

Official Journal

of the European Communities

ISSN 0378-6978

L 2

Volume 39

4 January 1996

English edition

Legislation

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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 5/96

of 22 December 1995

imposing definitive anti-dumping duties on imports of microwave ovens originating in the People's Republic of China, the Republic of Korea, Malaysia and Thailand and collecting definitively the provisional duty imposed

THE COUNCIL OF THE EUROPEAN UNION,

B. SUBSEQUENT PROCEDURE

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⁾, and in particular Article 23 thereof,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Community⁽²⁾, and in particular Article 12 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas :

A. PROVISIONAL MEASURES

- (1) The Commission, by Regulation (EC) No 1645/95⁽³⁾, hereinafter referred to as 'the provisional duty Regulation', imposed a provisional anti-dumping duty on imports into the Community of microwave ovens (hereinafter referred to as 'MWOs') originating in the People's Republic of China, the Republic of Korea, Malaysia and Thailand.

By Regulation (EC) No 2580/95⁽⁴⁾ the Council extended the validity of this duty for a period of two months expiring not later than 7 January 1996.

- (2) Following the imposition of the provisional anti-dumping measures the following interested parties submitted in writing :

1. Community industry :

- GIFAM, the complainant and the following individual complaining Community producers :
- AEG, Germany,
- Groupe Moulinex SA, France,
- Thomson Electromenager, France.

2. A company with an MWO production located in a Member State recently acceded to the Community :

- Whirlpool Europe BV, Sweden ('Whirlpool').

3. The following producers/exporters :

- Beijing Sampo Electric Co., Ltd, China, together with Vegary Ltd, Hong Kong,
- Whirlpool SMC Microwave Products (China) Co., Ltd⁽⁵⁾,
- Daewoo Electronics Co., Ltd, Korea, ('Daewoo') and its related importers in the Community,
- LG Electronics Co., Ltd, Korea, ('LG Electronics') and its related importers in the Community,
- Korea Nisshin Co., Ltd, Korea ('Korea Nisshin'),

⁽¹⁾ OJ No L 349, 31. 12. 1994, p. 1. Regulation, as last amended by Regulation (EC) No 1251/95 (OJ No L 122, 2. 6. 1995, p. 1).

⁽²⁾ OJ No L 209, 2. 8. 1988, p. 1. Regulation, as last amended by Regulation (EC) No 522/94 (OJ No L 66, 10. 3. 1994, p. 10).

⁽³⁾ OJ No L 156, 7. 7. 1995, p. 5.

⁽⁴⁾ OJ No L 263, 4. 11. 1995, p. 1.

⁽⁵⁾ The ownership of one producer located in China, i.e. SMC Microwave Products (China) Co., Ltd, changed after the investigation period. As a consequence the name of the Chinese producer changed.

- Samsung Electronics Co., Ltd, Korea ('Samsung Korea'), and its related importers in the Community,
- Samsung Electronics (M) SDN.BHD, Malaysia, ('Samsung Malaysia') and its related importers in the Community,
- Acme Industry Co., Ltd, Thailand ('Acme').

4. An organization representing importers into the Community, the Foreign Trade Association ('FAT'), Cologne.

- (3) Those parties who so requested were granted an opportunity to be heard by the Commission.
- (4) The Commission continued to seek and verify all information it deemed necessary for its definitive findings.
- (5) Parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of a provisional duty. They were also granted a period within which to make representations subsequent to the disclosure.
- (6) The parties' oral and written comments were considered, and the conclusions altered where deemed appropriate.
- (7) Owing to the complexity of the case, in particular due to the number of exporting countries and parties involved, the investigation overran the normal duration of one year provided for in Article 7 (9) (a) of Regulation (EEC) No 2423/88 (hereinafter referred to as the 'basic anti-dumping Regulation').

C. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

- (8) As no new evidence and comments have been presented regarding the product under consideration and the like product, the findings set out in recitals (7) and (10) of the provisional duty Regulation are confirmed.

D. DUMPING

I. CHINA

1. Volume of Chinese exports to the Community

- (9) The investigation carried out with respect to MWOs originating in China had revealed at the

provisional stage that the export volume to customers located in the Community reported by the two cooperating producers located in China was higher than the import volume from China reported in the Community import statistics for the investigation period. One Chinese producer claimed that import statistics should be used instead of the information provided by the cooperating Chinese producers. Although it was not possible to assess decisively the reason for the discrepancy, it was concluded that the determination of export/import volumes as well as export/import prices should be based on the specific information submitted by the Chinese producers which was verified at the premises of these producers' related exporters in Hong Kong and which covered these producers' exports of MWOs with the Community as final destination.

It was considered that only in the absence of such information should generally available statistical information be used.

2. Normal value

- (10) One Chinese producer argued that the normal value established based on Korean prices appeared inappropriate given the higher degree of sophistication of MWOs sold on the analogue country market.

In respect of the above submission, it should be noted that the normal values for by far the great majority of MWOs exported from China were constructed on the basis of the cost of manufacturing models exported by the Korean companies concerned to the Community, plus an amount for selling, general and administrative costs ('SG&A') and profit realized for the like product on the domestic market. The constructed normal values established were therefore fully comparable to those of the Chinese producers.

The same Chinese producer also claimed that the SG&A costs incurred for sale of the like products on the domestic market in Korea were inflated, given this market's inefficient distribution system.

In fact, the amount of SG&A costs attributed was far below that which the Chinese producer concerned alleged had been used in constructing normal value. The amount of SG&A costs used is in line with the Chinese Producer's estimate.

- (11) In these circumstances, it is considered that one of the comments received after the imposition of provisional measures require the choice of an analogue country other than Korea, or a change in the methodology used for determining the normal values for the Chinese producers. Consequently, the approach followed at the provisional stage with regard to the determination of normal values concerning China is maintained.

3. Export price

- (12) In establishing the export price all export transactions during the investigation period reported by Chinese producers were used.

Account was taken of the fact that no price for the Chinese MWOs sold directly for export to the Community from the country of origin was found to exist as all export sales were made through selling organizations located in Hong Kong. Therefore the export price had to be adjusted on the basis of the price at which the product concerned was resold by the Hong Kong based selling companies to independent customers located in the Community.

Contrary to the approach taken at the provisional stage, at which a flat rate of 5 % was applied to reflect the costs incurred and profit realized by the exporters concerned for their export activity, at the definitive stage due allowance was only made for the direct costs actually incurred by the Hong Kong sales companies.

4. Comparison

- (13) As at the provisional stage, all adjustments relating to differences in normal value affecting price comparability claimed by the Korean producers concerned, which proved to be justified and significant in accordance with Article 2(10)(c) of the basic anti-dumping Regulation, were also applied in comparing normal value and export price for Chinese producers. Such adjustments were made in particular in respect of physical differences, differences relating to import charges and direct taxes, differences in the level of trade and to differences in direct selling expenses as discussed in recital (20) below.

Normal value established in the analogue country on an ex-frontier level was compared with the export price at the Chinese ex-frontier level on a transaction-by-transaction basis.

5. Dumping margin

- (14) The assessment of the information received from the Chinese producers concerned with respect to export prices and taking into account the normal value as established above shows the existence of dumping in respect of imports of MWOs originating in China taken as a whole.

Unlike at the provisional stage, the two Chinese producers claimed individual treatment at the definitive stage.

However, one company did not submit any new arguments after the imposition of provisional measures relating to the direct and indirect, contractual and factual involvement of Chinese public authorities in the operation of the company.

The other company recently submitted information related to its operation in China which also indicates that the company does not operate in a way that would justify the granting of individual treatment.

Indeed, both producers in China are joint companies whose joint venture partners are non-Chinese, as well as Chinese companies. From the joint-venture contracts, it appears that the producing companies are still partly controlled in their operations by the Chinese partners and are not entirely free to determine the destination of their sales.

These case specific grounds are in themselves sufficient to reject the claims for individual treatment without having to examine further whether there has been a change in the involvement of the State in, or the influence of the State on, economic activity in China as described, in particular, in recital (19) of Council Regulation (EEC) No 2474/93 of 8 September 1993 imposing a definitive anti-dumping duty on imports into the Community of bicycles originating in the People's Republic of China and collecting definitively the provisional anti-dumping duty⁽¹⁾ on the basis of which individual treatment could not, at that time, be granted.

- (15) In conclusion concerning Chinese imports, the weighted average margin found, expressed as a percentage of the net free-at-Community-frontier price was determined at the definitive stage to be 12,1 %.

⁽¹⁾ OJ No L 228, 9. 9. 1993, p. 1.

II. KOREA

1. Normal value

(a) *Ordinary course of trade of domestic sales*

(i) Total sales

- (16) Two companies requested that normal value be established on the basis of all their sales on the domestic market. These companies considered this approach to yield a more representative result as compared to the one taken at the provisional stage in which the analysis was limited to approximately 85 % of domestic sales.

On the basis of the above request, at the definitive stage the assessment of whether domestic sales were made in the ordinary course of trade took into account all sales of these companies.

(ii) Profitable sales

- (17) Based on the total domestic sales transactions as determined above, and using the costs of production data submitted by the three Korean producers which had made representative sales, the profitability of these transactions was analysed.

Where the companies concerned had reported incomplete information with respect to costs of production, where they had used allocation methods yielding unrepresentative results or where the allocation methods used were not supported by the internal accounts of the companies concerned, the costs of production were adjusted accordingly. Such adjustments concerned in particular the financing costs of three companies and the SG&A costs incurred for domestic sales of three companies.

In accordance with Article 2 (11) of the basic anti-dumping Regulation, allocations of indirect costs after the abovementioned adjustments were made on the basis of turnover.

It was concluded at the definitive stage after taking into account the abovementioned adjustments that all three Korean producers concerned had made profitable sales on the domestic market, i.e. that these companies had made sales in the ordinary course of trade.

The same methodology described in recital (21) of the provisional duty Regulation and used at the

provisional stage to assess the profitability by MWO model was used at the definitive stage.

(b) *Model comparison and normal value determination*

- (18) As far as model comparisons are concerned, the provisional conclusions reached in recital (23) to (25) of the provisional duty Regulation that the great majority of domestically sold models are not comparable to those exported were maintained. Consequently, normal values had to be constructed for the great majority of exported models using the companies' specific cost of production information and profit rates as determined for their sales in the ordinary course of trade.

In the few cases where domestically sold models were comparable with exported models, normal value was established on domestic sales prices. For the fourth producer located in Korea, which had not made any domestic sales, normal value was constructed using the methodology described in recital (19) of the provisional duty Regulation.

2. Export price

- (19) In the same way as for the domestic sales, export sales prices were also established on the total sales volume, where requested, at the definitive stage. Otherwise the same methodologies as the ones used at the provisional stage and described in recitals (26) to (29) of the provisional duty Regulation were used at the definitive stage in order to establish export prices.

3. Comparison

- (20) At the definitive stage, normal value by model, as determined above, was compared at an ex-factory level with the ex-factory export price on a transaction-by-transaction basis. For the purpose of a fair comparison, due allowance in the form of adjustments was made for differences affecting price comparability. Those allowances which were claimed and which proved to be significant were granted where justified in accordance with Article 2 (9) and (10) of the basic anti-dumping Regulation. Based on the analysis conducted after the imposition of provisional measures, adjustments were made in respect of differences in physical characteristics, differences relating to import charges and indirect taxes, selling expenses and, in addition, with respect to differences in the level of trade, in particular as regards sales to original equipment manufacturers ('OEM').

As far as differences in selling expenses in the form of credit costs for differences in payment terms are concerned, the general approach taken at the provisional stage is maintained. This approach allowed for the granting of an allowance for differences in payment terms if it was demonstrated by the parties concerned that these differences affect prices comparability. In this context it was considered that payment terms can affect prices paid by a customer only where the payment terms are agreed at the date of sale, i.e. the date of the conclusion of the sales contract or the date of the invoice at the latest. It is only in such circumstances that the cost of credit associated with the payment terms can be considered to have influenced the buyer's decision. As far as export sales to OEM-customers are concerned, allowances were granted in cases in which these customers performed functions different from customers on the domestic market resulting in consistently different export price patterns for such customers.

Furthermore, two Korean producers had submitted information on the organization of their export sales that did not reflect the actual export organization. These producers had incorrectly described the role of related companies in the Community involved in the export transactions and not submitted information on the related costs of these related companies reflecting their role.

In these circumstances the directly related costs involved had to be determined on the basis of Article 7 (7) (b) of the basic anti-dumping Regulation. This determination was based on general experience related to costs incurred by economic operators assuming such functions.

4. Dumping margin

- (21) The assessment of the information received from the producers concerned at the definitive stage with respect to export prices and taking into account the normal value as established above shows the existence of dumping in respect of imports of the product concerned originating in Korea also at the definitive stage.

The weighted average dumping margins definitively established for each producer and expressed as a percentage of the total CIF Community-frontier value of imports are as follows:

— Daewoo :	9,4 %
— LG Electronics :	18,8 %
— Korea Nisshin :	24,4 %
— Samsung Korea :	3,3 %.

As at the provisional stage and for the reasons set out in recital (35) of the provisional duty Regulation the dumping margins of the cooperating company with the highest margin, i.e. 24,4 %, should apply to all non-cooperating producers.

III. MALAYSIA

1. Normal value

- (22) No changes with regard to the overall methodology described in recitals (36) and (37) of the provisional duty Regulation were deemed to be necessary at the definitive stage for the determination of normal value in the light of the comments received.

However, since certain changes were made with respect to the amounts of SG&A and profit realized by Korean producers and since these items were used in constructing normal value for the Malaysian producer, the constructed normal values applied to the Malaysian producer have also changed.

2. Export price

- (23) No new arguments were raised in respect to the determination of the export price. The approach followed at the provisional stage is therefore maintained at the definitive stage.

3. Comparison

- (24) As for the determination of the normal values mentioned above, changes were also made with respect to certain allowances granted following changes in the amounts of these allowances for the Korean producers. Consequently, the total allowances granted in order to reflect differences affecting price comparability relating to selling expenses were changed accordingly.

4. Dumping margin

- (25) Applying the same methodology as explained in the provisional duty Regulation, the weighted average dumping margin established at the definitive stage for the sole cooperating Malaysian producer and expressed as a percentage of the total CIF-Community-frontier value of imports is as follows :

— Samsung Malaysia : 29,0 %.

As this producer was the only one which cooperated in the present investigation and as it appears from Community import statistics that no other producer made any MWO-exports during the investigation period, it is considered appropriate to apply the above dumping rate to all MWO imports originating in Malaysia.

IV. THAILAND

1. Normal value and export price

- (26) The cooperating Thai producer requested that the normal value for Thailand be established on the basis of sales made by this producer's related company on the Japanese market. The Thai producer in particular claimed that this was in line with Article 2 (6) of the basic anti-dumping Regulation, as exports to the Community of MWOs produced in Thailand were actually shipped from Japan. In investigating this request, it was established that the producer's related company in Japan merely issued the invoices for export sales while the MWOs concerned were produced in Thailand and physically shipped directly from Thailand to export markets. Moreover, the information submitted by the Thai producer on its sales activity on the Japanese market turned out to be unreliable.

In these circumstances, it is considered reasonable to maintain, as in the case of Malaysia, the general methodology for determining normal value for Thailand as outlined in recitals (46) and (47) of the provisional duty Regulation.

As for Malaysia, certain changes in the profitability and SG&A costs of the Korean companies having profitable sales of the Korean market, led to a change in the average SG&A rate and the average

profit used for constructing the normal values for the Thai producer.

2. Comparison

- (27) As in the case of Malaysia, the changes in the total allowances granted to the Korean producers concerned and deducted from normal value were also taken into account in comparing normal value and export prices for the Thai producer. In particular, an allowance was also granted for sales made at a different level of trade.

3. Dumping margin

- (28) Applying the same methodology as explained in the provisional duty Regulation, the weighted average dumping margin established at the definitive stage for the cooperating Thai producer and expressed as a percentage of the total CIF Community-frontier value of imports is as follows :

— Acme : 14,1 %.

For the reasons set out at the provisional stage which were not contested by any party, the dumping margin for the non-cooperating Thai producer(s)/exporter(s) is based on the highest weighted average dumping margin determined with regard to an individual MWO-segment for which the cooperating Thai producer made significant export sales to the Community.

- (29) On this basis, the dumping margin established for all other exporters from Thailand expressed as a percentage of the total CIF Community-frontier value of imports is 27,3 %.

E. DEFINITION OF COMMUNITY INDUSTRY

- (30) In its determination, the Commission had established that a variety of producers operated on the Community market.

In accordance with the provisions of Article 4 (5) of the basic anti-dumping Regulation, it was concluded that certain producers related to the exporters should be excluded from the definition of the Community production. On this basis, it was further concluded that the complaining companies represented a major porportion of the remaining Community production. The resulting injury assessment was consequently limited to the situation of the complaining producers.

- (31) On MWO producer located in the Community after its enlargement at 1 January 1995 ('the enlarged Community') claimed that, for the purpose of the injury analysis, the term Community industry should be interpreted as including not only the complaining companies but all Community producers. Moreover, the company argued that producers from the new Member States should also be included in the definition of the Community industry for the purpose of this proceeding.

In this regard, the complainant has submitted that the inclusion of producers located in new Member States should not be considered, given that these Member States were not part of the Community during the investigation period. Furthermore, it was argued that the producer concerned was directly related to one of the exporters subject to the investigation. The complainant has concluded that this company was shielded from the injurious effects of dumping and should on this ground alone be excluded from the definition of the Community industry.

- (32) In respect of the abovementioned arguments the following is noted:

- in accordance with Article 4 (5) of the basic anti-dumping Regulation the term 'Community industry' is defined as including either the producers located in the Community as a whole or those producers whose collective output constitutes a major proportion of the total Community production,
- as outlined in recital (110) of the provisional duty Regulation, the Commission took the view that, with or without considering companies located in new Member States as part of the overall Community industry and taking into account a conservative approach as far as the status of the remaining non-cooperating producers are concerned, the complaining companies represent in either case a major proportion of the total Community production.

In view of the above, the Council confirms that it is not necessary to address the question of whether or not producers located in new Member States should be included into the overall Community production as in the present investigation the complaining producers fulfil in any case the requirements of Article 4 (5) of the basic anti-dumping Regulation and form a major proportion of the total Community production.

- (33) This conclusion is reinforced by the fact that, after the end of the investigation period, another

producer located in the Community, which did not initially cooperate in the investigation and which was not considered as part of the complaining producers at the provisional stage, approached the Commission indicating its support for the complaint.

- (34) Consequently, for the remainder of this document, the term 'Community industry' refers only to that part represented by the complaining companies.

F. INJURY

1. Cumulation of the imports originating in the countries concerned

- (35) One Chinese producer argued that the imports from the exporting countries concerned by this anti-dumping proceeding should not be cumulated. This producer in particular stressed that imports originating in China were not of the same volume as those from Korea.

As already determined at the provisional stage and as outlined in recitals (66) to (69) of the provisional duty Regulation, it is considered that all criteria on the basis of which the Community Institutions usually decide whether the imports from several exporting countries may be cumulated are met in the present proceeding. It has been established that imports from China followed trends comparable to those of the other exporting countries in that:

- they were made at significant levels during the investigation period,
- they were sold at low prices, and
- they were in competition on the Community market with the other imports concerned.

Therefore, the Council confirms that it is justified and necessary to cumulate the imports from the countries concerned for the injury determination.

2. Prices of the dumped imports

- (36) The investigation conducted after the provisional determination has confirmed that prices of MWOs originating in the countries concerned were significantly below the prices charged by the Community industry during the investigation period. In order to establish the level at which prices of the exporters undercut those of the Community industry, the methodology used for the purposes of the prelimi-

nary determination has been adapted, in that it was considered reasonable to take into account the possibility of a difference of level of trade between some of the export sales made to independent customers and those made, on average, by the Community industry.

The revised methodology consisted of comparing the sales prices of all sales of the Community industry to independent customers with sales prices of the producers/exporters concerned to independent customers in the Community; an additional amount representing 10 % of the export prices being added to the latter prices, representing an estimate for distribution and marketing costs and for a profit for the independent distributors located in the Community.

- (37) The above approach is considered conservative, given that the adopted export prices have been compared to all sales transactions of the Community industry whereas some of these sales by Community industry were made at a level of trade comparable to that of the Community frontier stage. The results of this price comparison showed that for all producers located in the exporting countries concerned substantial price undercutting remained. The weighted average undercutting margin was about 20 % for China, between around 12 % to 30 % for Korea depending on the producers and was around 33 % for Malaysia and Thailand.

3. Arguments raised concerning the injurious situation of the Community industry

- (38) No new arguments were raised relating to the injurious situation of the Community industry after the imposition of provisional measures. Therefore, on the basis of the conclusion reached at the provisional stage in recitals (75) to (84) of the provisional duty Regulation, it was definitively concluded that the Community industry has been suffering material injury within the meaning of Article 4 of the basic anti-dumping Regulation.

G. CAUSATION

I. EFFECT OF THE DUMPED IMPORTS

- (39) One Chinese producer, one producer located in the enlarged Community and an importers' association alleged that at the provisional stage the Commission did not establish a causal link between dumped imports from the countries under investigation and the injury caused to the Community

industry. According to these parties, the Commission has merely relied on a coincidence between the imports and the deterioration of the situation of the Community industry.

- (40) The complainant has contested these claims and supported the provisional conclusions of the Commission set out in recitals (85) to (95) of the provisional duty Regulation and has contested the influence of any factor other than dumped imports on the injurious situation of the Community industry.
- (41) With regard to the question of the causal link between dumped imports and the injury suffered by the Community industry, the Council notes the following:

in the analysis undertaken, the Community Institutions have not merely relied on a coincidence in time of increased low-priced imports and the deterioration of the situation of the Community industry. The impact of the increase in volume and market share of the dumped imports and the amount by which they undercut the prices of the Community industry, with a particular emphasis on the pricing behaviour of the exporters and its consequent effect on the Community market has been examined *in concreto*.

In this analysis it was established that sales made during the investigation period by the exporters concerned and by the Community industry actually went through the same sales channels and even to the same customers. In the light of this and bearing in mind that customer loyalty is generally not very strongly developed for this type of product — this factor being reflected in a high price elasticity of demand — it was considered that the above claims are unfounded and that it was established that dumped imports have contributed significantly to the injury suffered by the Community industry.

II. OTHER FACTORS

1. Imports from other countries

- (42) One Chinese producer and a producer located in Sweden stated that the loss in market share of one producer of the Community industry in particular was not due to dumped imports but to increased imports from Sweden.
- (43) The Commission had provisionally concluded, as stated in recitals (89) to (90) of the provisional duty Regulation, that an examination of the trend in imports from other countries (i.e. Japan, Sweden, United States and other third countries) showed,

overall, a declining tendency. The prices of these imports were found to be substantially higher than those from the countries subject to investigation.

With regard to the above allegation, as stated in recital (89) of the provisional duty Regulation imports from Sweden taken individually increased up to the investigation period to reach a market share of around 8 %. However, it was found that the average import prices of these imports were substantially higher than those of the exporting countries concerned by this proceeding and even higher than the average prices of MWOs of the Community industry. Furthermore, the development of the market shares in individual Member States by the Community producer and the Swedish producer has been specifically analysed, based on the information provided by the Chinese producer and the Swedish producer. This analysis shows that there is no consistent correlation between increases in market share in individual Member States for MWOs originating in Sweden and losses in market share for MWOs made by the Community producer and vice versa. Indeed, the two companies concerned have strongholds in entirely different Member States.

In conclusion, it was deemed highly unlikely that the imports from Sweden have had a significant impact on the overall situation of the Community industry except that, if any, resulting from normal competition.

2. Behaviour of the Community industry

- (44) One Chinese producer, one producer located in the enlarged Community and an importers' association alleged that the difficulties suffered by the Community industry can be reduced to problems encountered by one of the complaining companies. In particular the Chinese producer and the producer located in the enlarged Community have stated that this company has made wrong management decisions in acquisition of a company located in the Community and in not renewing its model range.
- (45) In addressing the above allegations, which were not supported by any relevant evidence, it is considered of particular importance to stress that the investigation carried out before and after the provisional determination has confirmed that indeed all four individual companies constituting the complaining industry have suffered material injury. The collected and verified information on the state of the Community industry does not contain any indication that the material injury suffered by this

industry was due to particularly adverse results by one company only.

- (46) Furthermore, it is noted that the above parties have not submitted any information in support of their claims that would justify a change in the assessment outlined in recital (92) of the provisional duty Regulation, concerning the acquisition policy of one particular complaining producer.
- (47) As far as the policy of model renewal of the complaining producer mentioned in the above claim is concerned, the investigation has shown that, in the three years between 1990 and 1992 leading to the investigation period, the Community producer in question launched new model ranges which during the investigation period were sold in substantial quantities. In any event, as has been stated in recital (82) of the provisional duty Regulation, the Community industry could not implement all its investment plans due to its deteriorating financial situation resulting from the depressed price situation.
- (48) One Chinese producer and one producer located in the enlarged Community also alleged that certain Community producers, through over-investment in an unrealistic level of capacity for MWO production, had suffered self-inflicted injury.
- (49) The evidence relating to the history of investment decisions submitted in the course of the present anti-dumping proceeding by the companies concerned was reviewed in detail. This revealed that the investment decisions concerned were based on independent and reliable forecasts of the size of the Community MWO market and on realistic targets as far as market shares in this market are concerned.
- (50) One Chinese producer, one producer located in the enlarged Community and an importers' association submitted that during the period under consideration for assessing injury, other Community producers, which were not part of the complaining industry, showed a positive performance.
- (51) In response to this argument, it should be noted that, as explained in recitals (57) to (64) of the provisional duty Regulation, certain producers operating in the Community which were not excluded from the definition of Community production, and which did not support the complaint, were shielded from the injurious effect of dumped imports by having themselves imported dumped MWOs in substantial quantities. It is considered that any positive performance by such companies cannot constitute proof that dumped imports have not caused injury to the complaining companies.

- (52) For the reasons given in recital (32) above, it was not necessary to determine whether such producers' output constituted Community production for the purposes of determining Community industry, but it should be noted that these companies' positive performance tends to reinforce the conclusion that it is actually necessary to exclude them from the category of Community production for the purposes of an examination of injury. If their data were to be included in the evaluation of the situation of the state of the Community industry, this would distort the evaluation of the situation of those companies that did not benefit from dumping and have encountered economic difficulties.

3. Development of the Community MWO market

- (53) One Chinese producer and the producer located in the enlarged Community have further alleged that the price erosion noted in the Community MWO market can be explained by factors relating to changes in the distribution of MWOs in general.

Although the above parties have not supported their claim with evidence, it is considered that changes in the distribution system of MWOs might be one reason for a reduction in MWO sales prices. However, it should be emphasized that such developments do not explain the substantial level of price undercutting found between the export prices concerned and prices of the Community industry.

III. CONCLUSION

- (54) Based on the above analysis and taking into account the analysis summarized in recitals (85) to (95) of the provisional duty Regulation, the conclusions of which remain unchanged, it is considered that, on balance, it must be concluded that dumped imports have caused material injury to the Community industry.

This conclusion is supported in particular by the findings concerning imports of MWOs made in increasing volumes and at prices substantially undercutting those of the Community industry and the findings that, to a great extent, the sales of the MWOs by both the exporters and the complaining

producers were made through the same sales channels and in some cases to the same customers.

- (55) This conclusion was reached at the definitive stage even though it cannot be excluded that certain other factors have also contributed to the economic difficulties of the Community industry. It remains the case that the injury caused by the dumped imports, taken in isolation, was material.

H. COMMUNITY INTEREST

- (56) The determination as to whether the Community interest calls for intervention in the present investigation was based on an appreciation of all various interests taken as a whole, including the interest of the domestic industry and users and consumers. In such an examination, the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition was given special consideration.

- (57) After the imposition of provisional measures, one Chinese producer and one producer located in the enlarged Community stated that the imposition of definitive anti-dumping measures in this case would not be in the Community interest as such measures would result in an increase of sales prices to the end customers. In response to this argument, it is considered that while it is the purpose of any anti-dumping measure that the prices for imports originating in the countries concerned are increased to a non-dumped or at least non-injurious level, it is also considered that, given the number of suppliers operating in this market, and given the purchasing power of the distribution channels in the Community, the overall price increase in the market will be limited as the market will continue to operate in a competitive environment. This conclusion is reached taking into account that, by the imposition of definitive anti-dumping measures, the Community industry will be allowed to operate under effective conditions of competition, ensuring this industry's presence on the Community market in the future.

- (58) Furthermore, the producer located in the enlarged Community argued that the imposition of anti-dumping measures would deprive it of the opportunity to pursue a global production and marketing

strategy as it would be forced to operate separately in each region of the world. This in turn would lead to inefficiencies and ultimately to a worsening of the situation of its Community based production.

As far as the above argument is concerned, it should be pointed out that anti-dumping measures, *per se*, do not affect the global strategies of companies, unless such strategies rely on sourcing products at dumped prices. In such cases, where dumping has caused injury to a Community industry, the companies in question would, to the detriment of other producing companies in the Community, in the absence of corrective measures eliminating injurious dumping, benefit from an unfair competitive advantage beyond any normal and fair advantage that globalization might bring.

- (59) In conclusion, and taking into account the analysis outlined in recitals (96) to (102) of the provisional duty Regulation, it is considered that, on balance, it is in the general interest of the Community to impose anti-dumping measures concerning imports of MWOs originating in China, Korea, Thailand and Malaysia. Indeed, no compelling reason not to impose anti-dumping measures in this case has been identified.

I. UNDERTAKING

- (60) The Commission has received an offer of an undertaking from one Chinese producer pursuant to Article 10 (2) of the basic anti-dumping Regulation. This offer has been examined carefully. In particular, attention has been paid as to whether the minimum prices offered in the undertaking are such that the Commission can be satisfied that the injurious effect of the dumping determined would be eliminated, as specifically required by Article 10 (2) (b) of the basic anti-dumping Regulation.

Furthermore, the Commission has assessed whether it would be feasible to monitor the undertaking proposed.

- (61) As far as the level of the prices offered is concerned and on the basis of the investigation conducted, it has been determined that the price levels proposed would lead to a dumping margin even higher than the one determined for the investigation period. In any event, it should be noted that the acceptance of undertakings for consumer products has historically been exceptional given, *inter alia*, the complexity of the models, the number of different types and the variety and the regularity with which they are upgraded or otherwise modified. All these considerations tend to lead to virtually insurmountable difficulties in monitoring. These general considerations also apply to the present case.
- (62) It was therefore considered by the Commission, after consultation, that the acceptance of an under-

taking was not appropriate in this particular proceeding and the offer concerned has accordingly been rejected. The Commission has informed the exporter concerned accordingly.

J. DUTY

- (63) For the purpose of establishing the level of the definitive duty, the same methodology already applied at the provisional stage and outlined in recitals (103) to (108) of the provisional duty Regulation was used taking account of the dumping margins definitively determined and of the amount of duty necessary to eliminate the injury sustained by the Community industry.

Since it was confirmed at the definitive stage that the injury consists principally of price undercutting, price depression and, as a consequence, slightly decreasing market shares and substantial financial losses, the removal of such injury requires that the industry should be put in a position where prices can be increased to profitable levels without a continued loss of market share.

For calculating the necessary price increase, it was considered that the actual prices of these imports adjusted using the same methodology as mentioned in recitals (35) and (36) of the provisional duty Regulation had to be compared to selling prices that reflect the costs of production of the complaining producers plus a reasonable amount of profit.

- (64) To this end, the costs of manufacturing of the complaining producers were increased by the SG&A costs and an amount of profit, i.e. a margin of 5 % on turnover, which was considered to provide the minimum required to ensure the viability of the Community industry.

The actual weighted average selling prices charged during the investigation period by the Community industry were compared to the values constructed as explained above, and increased, if appropriate, in order to achieve the overall minimum amount of profit required. The resultant prices thus established were compared with the average prices of the dumped imports used to establish price undercutting.

The differences between these two prices expressed on a weighted average basis and as a percentage of the net, free-at-Community-frontier price, before CCT duty, ranged from around 50 % for China for which a single margin was established, between 35 % and 60 % for Korea depending on the exporters concerned and around 80 % for Malaysia and Thailand.

- (65) Based on the above, definitive anti-dumping duties, expressed as a percentage of the net, free-at-Community-frontier price, before CCT duty, should, in accordance with Article 13 (3) of the

basic anti-dumping Regulation be imposed at the level of the dumping margins found, the dumping margins all being lower than the above levels of injury. Definitive duties should therefore be as follows :

— China :

— all imports 12,1 %

— Korea :

— Daewoo 9,4 %

— LG Electronics 18,8 %

— Korea Nisshin 24,4 %

— Samsung Korea 3,3 %

— any other imports 24,4 %

— Malaysia :

— all imports 29,0 %

— Thailand :

— Acme 14,1 %

— any other imports 27,3 %.

K. COLLECTION OF THE PROVISIONAL DUTIES

- (66) In view of the magnitude of the dumping margins found for the majority of exporting producers and in light of the seriousness of the injury, in particular in light of the level of price undercutting and price underselling, it is considered necessary that amounts secured by way of provisional anti-dumping duties should be definitively collected for all companies at the level of the definitive duties,

HAS ADOPTED THIS REGULATION :

Article 1

1. Definitive anti-dumping duties are hereby imposed on imports of microwave ovens falling within CN code 8516 50 00 and originating in the People's Republic of China, the Republic of Korea, Malaysia and Thailand.

2. The rate of the anti-dumping duties applicable to the net, free-at-Community-frontier price, before CCT duty, shall be as follows :

Country	Products manufactured by	Rate of duty (%)	Taric additional code
People's Republic of China		12,1	—
Republic of Korea	— Daewoo Electronics Co., Ltd	9,4	8829
	— LG Electronics Inc.,	18,8	8830
	— Korea Nisshin Co., Ltd	24,4	8831
	— Samsung Electronics Co., Ltd	3,3	8832
	— other companies	24,4	8833
Malaysia		29,0	—
Thailand	— Acme Industry Co., Ltd	14,1	8836
	— other companies	27,3	8837

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

The amounts secured by way of provisional anti-dumping duty under Regulation (EC) No 1645/95 shall be definitively collected at the duty rate definitively imposed. Amounts secured in excess of the definitive rate of anti-dumping duty shall be released.

Article 3

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

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

Done at Brussels, 22 December 1995.

For the Council

The President

L. ATIENZA SERNA

COMMISSION REGULATION (EC) No 6/96
of 3 January 1996
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 4 January 1996.

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

Done at Brussels, 3 January 1996.

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	10,49	0,49
1001 90 99	Common high quality wheat other than for sowing ⁽³⁾	10,49	0,49
	medium quality	26,94	16,94
	low quality	30,87	20,87
1002 00 00	Rye	25,88	15,88
1003 00 10	Barley, seed	25,88	15,88
1003 00 90	Barley, other ⁽³⁾	25,88	15,88
1005 10 90	Maize seed other than hybrid	69,05	59,05
1005 90 00	Maize other than seed ⁽³⁾	69,05	59,05
1007 00 90	Grain sorghum other than hybrids for sowing	25,88	15,88

⁽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 20. 12. 1995 to 2. 1. 1996):

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)	139,05	141,53	141,64	108,79	209,99 ⁽²⁾	162,93 ⁽²⁾
Gulf premium (ECU/tonne)	39,28	20,34	16,31	10,97	—	—
Great lake premium (ECU/tonne)	—	—	—	—	—	—

⁽¹⁾ Fob Duluth.

⁽²⁾ Fob Gulf.

2. Freight/cost : Gulf of Mexico — Rotterdam : ECU 11,98 per tonne ; Great Lakes/St Lawrence — Rotterdam : ECU 28,83 per tonne.

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

COMMISSION REGULATION (EC) No 7/96
of 3 January 1996
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 last amended by Regulation (EC) No 2928/95 ⁽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 4 January 1996.

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

Done at Brussels, 3 January 1996.

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 307, 20. 12. 1995, p. 5.

ANNEX I

to the Commission Regulation of 3 January 1996 fixing the import duties on rice and broken rice

(ECU/tonne)

CN code	Duties ^(*)				
	Third countries (except ACP and Bangladesh) ⁽²⁾ ⁽³⁾	ACP Bangladesh ⁽¹⁾ ⁽²⁾ ⁽³⁾ ⁽⁴⁾	Basmati India ⁽²⁾ Article 4, Regulation (EC) No 1573/95	Basmati Pakistan ⁽²⁾ Article 4, Regulation (EC) No 1573/95	Arrangement in Regulation (EEC) No 3877/86 ⁽²⁾
1006 10 21	⁽³⁾	150,76			
1006 10 23	⁽³⁾	150,76			
1006 10 25	⁽³⁾	150,76			
1006 10 27	⁽³⁾	150,76			232,65
1006 10 92	⁽³⁾	150,76			
1006 10 94	⁽³⁾	150,76			
1006 10 96	⁽³⁾	150,76			
1006 10 98	⁽³⁾	150,76			232,65
1006 20 11	249,77	120,55			
1006 20 13	249,77	120,55			
1006 20 15	249,77	120,55			
1006 20 17	358,50	174,91	108,50	308,50	268,88
1006 20 92	249,77	120,55			
1006 20 94	249,77	120,55			
1006 20 96	249,77	120,55			
1006 20 98	358,50	174,91	108,50	308,50	268,88
1006 30 21	526,51	248,35			
1006 30 23	526,51	248,35			
1006 30 25	526,51	248,35			
1006 30 27	⁽³⁾	290,59			458,25
1006 30 42	526,51	248,35			
1006 30 44	526,51	248,35			
1006 30 46	526,51	248,35			
1006 30 48	⁽³⁾	290,59			458,25
1006 30 61	526,51	248,35			
1006 30 63	526,51	248,35			
1006 30 65	526,51	248,35			
1006 30 67	⁽³⁾	290,59			458,25
1006 30 92	526,51	248,35			
1006 30 94	526,51	248,35			
1006 30 96	526,51	248,35			
1006 30 98	⁽³⁾	290,59			458,25
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).

- (⁵) 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).
- (⁶) 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).
- (⁷) 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).
- (⁸) 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).
- (⁹) 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)	358,50	611	249,77	526,51	(²)
2. Elements of calculation :						
(a) Arag cif price (\$/tonne)	—	366,48	394,94	509,99	497,96	—
(b) fob price (\$/tonne)	—	—	—	479,99	467,96	—
(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 8/96

of 3 January 1996

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
2933/95⁽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 Regu-
lation (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 stan-
dard 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 4 January 1996.

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

Done at Brussels, 3 January 1996.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ No L 307, 20. 12. 1995, p. 21.

⁽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 3 January 1996 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 15	052	125,4	0805 20 13, 0805 20 15, 0805 20 17, 0805 20 19	052	90,1
	060	80,2		464	55,2
	064	59,6		624	89,9
	066	41,7		999	78,4
	068	62,3	0805 30 20	052	68,1
	204	61,2		204	59,8
	208	44,0		388	67,5
	212	117,9		400	55,8
	624	148,0		512	54,8
	999	82,3		520	66,5
0707 00 10	052	91,0		524	100,8
	053	166,9		528	94,7
	060	61,0		600	83,9
	066	53,8		624	78,0
	068	60,4		999	73,0
	204	49,1	0808 10 51, 0808 10 53, 0808 10 59	052	64,0
	624	104,0		064	78,6
	999	83,7		388	39,2
0709 10 10	220	164,9		400	72,3
	999	164,9		404	70,6
0709 90 71	052	78,8		508	68,4
	204	77,5		512	51,2
	412	54,2		524	57,4
	624	209,5		528	48,0
	999	105,0		728	107,3
0805 10 01, 0805 10 05, 0805 10 09	052	38,3		800	78,0
	204	50,3		804	21,0
	388	40,5	0808 20 31	999	63,0
	448	36,1		052	86,3
	600	58,4		064	73,0
	624	80,4		388	79,6
	999	50,7		400	101,5
0805 20 11	052	70,2		512	89,7
	204	74,0		528	84,1
	624	79,6		624	79,0
	999	74,6		728	115,4
				800	55,8
				804	112,9
				999	87,7

⁽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 9/96**of 3 January 1996****amending representative prices and additional duties for the import of certain products in the sugar sector**

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

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector ⁽¹⁾, as last amended by Regulation (EC) No 1101/95 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1423/95 of 23 June 1995 laying down detailed implementing rules for the import of products in the sugar sector other than molasses ⁽³⁾, as amended by Regulation (EC) No 2528/95 ⁽⁴⁾, and in particular the second subparagraph of Article 1 (2), and Article 3 (1) thereof,

Whereas the amounts of the representative prices and additional duties applicable to the import of white sugar, raw sugar and certain syrups are fixed by Commission Regulation (EC) No 1568/95 ⁽⁵⁾, as last amended by Regulation (EC) No 2982/95 ⁽⁶⁾;

Whereas it follows from applying the general and detailed fixing rules contained in Regulation (EC) No 1423/95 to the information known to the Commission that the representative prices and additional duties at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties on imports of the products referred to in Article 1 of Regulation (EC) No 1423/95 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 4 January 1996.

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

Done at Brussels, 3 January 1996.

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 141, 24. 6. 1995, p. 16.

⁽⁴⁾ OJ No L 258, 28. 10. 1995, p. 50.

⁽⁵⁾ OJ No L 150, 1. 7. 1995, p. 36.

⁽⁶⁾ OJ No L 310, 22. 12. 1995, p. 61.

ANNEX

to the Commission Regulation of 3 January 1996 amending representative prices and the amounts of additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 99

(ECU)

CN code	Amount of representative prices per 100 kg net of product concerned	Amount of additional duty per 100 kg net of product concerned
1701 11 10 ⁽¹⁾	23,78	4,41
1701 11 90 ⁽¹⁾	23,78	9,64
1701 12 10 ⁽¹⁾	23,78	4,22
1701 12 90 ⁽¹⁾	23,78	9,21
1701 91 00 ⁽²⁾	29,52	10,47
1701 99 10 ⁽²⁾	29,52	5,95
1701 99 90 ⁽²⁾	29,52	5,95
1702 90 99 ⁽³⁾	0,30	0,35

⁽¹⁾ For the standard quality as defined in Article 1 of amended Council Regulation (EEC) No 431/68 (OJ No L 89, 10. 4. 1968, p. 3).

⁽²⁾ For the standard quality as defined in Article 1 of Council Regulation (EEC) No 793/72 (OJ No L 94, 21. 4. 1972, p. 1).

⁽³⁾ By 1 % sucrose content.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 14 December 1995

authorizing certain Member States to provide for derogations from certain provisions of Council Directive 77/93/EEC in respect of seed potatoes originating in Canada

(Only the Spanish, Greek, Italian and Portuguese versions are authentic)

(96/6/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community⁽¹⁾, as last amended by Directive 95/41/EC⁽²⁾, and in particular Article 14 (1) thereof,

Having regard to the requests made by Greece, Italy and Portugal,

Whereas, pursuant to the provisions of Directive 77/93/EEC, seed potato tubers originating in the American continent may not, in principle, be introduced into the Community;

Whereas, however, Directive 77/93/EEC permits derogations from that rule, provided that it is established that there is no risk of spreading harmful organisms;

Whereas in Greece, Italy and Portugal the planting and growing of seed potatoes of certain North American varieties for ware potato production has been an established

practice; whereas part of the supply of seed potatoes of these varieties has been ensured by imports from Canada;

Whereas, by Commission Decision 93/680/EC⁽³⁾, as last amended by Decision 95/14/EC⁽⁴⁾, the Commission approved derogations based on the concept of 'area freedom', subject to certain technical conditions to prevent the risk of harmful organisms spreading; whereas that approval expired on 30 April 1995; whereas the Commission also provided that those derogations would provide for the opportunity to seek confirmation of the proper functioning of the concept of 'area freedom';

Whereas it is known that Canada is still not completely free from potato spindle tuber viroid or from *Clavibacter michiganensis* ssp. *sepedonicus*;

Whereas information supplied by Canada and collected in that country during missions carried out in 1994 and 1995, has shown that Canada has further developed its programme to eradicate these harmful organisms in the provinces of New Brunswick and Prince Edward Island; whereas there are good reasons to believe that the programme to eradicate potato spindle tuber viroid has become fully effective in those provinces, and that the programme to eradicate *Clavibacter michiganensis* ssp. *sepedonicus* has become largely effective in certain areas of these provinces; whereas there have been no confirmed findings of the disease on samples drawn from seed potatoes introduced pursuant to Decisions

⁽¹⁾ OJ No L 26, 31. 1. 1977, p. 20.

⁽²⁾ OJ No L 182, 2. 8. 1995, p. 17.

⁽³⁾ OJ No L 317, 18. 12. 1993, p. 75.

⁽⁴⁾ OJ No L 21, 28. 1. 1995, p. 18.

93/680/EC and 95/14/EC; whereas it has not been established that there are sufficient elements which would militate against the proper functioning of the aforementioned concept of 'area freedom', and therefore against the recognition of the provisions implemented there as equivalent to the Community provisions on combating *Clavibacter michiganensis* ssp. *sepedonicus*;

Whereas, however, as a result of inspections carried out in 1995 by the Community Veterinary and Plant Health Inspection Office in the importing Member States, it became apparent that certain technical conditions should be modified to improve the trace back system of the imported lots;

Whereas it can therefore be established that there is no risk of the harmful organisms in question spreading, provided that the seed potatoes originate in areas declared, on scientific evidence, free from both potato spindle tuber viroid and from *Clavibacter michiganensis* ssp. *sepedonicus*, and that certain improved special technical conditions are complied with;

Whereas the Commission will ensure that Canada makes all technical information available which is necessary to monitor the functioning of the protective measures required under the aforementioned technical conditions and to assess the functioning of the aforementioned concept of 'area freedom';

Whereas, the risk of establishing and spreading *Clavibacter michiganensis* ssp. *sepedonicus* is high in wet and cold regions; consequently the derogation should not apply to Member States which are particularly exposed to such risks, i.e. Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Luxembourg, the Netherlands, Sweden and the United Kingdom; whereas, therefore, the authorization should not apply to the abovementioned Member States, taking into account the differences in agricultural and ecological conditions;

Whereas, therefore, derogations should be authorized for the next seed-potato marketing season, provided that they include the aforementioned conditions and without prejudice to Council Directive 66/403/EEC⁽¹⁾, as last amended by Directive 95/65/EC⁽²⁾, and to Council Directive 70/457/EEC⁽³⁾, as last amended by the Act of Accession of Austria, Finland and Sweden;

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

HAS ADOPTED THIS DECISION:

Article 1

1. Greece, Spain, Italy and Portugal are hereby authorized to provide, under the conditions laid down in paragraph 2, for derogations from Article 4 (1) of Directive 77/93/EEC, with regard to Annex III (A) (10) and from Article 5 (1) and the third indent of Article 12 (1) (a) of that Directive as regards the requirements referred to in part A, Section I, points 25.2 and 25.3 of Annex IV thereto, for seed potatoes of the varieties 'Atlantic', 'Donna', 'Kennebec', 'Russet Burbank', 'Sebago' and 'Shepody' originating in Canada.

2. The following conditions shall be satisfied:

(a) the seed potatoes shall have been produced in fields located in areas of New Brunswick or Prince Edward Island which have been officially declared, by 'Agriculture Canada', free from both potato spindle tuber viroid and from *Clavibacter michiganensis* ssp. *sepedonicus* and which satisfy the following conditions, irrespective of whether the fields are operated by establishments inside or outside the area:

(i) the areas comprise:

- either fields owned by at least three distinct potato-growing establishments, whether or not these establishments operate rented land located outside,
- or, alternatively, a surface of at least four square kilometres, and are surrounded entirely by water, or by land other than that of fields where the organisms concerned have occurred within the previous three years; and

(ii) all potatoes produced in the area are the first direct progeny of seed potatoes of the category 'Pre-elite', 'Elite I', 'Elite II' or 'Elite III' which were produced in establishments qualified to produce seed potatoes of the 'Pre-elite' or 'Elite I' categories and which are either official establishments or officially designated and controlled for that purpose; and

(iii) the surface used for the production of potatoes which are not finally certified as seed potatoes does not exceed one fifth of that used for the production of potatoes certified as seed potatoes; and

(iv) systematic and representative annual surveys which have been carried out over at least the previous five years under appropriate conditions for the detection of the organisms concerned, on all potato fields located in the area and on potatoes harvested there, including appropriate laboratory testing, did not show any positive finding, or any other element which could militate against the recognition as disease-free; and

⁽¹⁾ OJ No 125, 11. 7. 1966, p. 2320/66.

⁽²⁾ OJ No L 56, 14. 3. 1995, p. 18.

⁽³⁾ OJ No L 225, 12. 10. 1970, p. 1.

(v) legislative, administrative or other arrangements have been made to ensure that:

- no potatoes originating in areas of Canada other than those declared disease-free, or in countries where the organisms concerned are known to occur, can be introduced into such areas, and
- neither potatoes originating in such areas nor any containers, packaging material, vehicles and handling, grading and preparation equipment used there can be brought into contact with potatoes originating, or material or equipment as specified used, in areas other than those declared disease-free.

This provision shall also apply to cases where fields located inside the areas declared disease-free are operated by establishments outside such areas or where establishments inside such areas operate fields located outside them;

(b) the seed potatoes shall be certified officially as seed potatoes meeting at least the conditions laid down for the 'Foundation' category;

(c) samples shall be taken officially in respect of each lot intended for export to the Community; a lot may consist only of tubers of one single variety and class which have been produced on one single farm and with the same reference number. The samples shall be examined by official laboratories in order to detect any presence of potato spindle tuber viroid or *Clavibacter michiganensis* ssp. *sepedonicus*; the samples for the detection of potato spindle tuber viroid shall be tubers, or leaves taken from the crop which produced the lot; for the detection of *Clavibacter michiganensis* ssp. *sepedonicus* a sample of at least 200 tubers per lot of 25 tonnes or less shall be taken; examinations shall be carried out on the entire sample, using the following methods:

- as regards potato spindle tuber viroid: the 'reverse-page' method, or c-DNA hybridization procedure, and
- as regards *Clavibacter michiganensis* ssp. *sepedonicus*: at least that set out in the scheme for the detection and diagnosis of the ring rot bacterium in batches of potato tubers as laid down in Council Directive 93/85/EEC⁽¹⁾;

(d) the lots shall be kept separate in all operations including transport, at least until delivery to the premises of the importers referred to in (f);

(e) the plant health certificate required shall be made out separately for each consignment and only if it has been established by the scientists involved that the

examinations referred to in (c) did not give rise to suspicions or to the detection of the presence of potato spindle tuber viroid or *Clavibacter michiganensis* ssp. *sepedonicus* in the consignment and that in particular the IF-testing was shown to be negative.

It shall state, under 'Additional declaration', that the conditions laid down in (a), (b) and (c) have been complied with, and shall give the name of the establishment or establishments which have produced the seed potato lots and the relevant seed potato certification lot numbers, as well as the name of the area referred to in (a) and of the establishment referred to in (a) (ii). It shall give under 'Distinguishing marks', the number of bags as well as the colour code corresponding to a specified importer in the importing Member State. Documents attached to the said plant health certificate as an integral part of the certificate shall relate precisely to that certificate in both description and quantity of commodity;

(f) prior to introduction into the Community, the importer shall notify each introduction sufficiently in advance to the responsible official bodies in the Member State concerned, and that Member State shall then convey the details of the notification to the Commission, indicating:

- the variety,
- the quantity,
- the declared date of import,
- the names and addresses of the premises of the importers of the potatoes, and those listed in accordance with the provisions of Commission Directive 93/50/EEC⁽²⁾.

At the moment of import the importer shall provide confirmation of the details of the aforementioned advance notification;

(g) the potatoes may be introduced into the Community only via the following ports of unloading:

- Aveiro
- Genova
- Livorno
- Pireaus
- Patras
- Porto
- Savona.

Upon notification by the Member States concerned, changes to the list of ports of unloading can be made by the Commission, after consultation with the other Member States;

⁽¹⁾ OJ No L 259, 18. 10. 1993, p. 1.

⁽²⁾ OJ No L 205, 17. 8. 1993, p. 22.

- (h) the inspections required pursuant to Article 12 of Directive 77/93/EEC shall be made by responsible official bodies referred to in the said Directive. Without prejudice to the monitoring referred to in Article 19a (3) second indent, first possibility, the Commission shall determine to which the inspections referred to in Article 19a (3) second indent, second possibility of the said Directive shall be integrated into the inspection programme in accordance with Article 19a (5) (c) of that Directive. The said official bodies and, as appropriate, the experts referred to in Article 19a (3) shall check the importers premises to confirm details of the quantities of potatoes imported from Canada, the labels with colour coding, and those destinations for plating at premises listed under Directive 93/50/EEC.

The plant passport issued in order to allow movement from the importers' premises to the premises referred to in (j) or those listed in accordance with the provisions of Directive 93/50/EEC shall contain the corresponding colour code as referred to in (e);

- (i) the responsible official bodies of the importing Member States shall take a representative sample from each of the non-bulk lots intended to be imported pursuant to this Decision for official examination in respect of *Clavibacter michiganensis* ssp. *sepedonicus* in accordance with the Community established method for the detection and diagnosis of *Clavibacter michiganensis* ssp. *sepedonicus*; the lots shall remain separate under official control and may not be marketed or used until it has been established that the presence of *Clavibacter michiganensis* ssp. *sepedonicus* was not suspected or detected in those examinations; the total lots imported shall not exceed an amount which is adequate for the abovementioned examinations, taking into account the facilities available for that purpose; subsamples shall be kept available for subsequent examination by other Member States and the responsible official bodies referred to in the said Directive of the importing Member State shall by 15 April 1996 inform the Commission, with a view to organizing that examination and the recording thereof;
- (j) the potatoes shall be planted only at premises in the Member State of import, for which it is possible to trace the names and addresses; this provision shall not apply in the case of final users planting the imported seed potatoes or for users who will sell only onto the local market;
- (k) buildings, containers, packaging material, vehicles and handling, grading and preparation equipment which have been in contact with seed potatoes imported pursuant to this Decision shall be cleaned and disinfected before being brought into contact with other potatoes; this provision shall not apply in the case of final users planting the imported seed potatoes, or for users who will sell only onto the local market. The responsible official bodies shall inspect a suitable proportion of premises referred to under (f) and (j) for compliance with this provision;
- (l) in the growing period following introduction, a suitable proportion of the plants shall be inspected by the said responsible official bodies, at appropriate times, at the premises listed in accordance with the provisions of Directive 93/50/EEC or referred to in (j);
- (m) potatoes grown from seed potatoes introduced pursuant to this Decision shall not be certified as seed potatoes, and shall be used only as potatoes for consumption.

For the premises referred to in under (j) the potatoes grown from such seed potatoes shall be packaged and labelled accordingly and shall bear the number of the premises listed in accordance with the provisions of Directive 93/50/EEC, as well as the Canadian origin of the seed potatoes used. Such potatoes may be moved within the Member States, only after approval by the said responsible official bodies taking into account the results of the inspection referred to in (l).

Article 2

The importing Member States shall provide the Commission and the other Member States, before 1 June 1996, with information on the amounts imported pursuant to this Decision and with a detailed technical report on the official examination referred to in Article 1 (2) (i); copies of each plant health certificate shall be transmitted to the Commission.

Article 3

The authorization granted in Article 1 shall apply from 15 December 1995 until 31 March 1996. It shall be revoked prior to 31 March 1996 if it is found that the conditions laid down in Article 1 (2) have been insufficient to prevent the introduction of the harmful organisms in question or have not been complied with. It may be revoked prior to that date if it is found that there are elements which would militate against the proper functioning of the 'area freedom' concept in Canada.

Article 4

This Decision is addressed to the Hellenic Republic, the Kingdom of Spain, the Italian Republic and the Portuguese Republic.

Done at Brussels, 14 December 1995.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION DECISION

of 14 December 1995

amending Decision 80/862/EEC authorizing the Member States to provide for derogations from certain provisions of Council Directive 77/93/EEC, in respect of potato breeding material

(96/7/EC)

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

Having regard to Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community⁽¹⁾, as last amended by Commission Directive 95/41/EC⁽²⁾, and in particular Article 14 (1) thereof,

Having regard to the requests made by the Member States,

Whereas, in principle, pursuant to Directive 77/93/EEC, potato material intended for planting, other than tubers, may not be introduced into any Member State and potato tubers intended for planting may only be introduced into the Member States where they belong to officially accepted varieties or to advance selections;

Whereas, in the Member States, there is a need to import potato material, including tubers, for work on varietal selection, or for gene conservation or official scientific research purposes;

Whereas the Commission has established that, on the basis of the information currently available, there is, under such circumstances, no risk of spreading harmful organisms provided that certain technical conditions are satisfied;

Whereas by Decision 80/862/EEC⁽³⁾, as last amended by Decision 91/22/EEC⁽⁴⁾, the Commission has already granted such a derogation to the Member States for a period which expires on 31 December 1995;

Whereas no information has been received in the meantime giving cause for the derogation to be restricted to the abovementioned period;

Whereas the Member States should therefore be authorized to provide for derogations in respect of potato breeding material for a further period;

Whereas the authorization will be extended unless new information gives cause for its revision;

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

HAS ADOPTED THIS DECISION:

Article 1

In the first sentence of Article 2 of Decision 80/862/EEC, '1995' is hereby replaced by '1996'.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 14 December 1995.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 26, 31. 1. 1977, p. 20.

⁽²⁾ OJ No L 182, 2. 8. 1995, p. 17.

⁽³⁾ OJ No L 248, 19. 9. 1980, p. 25.

⁽⁴⁾ OJ No L 13, 18. 1. 1991, p. 21.

CORRIGENDA

Corrigendum to Commission Regulation (EC) No 2805/95 of 5 December 1995 fixing the export refunds in the wine sector and repealing Regulation (EEC) No 2137/93

(Official Journal of the European Communities No L 291 of 6 December 1995)

On page 12, in the Annex, fifth CN code :

for: '2004 30 92',

read: '2204 30 92'.
