67	052	143,7
	204	77,5		064	68,8
	624	75,9		388	79,6
	999	83,2		400	81,7
0805 20 31	204	77,9		512	89,7
	999	77,9		528	84,1
				800	55,8
0805 20 33, 0805 20 35, 0805 20 37, 0805 20 39	052	56,1		804	112,9
	464	165,7		999	89,5
	624	131,8			
	999	117,9			

(1) Country nomenclature as fixed by Commission Regulation (EC) No 3079/94 (OJ No L 325, 17. 12. 1994, p. 17). Code '999' stands for 'of other origin.'

COMMISSION REGULATION (EC) No 2707/95

of 22 November 1995

determining the quantities of certain categories of milk and milk products available for the first quarter of 1996 under the arrangements provided for in the European Agreements concluded by the Community with the Republic of Poland, the Republic of Hungary, the Czech Republic and Slovak Republic

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EEC) No 584/92 of 6 March 1992 laying down detailed rules for the application to milk and milk products of the arrangements provided for in the Interim Agreements between the Community and the Republic of Poland, the Republic of Hungary and the Czech and Slovak Federal Republic⁽¹⁾, as last amended by Regulation (EC) No 2416/95⁽²⁾, and in particular Article 4 (5) thereof,

Whereas, pursuant to Commission Regulation (EC) No 2471/95⁽³⁾ determining the extent to which applications lodged in October 1995 for import licences for certain milk products and products covered by the arrangements provided for in the Interim Agreements concluded by the Community with the Republic of Poland, the Republic of Hungary and the Czech and Slovak Federal Republic can

be accepted, applications for import licences for certain of the products referred to in Regulation (EEC) No 584/92 were for quantities exceeding those available; whereas, therefore the quantity of each product available for the period from 1 January to 31 March 1996 should be fixed,

HAS ADOPTED THIS REGULATION:

Article 1

The quantity available pursuant to Regulation (EEC) No 584/92 for the period from 1 January to 31 March 1996 shall be as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 23 November 1995.

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

Done at Brussels, 22 November 1995.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 62, 7. 3. 1992, p. 34.

⁽²⁾ OJ No L 248, 14. 10. 1995, p. 28.

⁽³⁾ OJ No L 255, 25. 10. 1995, p. 5.

ANNEX

Total quantity available for the period 1 January to 31 March 1996

Country	Poland			Czech Republic			Slovak Republic			Hungary
	0402 10 19 0402 21 19 0402 21 99	0405 10 11 0405 10 19 butter	0406 cheese	0402 10 19 0402 21 19 0402 21 91	0405 10 11 0405 10 19 butter	ex 0406 40-Niva ex 0406 90- Moravsky block (*)	0402 10 19 0402 21 19 0402 21 91	0405 10 11 0405 10 19 butter	ex 0406 40-Niva ex 0406 90- Moravsky block (*)	
CN code and product										ex 0406 90 86 ex 0406 90 87 ex 0406 90 88 Balaton (*)
Quantity available	1 025,—	350,—	823,809	573,632	227,500	254,025	306,265	140,932	223,885	893,320

(*) Primator, Otava, Javor, Uzeny block, Kashkaval, Akawi, Istambul, Jadel Hermelin, Ostepek, Koliba, Inovec.

(*) Cream-white, Hajdu, Marvany, Ovari, Pannonia, Trappista, Bakony, Bacsikai, Ban, Delicacy cheese 'Moson', Delicacy cheese 'Pelso', Goya, Ham-shaped, Karavan, Lajta, Parenyica, Sed, Tihany.

COMMISSION REGULATION (EC) No 2708/95**of 22 November 1995****establishing the quantity of certain cheeses available for the first quarter of 1996 under the arrangements provided for by the Interim Agreements concluded by the Community with Bulgaria and Romania**

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

Having regard to Commission Regulation (EC) No 1588/94 of 30 June 1994 laying down detailed rules for the application to milk and milk products of the arrangements provided for in the Interim Agreements between the Community, of the one part, and Bulgaria and Romania, of the other part ⁽¹⁾, as last amended by Regulation (EC) No 2252/95 ⁽²⁾, and in particular Article 4 (4) thereof,

Whereas, pursuant to Commission Regulation (EC) No 2472/95 ⁽³⁾ determining the extent to which applications lodged in October 1995 for import certificates for these products may be accepted, the applications for import licences lodged cover a smaller quantity of products than

those available; whereas, the quantity of each product available for the period 1 January to 31 March 1996 should be established,

HAS ADOPTED THIS REGULATION:

Article 1

The quantity available for the period 1 January to 31 March 1996 pursuant to Regulation (EC) No 1588/94 is set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 23 November 1995.

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

Done at Brussels, 22 November 1995.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 167, 1. 7. 1994, p. 8.

⁽²⁾ OJ No L 230, 27. 9. 1995, p. 12.

⁽³⁾ OJ No L 255, 25. 10. 1995, p. 7.

ANNEX

Total quantity available for the period 1 January to 31 March 1996

(tonnes)		
Country	CN codes and products	Quantities
Romania	ex 0406 90 29 ⁽¹⁾ ex 0406 90 86 ⁽¹⁾ ex 0406 90 87 ⁽¹⁾ ex 0406 90 88 ⁽¹⁾	1 149,975
Bulgaria	ex 0406 90 ⁽²⁾ ex 0406 90 ⁽³⁾	1 139,873

⁽¹⁾ Manufactured from cows' milk.⁽²⁾ White brined cheese of cows' milk.⁽³⁾ Kashkaval Vitosha, made from cows' milk.

COMMISSION REGULATION (EC) No 2709/95
of 22 November 1995
fixing the import duties in the cereals sector

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 1863/95⁽²⁾,

Having regard to Commission Regulation (EC) No 1502/95 of 29 June 1995 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 for the 1995/96 marketing year as regards import duties in the cereals sector⁽³⁾, as last amended by Regulation (EC) No 2481/95⁽⁴⁾, and in particular Article 2 (1) thereof,

Whereas Article 10 of Regulation (EEC) No 1766/92 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation; whereas, however, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by 55 %, minus the cif import price applicable to the consignment in question;

Whereas, pursuant to Article 10 (3) of Regulation (EEC) No 1766/92, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market;

Whereas Regulation (EC) No 1502/95 lays down detailed rules for the application of Council Regulation (EEC) No

1766/92 for the 1995/96 marketing year as regards import duties in the cereals sector;

Whereas the import duties are applicable until new duties are fixed and enter into force; whereas they also remain in force in cases where no quotation is available for the reference exchange referred to in Annex II to Regulation (EC) No 1502/95 during the two weeks preceding the next periodical fixing;

Whereas, in order to allow the import duty system to function normally, the representative market rates recorded during a reference period should be used for calculating the duties;

Whereas application of Regulation (EC) No 1502/95 results in import duties being fixed as set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import duties in the cereals sector referred to in Article 10 (2) of Regulation (EEC) No 1766/92 shall be those fixed in Annex I to this Regulation on the basis of the information given in Annex II.

Article 2

This Regulation shall enter into force on 23 November 1995.

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

Done at Brussels, 22 November 1995.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ No L 179, 29. 7. 1995, p. 1.

⁽³⁾ OJ No L 147, 30. 6. 1995, p. 13.

⁽⁴⁾ OJ No L 256, 26. 10. 1995, p. 10.

ANNEX I

Import duties for the products listed in Article 10 (2) of Regulation (EEC) No 1766/92

CN code	Description	Import duty by land inland waterway or sea from Mediterranean, the Black Sea or Baltic Sea ports (ECU/tonne)	Import duty by sea from other ports ⁽²⁾ (ECU/tonne)
1001 10 00	Durum wheat ⁽¹⁾	0,00	0,00
1001 90 91	Common wheat seed	11,44	1,44
1001 90 99	Common high quality wheat other than for sowing ⁽³⁾	11,44	1,44
	medium quality	32,33	22,33
	low quality	36,84	26,84
1002 00 00	Rye	33,49	23,49
1003 00 10	Barley, seed	33,49	23,49
1003 00 90	Barley, other ⁽²⁾	33,49	23,49
1005 10 90	Maize seed other than hybrid	78,42	68,42
1005 90 00	Maize other than seed ⁽³⁾	78,42	68,42
1007 00 90	Grain sorghum other than hybrids for sowing	33,49	23,49

⁽¹⁾ In the case of durum wheat not meeting the minimum quality requirements referred to in Annex I to Regulation (EC) No 1502/95, the duty applicable is that fixed for low-quality common wheat.

⁽²⁾ For goods arriving in the Community via the Atlantic Ocean (Article 2 (4) of Regulation (EC) No 1502/95), the importer may benefit from a reduction in the duty of:

- ECU 3 per tonne, where the port of unloading is on the Mediterranean Sea, or
- ECU 2 per tonne, where the port of unloading is in Ireland, the United Kingdom, Denmark, Sweden, Finland or the Atlantic Coasts of the Iberian Peninsula.

⁽³⁾ The importer may benefit from a flat-rate reduction of ECU 8 per tonne, where the conditions laid down in Article 2 (5) of Regulation (EC) No 1502/95 are met.

ANNEX II

Factors for calculating duties (period from 8. 11. to 21. 11. 1995):

1. Averages over the two-week period preceding the day of fixing:

Exchange quotations	Minneapolis	Kansas-City	Chicago	Chicago	Mid-America	Mid-America
Product (% proteins at 12 % humidity)	HRS2. 14 %	HRW2. 11 %	SRW2	YC3	HAD2	US barley 2
Quotation (ECU/tonne)	135,80	139,28	136,00	96,51	201,17 ⁽¹⁾	140,25 ⁽²⁾
Gulf premium (ECU/tonne)	—	15,05	13,83	11,74	—	—
Great lake premium (ECU/tonne)	21,08	—	—	—	—	—

⁽¹⁾ Fob Duluth.

⁽²⁾ Fob Duluth/Gulf.

2. Freight/cost : Gulf of Mexico — Rotterdam : ECU 10,09 per tonne ; Great Lakes/St Lawrence — Rotterdam : ECU 28,43 per tonne.

3. Subsidy (third paragraph of Article 4 (2) of Regulation (EC) No 1502/95 : ECU 0,00 per tonne).

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 4 October 1995

concerning the conditions imposed on the second operator of GSM radiotelephony services in Italy

(Only the Italian text is authentic)

(95/489/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 90 (3) thereof,

Having given the Italian authorities, by letter of 3 January 1995, and Telecom Italia SpA, by letter of 30 January 1995, notice to submit their comments on the Commission's objections to the initial payment imposed on Omnitel Pronto Italia,

Whereas :

THE FACTS

The national measure in question

- (1) The Italian Government has imposed an initial payment for the grant of a second concession for the establishment and operation on Italian territory of a network for the provision of a public mobile radiotelephony service using the pan-European digital system, GSM (global system for mobile communications). This requirement was laid down in the specifications and does not apply to the public operator, Telecom Italia.

The undertaking and services concerned

- (2) Telecom Italia SpA is controlled by the Società Torinese Esercizi Telefoni (STET), which owns 55 % of its capital. STET is in its turn controlled by the Istituto per la Ricostruzione Industriale (IRI)

and thus by the Italian Government. Telecom Italia thus constitutes a 'public undertaking' within the meaning of Article 90 (1).

In terms of its turnover, Lit 26 700 billion, Telecom Italia is the sixth largest telecommunications operator in the world. It has a workforce of 101 000 employees and over 25 million subscribers.

When Telecom Italia was set up in August 1994, it took over the exclusive rights to operate the public telecommunications network and the voice telephony service granted to Società Italiana per l'Esercizio Telefonico (SIP) in 1984 for a period of 20 years.

- (3) Cellular digital mobile telephony complying with the GSM standard has been developed recently in Europe and enables subscribers both to send and to receive calls anywhere in the Community, as well as in some other European countries. This system, which used digital technology, a compact telephone and a subscriber identity module card, has greater potential than traditional analogue radiotelephony systems. Digital technology provides higher quality, high-speed data transmission and encryption enhancing the confidentiality of communications, and is more economical in its use of frequencies than analogue systems. Furthermore, the GSM system is based on common Community standards regarding common frequency bands approved at Community level and, unlike analogue systems which are often incompatible from one Member State to another, has the makings of one

of the pan-European services, whose promotion is one of the main objectives of the Community's policy on telecommunications⁽¹⁾. Lastly, the emerging market for GSM services is particularly dynamic: according to some studies, the number of users in western Europe could grow from a little over 1 million in 1993 to 15 to 20 million in the year 2000⁽²⁾.

- (4) The Council has adopted a directive reserving the 890 to 915 and 935 to 960 MHz frequency bands for the introduction of a common system of digital GSM radiotelephony⁽³⁾. These common frequency bands allow several competing operators to coexist. The GSM service began operating commercially in the Community in late 1992: since which time the great majority of the Member States (Belgium, Spain, Italy, the Netherlands, Finland, Denmark, Germany, France, Greece, Portugal and the United Kingdom) have each granted licences to two operators, while the other Member States (Austria and Ireland) have announced that they will follow the same path or have already initiated the necessary procedures to that effect. Sweden has granted three GSM licences. Germany, France, the Netherlands and the United Kingdom have authorized or decided to authorize a third operator to offer cellular digital radiotelephony services, on a higher frequency band, on the basis of the DCS 1800 specifications.

The European Conference of Postal and Telecommunications Administrations (CEPT), the forum for the national regulatory authorities of 36 countries (including Italy), has recommended that competition between operators of GSM services be actively encouraged and the regulatory barriers which are restricting such competition be abolished⁽⁴⁾.

Background

- (5) By letter of 29 July 1993, the Commission requested the Italian Government either to terminate the monopoly enjoyed by Telecom Italia (at

that time, SIP) in GSM radiotelephony or to present arguments meeting the Commission's objections to that monopoly. In response, the Italian Government decided to put out to tender a second concession for 15 years for the operation of a GSM network. A notice to that effect was published in the *Gazzetta Ufficiale della Repubblica Italiana*, No 294 of 16 December 1993. No provision was made for an initial payment.

On 29 January 1994, the Italian Government sent the specifications to the businesses which had responded. They state that tenders must indicate 'the lump sum, in billions of lire, which the tenderer will pay when the concession is granted' (Article 4.9.1, page 44). The specifications also indicate that that amount will constitute one of the selection criteria (p. 51), without mentioning the weighting to be attached to it. The deadline for submitting tenders was 1 March 1994 (Article 3.9, page 19).

The specifications were sent to the Commission only on 2 March 1994, after the expiry of the deadline. By letter of 1 April 1994, the Commission expressed its regret that the specifications for selecting a second operator imposed on the firm to be selected conditions less favourable than those enjoyed by SIP, in particular the requirement of an initial payment (the bid) and a minimum annual charge to be paid by the operator for the first five years irrespective of turnover, while for SIP this charge is only 3,5 % on the amount of its actual income.

The Commission then suggested to the Italian Government that these two requirements should be deleted and the bids of the two remaining consortia be considered solely in the light of the other criteria mentioned in the specifications — that is to say, qualitative criteria.

On 18 April 1994, the Italian Government officially announced the consortium selected, Omnitel Pronto Italia, together with the weighting used in making the selection. The tenderers did not know the weighting. The consortium selected obtained the better score on every one of the selection criteria.

In its letter of 11 May 1994, the Commission replied that it continued to have reservations concerning the initial payment. Since Omnitel had been successful on all the other selection criteria, the Commission requested that the initial payment be reconsidered but without calling in question or delaying the start of the operator's service.

⁽¹⁾ Council recommendation 87/371/EEC of 25 June 1987 (OJ No L 196, 17. 7. 1987, p. 81).

⁽²⁾ 'Scenario Mobile Communications up to 2010 — study on forecast developments and future trends in technical development and commercial provision up to the year 2010'. Eutelis Consult, October 1993.

⁽³⁾ Council Directive 87/372/EEC of 25 June 1987 on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community OJ No L 196, 17. 7. 1987, p. 85).

⁽⁴⁾ 'Review of the Requirements for the Future Harmonization of Regulatory Policy Regarding Mobile Communications Services'. CEPT/ECTRA (92) 57, p. 17.

Since there was no reply to this letter, the Commission sent a reminder on 27 July 1994 pointing out that it could not terminate the infringement procedure before the licence had been formally granted and again inquired what the Italian Government's current intentions were concerning the initial payment. Given the lesser impact of the minimum annual charge imposed solely on the second operator as compared to the initial payment, the Commission decided to concentrate solely on this latter aspect, without, however, accepting the former.

By letter of 8 August 1994, the Italian authorities replied to this last point to the effect that the tenderers, and therefore the consortium selected, were well aware of that obligation since it was expressly included in the specifications, adding that in the course of meetings between officials of the Ministry of Posts and Telecommunications and senior management of Omnitel Pronto Italia, the problem appeared to have been resolved. On 31 October 1994, the Commission replied that the acceptance by the applicant second operator of the conditions for obtaining the licence had no effect on whether these conditions were discriminatory or not, and it continued to press its request for the views of the Italian Government.

On 3 January 1995, the Commission gave formal notice to the Italian Government either to annul the second operator's obligation to make an initial payment or to submit its comments on the Commission's arguments. The Italian authorities replied on 28 February, 17 May and 10 August 1995.

THE COMMISSION'S ASSESSMENT

Article 90 (1)

- (6) Article 90 (1) of the Treaty provides that, in the case of public undertakings to which Member States grant special or exclusive rights, Member States must neither enact nor maintain in force any measure contrary to the rules contained in the Treaty, in particular those relating to competition.

Telecom Italia is a public undertaking which has been granted exclusive rights to operate the fixed telecommunications network and offer voice telephony (within the meaning of Article 1 of Commission Directive 90/388/EEC⁽¹⁾) and mobile analogue radio telephony services. On 22

December 1994, the Italian Government also granted it the right to operate a GSM radiotelephony network, which qualifies as a special right, since the operator had been designated otherwise than according to objective and non-discriminatory criteria.

In accordance with the case-law of the Court of Justice⁽²⁾, the compatibility of this monopoly with the Treaty must be assessed in the light of Article 90 and the provisions to which it refers — in this instance, Article 86.

Article 86

The relevant market

- (7) The relevant market is the market for cellular digital mobile radiotelephony services. This should be distinguished from the market in voice telephony and that (or those) in other mobile telephone communications services.
- (8) The Commission has defined the market in voice telephony in Directive 90/388/EEC. The Directive draws a distinction between 'services whose provision consists wholly or partly in the transmission and routing of signals on the public telecommunications network' and mobile radio telephony services, which are excluded from its scope.
- (9) Voice telephony within the meaning of that Directive is the principal service provided on the fixed public network, meaning between given network termination points. These termination points are defined as 'all physical connections and their technical access specifications'. In mobile communications, on the other hand, the termination point is located at the radio interface between the base station of the mobile network and the mobile station, which means that there is no physical termination point. The definition of voice telephony services in Article 1 of the Directive therefore does not apply to mobile telephony services.
- (10) According to the case-law of the Court of Justice, for a product to be regarded as forming a market which is sufficiently differentiated from other markets, it must be possible for it to be singled out by such special features distinguishing it from other products that it is only to a limited extent interchangeable with them and is only exposed to their competition in a way that is hardly perceptible⁽³⁾.

⁽¹⁾ Commission Directive of 28 June 1990 on competition in the markets for telecommunications services (OJ No L 192, 24. 7. 1990, p. 10).

⁽²⁾ See, for example, the judgment of 19 May 1993 in Case-320/91, Corbeau, paragraph 12.

⁽³⁾ Case 27/76, United Brands v. Commission, [1978] ECR, p. 207, paragraph 22.

Clearly, there is very little interchangeability between mobile radiotelephony and telephony using the fixed network: users taking out a subscription for a carphone or portable telephone do not normally cancel their previous subscription for a telephone installed at their home or workplace. Therefore, mobile radiotelephony is indeed a new, additional service, not a substitute for traditional telephony.

This distinction is also reflected in a very significant price differential: according to a study conducted by the Organization for Economic Cooperation and Development (OECD) and based on a basket of services, the cost of mobile telephony to the user is, on average in the OECD area, four times that of the same services offered on the fixed network⁽¹⁾.

Admittedly, wider dissemination of mobile radiotelephony might ultimately lead to a single telecommunications system catering for markets that are for the time being separate. However, the conditions on which Article 86 is to apply must be assessed on the basis of present demand and not of developments that could take place at some unspecified time in the future.

- (11) It having been established, for the above reasons, that mobile radiotelephony should not be regarded as forming part of the market voice-telephony services offered using the fixed network, it remains to be seen whether, and to what extent, there might be grounds for distinguishing between the cellular mobile radiotelephony services based on the GSM standard which are the subject of this Decision and cellular radiotelephony services using analogue technology.

The GSM system of cellular mobile radio telephony is more than just a technical refinement of the earlier analogue technology. In addition to the advantages offered by GSM in terms of the quality of voice reproduction and more efficient use of the available spectrum (thus accommodating substantially more users on a given frequency allocation), this service provides new facilities that cater for the needs of only some users of mobile radiotelephony:

- (i) based as it is on a Community standard, GSM can become a pan-European service. Under

'roaming' agreements between network operators, the system permits any user to make calls from his phone outside the national territory of the operator with which he has taken out a subscription; this facility is available throughout the territory of the parties to the GSM Memorandum of Understanding in Europe and other parts of the world. Some users who, for business purposes, use mobile radiotelephony services only within the country or within a particular region, are not interested in this new feature. For others, however, this may be a reason for deciding to subscribe;

- (ii) in addition to voice transmission, the GSM service can be used to transmit large quantities of data; again, this feature meets the specific needs of only some of the existing or potential customers for mobile radiotelephony services;
- (iii) the digital coding of messages means that a far greater degree of security can be achieved than via the analogue system — again an advantage of interest to only some users (particularly business customers);
- (iv) digital technology makes it possible to offer a whole range of advanced telecommunications services which are not available (or which can be made so only at considerably higher cost) via an analogue network;
- (v) in the majority of the Member States, the tariffs applicable to GSM services currently remain higher than those for analogue mobile telephony.

In view of the above, the simple replacement of analogue radiotelephony by the GSM system is not generally envisaged, in the short term. On the contrary, it is likely that, even if there is a discernible drift of customers from one to the other, the two systems will continue to exist in parallel for several years to come, meeting largely different needs. It has been found that, even in countries where the GSM system is fully operational, some operators are continuing to invest in the analogue network.

- (12) On the basis of the abovementioned considerations and the current circumstances, and taking into account the possible evolution of the market, GSM radiotelephony services should therefore probably be regarded as also constituting a market separate from the market for analogue mobile telephony.

⁽¹⁾ OECD study, published 24 February 1993.

In any event, the conclusions of the legal analysis would not be different, even if analogue mobile telephony and GSM constituted two segments of the same market.

- (13) In accordance with judgments of the Court of Justice this market, which currently extends over the whole of Italy, is a substantial part of the common market.

The dominant position

- (14) The Court of Justice has held that an undertaking which has a legal monopoly in the provision of certain services may occupy a dominant position within the meaning of Article 86 of the Treaty⁽¹⁾. This applies in the case of Telecom Italia and its subsidiary, Telecom Italia Mobile, created in July 1995, which together are the only undertakings permitted by law to offer the telecommunications networks for the public, voice telephony and analogue radiotelephony in Italy, three markets in which they therefore enjoy a dominant position.

The abuse of a dominant position

- (15) The Court of Justice has ruled that 'a system of undistorted competition, as laid down in the Treaty, can be guaranteed only if equality of opportunity is secured as between the various economic operators'⁽²⁾.

Such equality of opportunity is particularly important for new entrants to a market in which a dominant operator on a related but separate market is in the course of establishing itself, like Telecom Italia and its subsidiary, Telecom Italia Mobile.

- (16) Telecom Italia Mobile already enjoys the following major advantages for acquiring a dominant share of the market in GSM radiotelephony:

- a head start: it is already in a position to market its service while the second operator will not be ready until the second half of 1995,
- potential customers: Telecom Italia Mobile's analogue radiotelephony service, TACS, had more than 2,2 million subscribers (February

1995) and is acquiring 100 000 new subscribers each month.

However, this service will become less attractive in future in view of GSM's superior facilities. In addition, TACS operates in wavebands reserved to GSM radiotelephony. With time some TACS subscribers will therefore change to GSM. Accordingly, Telecom Italia Mobile already has potential customers for its GSM service,

- an existing distribution network: the network is known to the public, since Telecom Italia Mobile can market its GSM service through its TACS distributors,

- specific information: through its experience with TACS, it has specific information on the calling habits of Italian subscribers, by consumer categories and region. Moreover, since it also enjoys a monopoly in the supply of fixed links for the networks of GSM operators⁽³⁾, it will continue to obtain important information on traffic flows,

- economies of scale for infrastructure: since it is at present the sole operator of fixed and analogue mobile telephony, it has available sites and aerials for establishing its GSM network which are not available to its competitor.

Telecom Italia would be unable to extend its dominant position on the market in wire telephony or analogue mobile telephony into the market in GSM radiotelephony by increasing the costs of its rival, for example by imposing interconnection charges which were not justified by the costs involved, without infringing Article 86 of the EC Treaty.

- (17) Pursuant to Article 90 (1) of the EC Treaty, Italy must at the same time refrain from enacting measures which would, by increasing the costs of access of the sole rival of a public undertaking on a market newly opened to competition, significantly distort this competition. Given the additional financial burden imposed on its only competitor, Telecom Italia Mobile will indeed have the choice between two commercial strategies, of which each would be in breach of Article 90 (1) read in conjunction with Article 86 of the Treaty.

⁽¹⁾ Case 311/84, Centre belge d'études de marché — Telemarketing (CBEM) SA v. Compagnie luxembourgeoise de télédiffusion SA and Information publicité Benelux SA, [1985] ECR, p. 3261.

⁽²⁾ Case C-202/88, France v. Commission, [1991] I, p. 1223, paragraph 51, p. 1271.

⁽³⁾ Telecom Italia and its subsidiary Telecom Italia Mobile operate the fixed network and mobile services. On the other hand, Omnitel Pronto Italia can only establish radio links if it can show that Telecom Italia cannot provide it with the leased lines requested within a reasonable time.

(i) Extension of the dominant position⁽¹⁾ of the public undertaking

The initial payment of Lit 750 billion made by the second operator on this market will necessarily have to be covered by income. The second operator will therefore have difficulties in competing with the first operator through lower tariffs. The first operator, Telecom Italia Mobile, which must not depreciate the same payment and which moreover is aware of the second operator's cost structure through its monopoly of the infrastructure⁽²⁾, could be encouraged by reducing its tariffs, to extend its current dominant position on the fixed infrastructure market and the analogue mobile telephony market into the market in GSM radiotelephony. It is a question of the extension of a dominant position thanks to the competitive advantage provided by the distortion of the cost structure due to the initial payment, rendering the State measure contrary to Article 90, read in conjunction with Article 86.

(ii) Limitation of production, markets or of technical development within the meaning of Article 86 (b)

Moreover, the need to finance Lit 750 billion will also delay the investments of the new entrant, which will have to use part of its initial capital to cover the initial payment, which will therefore not be available for investment in the development of its network, quite apart from the capital needed for establishing its service in compliance with the minimum requirements set out in the licence. This will delay the development of the network and could also encourage Telecom Italia Mobile to delay marketing its GSM service⁽³⁾. The TACS system is more attractive in that it guarantees Telecom

Italia Mobile a definite income since the services are operated as a monopoly and moreover the bulk of the investments have already been amortized.

The Telecom Italia group, which, as has been pointed out, is aware of the second operator's cost structure through its infrastructure monopoly, would therefore be encouraged to retain higher tariffs for its GSM services than it would otherwise do, in the absence of the State measure in question. In so doing, it would limit production, output or technical development at the expense of the users within the meaning of Article 86 (b) as regards GSM, which involves a more advanced technology, so as to benefit the older analogue service.

In addition, this would delay the move towards personal communication combining mobile and fixed networks, which will only be possible if the tariffs for mobile communications fall substantially.

As the Court of Justice has held⁽⁴⁾, Article 90 (1) precludes Member States from enacting measures likely to cause an undertaking to infringe the provisions to which it refers — in particular, in the case in point, those contained in Article 86.

In conclusion, on either hypothesis, the State measure concerned is therefore contrary to Article 90 (1), read in conjunction with Article 86 (b) of the Treaty.

- (18) The responsibility of Member States pursuant to Articles 86 and 90 (1) of the Treaty only arises where the improper behaviour of the company in question is capable of affecting trade between Member States. Such a potential effect exists in this instance because the commercial activity of the Italian GSM operators may affect the residents of other Member States, who may acquire the 'SIM' cards in Italy just as in the territories of the other Member States, thanks to the roaming agreement with the operators covering those Member States.

⁽¹⁾ See, for example, judgment of the Court of Justice of 17 November 1992, joined Cases C-271/90, C-281/90 and C-289/90, *The Kingdom of Spain, the Kingdom of Belgium and the Italian Republic v. Commission*, [1992] ECR I, p. 5833, paragraph 36.

⁽²⁾ The specifications provide for a reduction of 50 % of the public tariff for lines leased by SIP to the second operator. Despite this reduction, the cost of leased lines for the second GSM operator in Italy remains three times higher than that applied by BT in the United Kingdom to cellular telephony operators.

⁽³⁾ As the Commission has already emphasized in its letter of 29 June 1993, 'since the public undertaking holds a monopoly in the supply of mobile radiotelephony services, it has no great interest in introducing an alternative, the GSM service, quickly'.

⁽⁴⁾ See, for example, Case C-41/90, *Höfner v. Macrotron* [1991] ECR I, p. 1979 as well as the judgments of 18 June 1991, Case C-260/89, *Dimotiki Etairia Pliroforissis v. EPT*, [1991] ECR I, p. 2925, and of 5 October 1994, Case C-323/93, *Société civile agricole d'insémination de la Crespelle v. Coopérative d'élevage et d'insémination artificielle du département de la Mayenne* [1994] ECR I, p. 5077.

The reply of the Italian authorities

- (19) In its letter of 28 February 1995, the Italian Government emphasized that the initial payment had been one factor in selecting the second operator. The sum proposed by the second operator would therefore be determined as part of its strategic choice, since the specifications do not mention either a minimum or a maximum figure.

Moreover, the specifications allow the tenderer to propose further conditions, such as waiving the initial payment or spreading it over a number of years. In addition, the tenderers knew that Telecom Italia Mobile was not required to make an initial payment.

It was impossible to oblige Telecom Italia Mobile to make the same payment since it had already made its investments and therefore relied on amortizing them by operating the service as a monopoly.

By determining the amount of the initial payment which it would be prepared to make, the second operator of necessity took into account positive factors such as the investments already made by Telecom Italia Mobile and its right to use Telecom Italia Mobile network through national roaming.

It therefore denies that the dominant positions of Telecom Italia and its subsidiary Telecom Italia Mobile have been strengthened. It also denies that the initial payment produced a negative impact on investments or on the level of tariffs, in so far as the second operator's concession fixes specific obligations on this point.

Lastly, it refuses to abolish the initial payment. In its view, relinquishment of this criterion would mean that the selection procedure would have to be begun again if the principles of transparency and non-discrimination were to be respected. According to the Italian Government, the removal of an element such as the offer to pay a sum in order to enter the GSM market would necessarily lead to the opening of a new bidding process. Without the requirement of the initial payment, the competitors might well have made different bids. This argumentation was confirmed by the Italian authorities by letter of 10 August 1995.

- (20) In its letter of 17 May 1995, the Italian Government distinguished between the question of the

initial payment and the risk of extending the dominant position.

As far as the initial payment is concerned, the Italian Government maintains that, in the past, Telecom Italia Mobile has spent larger sums than that on developing the new service and that furthermore the opening up of the GSM service to competition has had a negative effect on the expected profits of Telecom Italia Mobile for running the service. Moreover, to reimburse the initial payment would allow the candidate who was not chosen to attract Omnitel's concession, and the selection procedure would have to start again. On this point, the Italian Government reaffirmed that the abolition of the obligatory initial payment on the part of the second operator would necessitate the opening of a new selection process.

As for the risk of extending the dominant position of Telecom Italia and its subsidiary, Telecom Italia Mobile, the Italian Government emphasized that, following its intervention, agreements had been concluded between Telecom Italia and Omnitel relating to the interconnection of Omnitel's GSM network to the fixed telephone network of Telecom Italia, to experimental roaming of Omnitel's service via Telecom Italia Mobile's GSM network, to the distribution system of Telecom Italia Mobile's GSM and to the keeping of separate accounts for GSM and Telecom Italia's other activities.

The Commission's rebuttal

- (21) The Commission has not challenged the Italian Government's decision to use two distinct procedures in awarding the GSM concessions. Nevertheless, it has repeatedly urged the Italian Government to ensure that the procedures used and the criteria adopted in granting the second licence should not have the effect of increasing the costs of access by the new entrant to the GSM market, as compared with those of the public operator.

The initial investment for establishing a GSM network in Italy amounts to about Lit 2 000 billion. The initial payment, when added to the initial investment, therefore increases the second operator's need for financing by more than one-third. Since Telecom Italia mobile does not have to make the same payment, it is wrong to say that the initial payment has not strengthened its position. It can use the money thereby saved to extend its distribution network or make special offers to potential subscribers.

Moreover, Telecom Italia Mobile possesses a temporal advantage to recoup the major sums invested for the development of GSM. When it puts its network at the disposal of the second national operator, in the context of national roaming, the latter will not benefit freely from this investment but will have to participate in financing it.

- (22) The fact that applicants for the second licence were aware of the future distortion of competition on the GSM market in Italy in favour of Telecom Italia Mobile does not mean that there is any less of an imbalance here. Moreover, firms which did wish to enter the market had no choice but to take this handicap into account in their business plan.

It is therefore wrong to say that the initial payment will have no impact on prices charged or the coverage offered. The second operator's concession adopts the objectives which it has itself undertaken to attain after making allowance for the initial payment. The Italian Government itself concedes that, without the initial payment, tenderers 'could have modified their economic objectives for each of the valuation parameters'. Moreover, the mere fact that the specifications make provision for national roaming is certainly not sufficient compensation for the second operator's disadvantage. The Italian Government has not as yet informed the Commission of an agreement on this matter with the second operator.

- (23) Lastly, the argument that, if the initial payment were waived, the tendering procedure would have to be repeated in order to comply with the principles of transparency and non-discrimination is not convincing.

Bearing in mind the fact that the consortium chosen submitted the better tender on all other selection criteria, the Commission, in its letter of 11 May 1994, determined that it was possible and necessary to reconsider this initial payment without calling in question or delaying the commencement of the second operator's service.

Moreover, the weighting of the various selection criteria was not communicated to the various applicants. The candidates could not therefore say that they would have made a better offer if they had known that the initial payment would be aban-

doned. The weighting attached to the initial payment could, in fact, have been very slight or zero.

In any case, in order not to interfere in a question which relates in part to the internal law of Italy, the Commission leaves to the Italian Government the choice of the means of remedying the breach, without expressly envisaging the reimbursement of the initial payment. Such reimbursement is not the only conceivable means of redressing the imbalance that it creates. The Italian Government could either impose an identical payment on Telecom Italia Mobile, or it could adopt corrective measures such as those mentioned in the context of contacts between the Commission and the Italian authorities, for example :

- a grant without delay to any operator of an unconditional right to establish its own infrastructure (the provision of the radio frequencies necessary for microwave links) or to use the existing infrastructure of other undertakings such as the national railways, the motorways or ENEL (the national electricity agency),
- the effective application of the roaming agreement between the two GSM-radiotelephony operators, which from a technical and tariff standpoint would compensate for the second operator's delay,
- the grant of access to Telecom Italia's TACS 900 customer database, while maintaining the confidentiality of personal data,
- the revision of the tariff conditions for inter-connection with Telecom Italia's switched telephone network,
- the grant to any operator of the right to apply alternative technologies such as DCS-1800 or DECT to provide its service.

The revocation of the concession already granted can in no circumstances be considered to be an appropriate remedy for the breach, bearing in mind that that would eliminate the only existing competitor to the public company Telecom Italia Mobile on the GSM market, and also bearing in mind the current monopoly of Telecom Italia as regards fixed telephony and GSM during the whole period necessary for the opening of a new call for offers, thus rendering competition even more difficult because of the additional time-lead.

- (24) The Commission's objections to the initial payment imposed on the second operator but not on Telecom Italia Mobile are not based on Article 6 of the Treaty. In this procedure the issue is not the discrimination in itself but the effect of the State measure which is, as has been shown at points 17 and 18, to lead the telecommunications agency to extend its dominant position or to limit production, markets or technical development.

The aim of this procedure is to cause the Italian Government to take the necessary steps to preclude that effect; the most obvious would be a requirement that Telecom Italia Mobile make an identical payment.

- (25) Likewise, if the Italian Government so requests, the Commission would be prepared to examine whether the infringement could be terminated by adopting other measures, provided that they offset properly the second operator's disadvantage.

It is incumbent upon the Italian Government to make proposals in this matter. The Italian Government should in any case provide figures for these proposals, showing that they properly offset the Lit 750 billion paid by Omnitel.

Article 90 (2)

- (26) Article 90 (2) of the Treaty provides that undertakings entrusted with the operation of services of general economic interest are subject to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The Italian Government has not relied on this provision to justify imposing the initial payment on the second operator alone.

- (27) The Commission considers for its part, that in this case Article 90 (2) does not apply, because there are no factors which would permit the conclusion that the initial payment is justified by the performance in law or in fact of a service of general economic interest.

CONCLUSION

- (28) In view of the above the Commission considers that the competitive disadvantage in the form of

the initial payment imposed on the second operator alone for its concession to operate a GSM network in Italy constitutes an infringement of Article 90 (1) of the Treaty, read in conjunction with Article 86,

HAS ADOPTED THIS DECISION:

Article 1

Italy shall take the steps necessary to abolish the distortion of competition resulting from the initial payment imposed on Omnitel Pronto Italia and to secure equal conditions for operators of GSM radiotelephony on the Italian market at the latest by 1 January 1996, by means of the following:

- a requirement that Telecom Italia Mobile make an identical payment, or
- the adoption, after receiving the agreement of the Commission, of corrective measures equivalent in economic terms to the payment made by the second operator.

The measures definitively adopted may not impair the competition created by the licensing of the second GSM operator on 2 December 1994.

Article 2

Italy shall inform the Commission within three months of notification of this Decision of the steps it has taken to comply therewith.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 4 October 1995.

For the Commission

Karel VAN MIERT

Member of the Commission

CORRIGENDA

Corrigendum to Commission Directive 94/79/EC of 21 December 1994 amending Council Directive 91/414/EEC concerning the placing of plant protection products on the market

(Official Journal of the European Communities No L 354 of 31 December 1994)

On page 19, in Annex I, under point 5.2.3., sixth indent:

for: '...> 50 μm ,'

read: '...< 50 μm ...'

* Corrigendum to Commission Directive 94/79/EC of 21 December 1994 amending Council Directive 91/414/EEC concerning the placing of plant protection products on the market (OJ No L 354 of 31. 12. 1994) 58