

Official Journal

of the European Communities

ISSN 0378-6978

L 15

Volume 39

20 January 1996

English edition

Legislation

Contents

I *Acts whose publication is obligatory*

- Commission Regulation (EC) No 75/96 of 19 January 1996 determining the extent to which the applications for import licences submitted in January 1996 for certain dairy products under certain tariff quotas opened by Regulation (EC) No 1600/95 can be accepted 1
- Commission Regulation (EC) No 76/96 of 19 January 1996 on the supply of milk products as food aid 3
- Commission Regulation (EC) No 77/96 of 19 January 1996 on the supply of cereal-based weaning food as food aid 11
- ★ Commission Regulation (EC) No 78/96 of 19 January 1996 amending Regulation (EEC) No 2742/90 laying down detailed rules for the application of Council Regulation (EEC) No 2204/90 15
- Commission Regulation (EC) No 79/96 of 19 January 1996 establishing the standard import values for determining the entry price of certain fruit and vegetables 16
- Commission Regulation (EC) No 80/96 of 19 January 1996 amending representative prices and additional duties for the import of certain products in the sugar sector 18
- ★ Council Regulation (EC) No 81/96 of 19 January 1996 amending Regulation (EEC) No 2455/93 imposing definitive anti-dumping duties on imports of monosodium glutamate originating in Indonesia, the Republic of Korea and Taiwan and collecting definitively the provisional duties imposed and terminating the proceeding with regard to Thailand 20

Commission

96/75/EC :

- ★ **Commission Decision of 4 October 1995 concerning aid granted by the Flemish region of Belgium to the truck producer DAF ⁽¹⁾ 31**

96/76/EC :

- ★ **Commission Decision of 4 October 1995 concerning aid granted by the Netherlands to the truck producer DAF ⁽¹⁾..... 37**

96/77/EC :

- ★ **Commission Decision of 18 January 1996 establishing the conditions for the harvesting and processing of certain bivalve molluscs coming from areas where the paralytic shellfish poison level exceeds the limit laid down by Council Directive 91/492/EEC ⁽¹⁾ 46**

⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 75/96**of 19 January 1996**

determining the extent to which the applications for import licences submitted in January 1996 for certain dairy products under certain tariff quotas opened by Regulation (EC) No 1600/95 can be accepted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Article 1

Having regard to Commission Regulation (EC) No 1600/95 of 30 June 1995 laying down detailed rules for the application of the import arrangements and opening tariff quotas for milk and milk products ⁽¹⁾, as amended by Regulation (EC) No 32/96 ⁽²⁾, and in particular Article 14 (4) thereof,

Import licences applied for for products falling within the order numbers in Annex 7 to the CN listed in the Annex hereto, lodged under Regulation (EC) No 1600/95 for the period 1 January to 31 March 1996, shall be awarded in accordance with the allocation factors indicated.

Whereas applications lodged for the products referred to in Annex II of Regulation (EC) No 1600/95 concern quantities greater than those available; whereas, therefore, the allocation factors should be fixed for the quantities applied for the period 1 January to 31 March 1996,

Article 2

This Regulation shall enter into force on 20 January 1996.

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

Done at Brussels, 19 January 1996.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 151, 1. 7. 1995, p. 12.

⁽²⁾ OJ No L 8, 11. 1. 1996, p. 16.

ANNEX

Order number in Annex 7 to the combined nomenclature	Allocation factor
27	0,0120
29	0,0556
30	0,0256
31	0,0296
32	0,0164
34	0,0085
37	0,0089

COMMISSION REGULATION (EC) No 76/96
of 19 January 1996
on the supply of milk products as food aid

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

Having regard to Council Regulation (EEC) No 3972/86 of 22 December 1986 on food-aid policy and food-aid management ⁽¹⁾, as last amended by Regulation (EEC) No 1930/90 ⁽²⁾, and in particular Article 6 (1) (c) thereof,

Whereas Council Regulation (EEC) No 1420/87 of 21 May 1987 laying down implementing rules for Regulation (EEC) No 3972/86 on food-aid policy and food-aid management ⁽³⁾ lays down the list of countries and organizations eligible for food-aid operations and specifies the general criteria on the transport of food aid beyond the fob stage;

Whereas following the taking of a number of decisions on the allocation of food aid the Commission has allocated to certain recipients 3 396 tonnes of milk powder and 500 tonnes of butteroil;

Whereas it is necessary to provide for the carrying-out of this measure in accordance with the rules laid down by Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community

food aid ⁽⁴⁾, as amended by Regulation (EEC) No 790/91 ⁽⁵⁾; whereas it is necessary to specify the time limits and conditions of supply and the procedure to be followed to determine the resultant costs,

HAS ADOPTED THIS REGULATION:

Article 1

Milk products shall be mobilized in the Community, as Community food aid, for supply to the recipients listed in the Annex in accordance with Regulation (EEC) No 2200/87 and under the conditions set out in the Annex. Supplies shall be awarded by the tendering procedure.

The successful tenderer is deemed to have noted and accepted all the general and specific conditions applicable. Any other condition or reservation included in his tender is deemed unwritten.

Article 2

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

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

Done at Brussels, 19 January 1996.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 370, 30. 12. 1986, p. 1.

⁽²⁾ OJ No L 174, 7. 7. 1990, p. 6.

⁽³⁾ OJ No L 136, 26. 5. 1987, p. 1.

⁽⁴⁾ OJ No L 204, 25. 7. 1987, p. 1.

⁽⁵⁾ OJ No L 81, 28. 3. 1991, p. 108.

ANNEX

LOTS A, B, C and D

1. **Operation Nos** ⁽¹⁾: 410/95 (lot A), 411/95 (lot B), 412/95 (lot C) and 413/95 (lot D)
2. **Programme**: 1995
3. **Recipient** ⁽²⁾: UNRWA, Supply division, Amman Office, PO box 140157 Amman — Jordan (Tlx 21170 UNRWA JC, fax 86 41 27)
4. **Representative of the recipient**: UNRWA Field Supply and Transport Officer
 - lot A: Ashdod: West Bank, PO box 19149, Jerusalem (tel. (972 2) 89 05 55; telex 26194 UNRWA IL; fax (972 2) 81 65 64)
 - lot B: Lattakia: PO box 4313, Damascus, SAR (tel. (963 11) 662 40 81; telex 412006 UNRWA SY; fax (963 11) 661 56 23)
 - lot C: Amman: PO box 484, Amman, Jordan (tel. (962 6) 74 19 14/77 22 26; telex 23402 UNRWA JFO JO; fax (962 6) 74 63 61)
 - lot D: Ashdod: Gaza c/o Field Supply and Transport officer, West Bank — West Bank, PO box 19149, Jerusalem (tel. (972 2) 89 05 55; fax (972 2) 81 65 64; telex 26194 UNRWA IL)
5. **Place or country of destination** ⁽³⁾: lots A and D: Israel; lot B: Syria; lot C: Jordan
6. **Product to be mobilized**: whole milk powder
7. **Characteristics and quality of the goods** ⁽³⁾ ⁽⁶⁾ ⁽⁸⁾: (See OJ No C 114, 29. 4. 1991, p. 1, I.C.(1))
8. **Total quantity**: 338 tonnes
9. **Number of lots**: 4 (lot A: 40 tonnes; lot B: 82 tonnes; lot C: 76 tonnes; lot D: 140 tonnes)
10. **Packaging and marking** ⁽⁷⁾ ⁽¹⁰⁾: 1 kg sachets
 - See OJ No C 114, 29. 4. 1991, p. 1, (I.C (2), I.C (3) and I.A. (2) (1))
 - Markings in English
 - Supplementary markings: 'NOT FOR SALE'
 - lot C: 'Date of expiry ...' (date of manufacture plus nine months)
11. **Method of mobilization**: Community market
 - The whole milk powder must be manufactured after the award of the tender
12. **Stage of supply**: lots A, B and D: free at port of landing — landed; lot C: free at destination
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: Lots A and D: Ashdod; lot B: Lattakia
16. **Address of the warehouse and, if appropriate, port of landing**:
 - lot C: UNRWA warehouses, Amman, Jordan
17. **Period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage**: 4 — 17. 3. 1996
18. **Deadline for the supply**: lots A, B and D: 31. 3. 1996; lot C: 7. 4. 1996
19. **Procedure for determining the costs of supply**: invitation to tender
20. **Date of expiry of the period allowed for submission of tenders**: 12 noon on 5. 2. 1996 (Brussels time)

21. In the case of a second invitation to tender :

- (a) deadline for the submission of tenders : 12 noon (Brussels time) on 19. 2. 1996
- (b) period for making the goods available at the port of shipment in case of award of tender at port of shipment stage : 18 — 31. 3. 1996
- (c) deadline for the supply : lots A, B, D : 14. 4. 1996 ; lot C : 21. 4. 1996

22. Amount of tendering security : ECU 20 per tonne**23. Amount of delivery security : 10 % of the tender in ecus****24. Address for submission of tenders and tendering securities⁽¹⁾ :** Bureau de l'aide alimentaire, à l'attention de Monsieur T. Vestergaard, bâtiment Loi 130, bureau 7/46, rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel. Attention ! New numbers : (telex 25670 AGREC B ; fax (32 2) 296 70 03 / 296 70 04)**25. Refund payable on application by the successful tenderer^(*) :** refund applicable on 16. 1. 1996, fixed by Commission Regulation (EC) No 3024/95 (OJ No L 315, 29. 12. 1995, p. 3)

LOT E

1. **Operation No** (1): 425/95
2. **Programme**: 1995
3. **Recipient** (2): World Food Programme, Via Cristoforo Colombo 426, I-00145 Roma (telex 626675 WFP I)
4. **Representative of the recipient**: to be designated by the recipient
5. **Place or country of destination** (3): Cape Verde
6. **Product to be mobilized**: vitaminized skimmed-milk powder
7. **Characteristics and quality of the goods** (3) (4): see OJ No C 114, 29. 4. 1991, p. 1 (under I.B. (1))
8. **Total quantity**: 384 tonnes
9. **Number of lots**: (E 1: 250 tonnes; E 2: 134 tonnes)
10. **Packaging and marking** (7) (8): see OJ No C 114, 29. 4. 1991, p. 1 (under I.A. (2) (3), I.B. (2) and I.B. (3))
Language to be used for the marking: Portuguese
11. **Method of mobilization of product**: Community market
The manufacture of the skimmed-milk powder, and the incorporation of vitamins, must be carried out after the award of the tender
12. **Stage of supply**: free at port of landing — landed
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: E 1: Praia; E 2: Mindelo
16. **Address of the warehouse and, if appropriate, port of landing**: —
17. **Period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage**: 4 — 17. 3. 1996
18. **Deadline for the supply**: 7. 4. 1996
19. **Procedure for determining the costs of supply**: invitation to tender
20. **Date of expiry of the period allowed for submission of tenders**: 12 noon (Brussels time) on 5. 2. 1996
21. **In the case of a second invitation to tender**:
 - (a) deadline for the submission of tenders: 12 noon (Brussels time) on 19. 2. 1996
 - (b) period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage: 18 — 31. 3. 1996
 - (c) deadline for the supply: 21. 4. 1996
22. **Amount of the tendering security**: ECU 20 per tonne
23. **Amount of the delivery security**: 10 % of the tender in ecus
24. **Address for submission of tenders and tendering securities** (1): Bureau de l'aide alimentaire, à l'attention Mr T. Vestergaard, bâtiment Loi 130, bureau 7/46, Rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel. Attention! New numbers: (telex 25670 AGREC B; telefax (32 2) 296 70 03 / 296 70 04)
25. **Refund payable on request by the successful tenderer** (4): refund applicable on 16. 1. 1996, fixed by Commission Regulation (EC) No 3024/95 (OJ No L 315, 29. 12. 1995, p. 3)

LOT F

1. **Operation No** ⁽¹⁾: 417/95
2. **Programme**: 1995
3. **Recipient** ⁽²⁾: World Food Programme, Via Cristoforo Colombo 426, I-00145 Roma (telex 626675 WFP I)
4. **Representative of the recipient**: to be designated by the recipient
5. **Place or country of destination** ⁽³⁾: Chad
6. **Product to be mobilized**: vitaminized skimmed-milk powder
7. **Characteristics and quality of the goods** ⁽³⁾ ⁽⁴⁾: see OJ No C 114, 29. 4. 1991, p. 1 (under I.B (1))
8. **Total quantity**: 449 tonnes
9. **Number of lots**: one (F1: 123 tonnes; F2: 73 tonnes; F3: 133 tonnes; F4: 59 tonnes; F5: 59 tonnes)
10. **Packaging and marking** ⁽⁷⁾ ⁽⁸⁾: see OJ No C 114, 29. 4. 1991, p. 1 (under I.A (2) (3), I.B (2) and I.B (3))
Language to be used for the marking: French
11. **Method of mobilization of product**: Community market
The manufacture of the skimmed-milk powder, and the incorporation of vitamins, must be carried out after the award of the tender
12. **Stage of supply**: free at destination
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: —
16. **Address of the warehouse and, if appropriate, port of landing**: WFP Warehouses in: F1: N'Djamena; F2: Mao; F3: Mongo; F4: Abèché; F5: Moundou
17. **Period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage**: 4 — 17. 3. 1996
18. **Deadline for the supply**: 28. 4. 1996
19. **Procedure for determining the costs of supply**: invitation to tender
20. **Date of expiry of the period allowed for submission of tenders**: 12 noon (Brussels time) on 5. 2. 1996
21. **In the case of a second invitation to tender**:
 - (a) deadline for the submission of tenders: 12 noon (Brussels time) on 19. 2. 1996
 - (b) period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage: 18 — 31. 3. 1996
 - (c) deadline for the supply: 12. 5. 1996
22. **Amount of the tendering security**: ECU 20 per tonne
23. **Amount of the delivery security**: 10 % of the tender in ecus
24. **Address for submission of tenders and tendering securities** ⁽¹⁾: Bureau de l'aide alimentaire, à l'attention Mr T. Vestergaard, bâtiment Loi 130, bureau 7/46, Rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel. Attention! New numbers: (telex 25670 AGREC B; fax (32 2) 296 70 03 / 296 70 04)
25. **Refund payable on request by the successful tenderer** ^(*): refund applicable on 16. 1. 1996, fixed by Commission Regulation (EC) No 3024/95 (OJ No L 315, 29. 12. 1995, p. 3)

LOT G

1. **Operation No** ⁽¹⁾: 418/95
2. **Programme**: 1995
3. **Recipient** ⁽²⁾: World Food Programme, Via Cristoforo Colombo 426, I-00145 Roma (telex 626675 I WFP)
4. **Representative of the recipient**: to be designated by the recipient
5. **Place or country of destination** ⁽³⁾: Cuba
6. **Product to be mobilized**: whole milk powder
7. **Characteristics and quality of the goods** ⁽³⁾ ⁽⁴⁾: see OJ No C 114, 29. 4. 1991, p. 1 (under I.C (1))
8. **Total quantity**: 2 225 tonnes
9. **Number of lots**: 1
10. **Packaging and marking** ⁽⁷⁾ ⁽⁸⁾: see OJ No C 114, 29. 4. 1991, p. 1 (under I.A (2) (3), I.C (2) and I.C (3))
Language to be used for the marking: Spanish
11. **Method of mobilization of product**: Community market
The manufacture of the whole milk powder must be carried out after the award of the tender
12. **Stage of supply**: free at port of landing — landed
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: La Habana
16. **Address of the warehouse and, if appropriate, port of landing**: —
17. **Period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage**: 4 — 17. 3. 1996
18. **Deadline for the supply**: 14. 4. 1996
19. **Procedure for determining the costs of supply**: invitation to tender
20. **Date of expiry of the period allowed for submission of tenders**: 12 noon (Brussels time) on 5. 2. 1996
21. **In the case of a second invitation to tender**:
 - (a) deadline for the submission of tenders: 12 noon (Brussels time) on 19. 2. 1996
 - (b) period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage: 18 — 31. 3. 1996
 - (c) deadline for the supply: 28. 4. 1996
22. **Amount of the tendering security**: ECU 20 per tonne
23. **Amount of the delivery security**: 10 % of the tender in ecus
24. **Address for submission of tenders and tendering securities** ⁽¹⁾: Bureau de l'aide alimentaire, à l'attention Mr T. Vestergaard, bâtiment Loi 130, bureau 7/46, rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel. Attention ! New numbers : (telex 25670 AGREC B ; fax (32 2) 296 70 03 / 296 70 04)
25. **Refund payable on request by the successful tenderer** ⁽⁴⁾: refund applicable on 16. 1. 1996, fixed by Commission Regulation (EC) No 3024/95 (OJ No L 315, 29. 12. 1995, p. 3)

LOT H

1. **Operation No⁽¹⁾**: 427/95
2. **Programme**: 1995
3. **Recipient⁽²⁾**: World Food Programme, via Cristoforo Colombo 426, I-00145 Roma, telex 626675 I WFP
4. **Representative of the recipient**: to be designated by the recipient
5. **Place or country of destination⁽³⁾**: Cuba
6. **Product to be mobilized**: butteroil
7. **Characteristics and quality of the goods⁽³⁾⁽⁴⁾**: see OJ No C 114, 29. 4. 1991, p. 1 (under I.E (1) and OJ No C 182, 13. 7. 1991, p. 24)
8. **Total quantity**: 500 tonnes
9. **Number of lots**: one
10. **Packaging and marking⁽⁷⁾⁽⁸⁾**: OJ No C 114, 29. 4. 1991, p. 1 (under I.E (2) and I.E (3))
5 kg metal cans, without cardboard cross-pieces
Language to be used for the marking: Spanish
11. **Method of mobilization**: Community market
12. **Stage of supply**: free at port of landing — landed
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: La Habana
16. **Address of the warehouse and, if appropriate, port of landing**: —
17. **Period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage**: 4 — 17. 3. 1996
18. **Deadline for the supply**: 14. 4. 1996
19. **Procedure for determining the costs of supply**: invitation to tender
20. **Date of expiry of the period allowed for submission of tenders**: 12 noon (Brussels time) on 5. 2. 1996
21. **In the case of a second invitation to tender**:
 - (a) deadline for the submission of tenders: 12 noon (Brussels time) on 19. 2. 1996
 - (b) period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage: 18 — 31. 3. 1996
 - (c) deadline for the supply: 28. 4. 1996
22. **Amount of the tendering security**: ECU 20 per tonne
23. **Amount of the delivery security**: 10 % of the tender in ecus
24. **Address for submission of tenders and tendering securities⁽¹⁾**: Bureau de l'aide alimentaire, à l'attention de Monsieur T. Vestergaard, Bâtiment Loi 130, bureau 7/46, rue de la Loi/Wetstraat, 200, B-1049 Bruxelles/Brussel. Attention! New numbers: (telex 25670 AGREC B; fax (32 2) 296 70 03 / 296 70 04)
25. **Refund payable on application by the successful tenderer⁽⁹⁾**: refund applicable on 16. 1. 1996, fixed by Commission Regulation (EC) No 3024/95 (OJ No L 315, 29. 12. 1995, p. 3)

Notes :

- (¹) The operation number should be mentioned in all correspondence.
- (²) The successful tenderer shall contact the recipient as soon as possible to establish which consignment documents are required.
- (³) The successful tenderer shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.
- (⁴) Commission Regulation (EEC) No 2330/87 (OJ No L 210, 1. 8. 1987, p. 56), as last amended by Regulation (EEC) No 2226/89 (OJ No L 214, 25. 7. 1989, p. 10), is applicable as regards the export refund. The date referred to in Article 2 of the said Regulation is that referred to in point 25 of this Annex.
- The amount of the refund shall be converted into national currency by applying the agricultural conversion rate applicable on the day of completion of the customs export formalities. The provisions of Articles 13 to 17 of Commission Regulation (EEC) No 1068/93 (OJ No L 108, 1. 5. 1993, p. 106), as last amended by Regulation (EC) No 2853/95 (OJ No L 299, 12. 12. 1995, p. 1), shall not apply to this amount.
- (⁵) Commission delegation to be contacted by the successful tenderer : OJ No C 114, 29. 4. 1991, p. 33.
- (⁶) The successful tenderer shall supply to the beneficiary or its representative, on delivery, the following document :
- health certificate.
- (⁷) Notwithstanding OJ No C 114 of 29. 4. 1991, point I. B.3 (c) or I. C. 3 (c) or I. E. 3 (c) is replaced by the following : 'the words "European Community"'.
- (⁸) Lot B : The health certificate and the certificate of origin must be signed and stamped by a Syrian Consulate, including the statement that consular fees and charges have been paid.
- (⁹) Placed in 20-foot containers. The free holding period for containers must be at least 15 days.
- (¹⁰) Shipment to take place in 20-foot containers : lots A, B and D : The contracted shipping terms shall be considered full liner terms (liner in/liner out) free port of landing container yard and is understood to cover 15 days — Saturdays, Sundays and official public and religious holidays excluded — free of container detention charges at the port of discharge taken from the day/time of the arrival of the vessel. The 15 day period should be clearly marked on the bill of lading. Bona fide detention charges levied in respect of container detention(s) in excess of the said 15 days as detailed above will be borne by UNRWA. UNRWA shall not pay/not be charged any container deposit fees.

After take-over of the goods at the delivery stage, the recipient will bear all costs of shifting the containers for destuffing outside the port area and of returning them to the container yard.

Ashdod : consignment to be stowed in 20-foot containers not more than 17 tonnes each, net.

COMMISSION REGULATION (EC) No 77/96
of 19 January 1996
on the supply of cereal-based weaning food as food aid

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

Having regard to Council Regulation (EEC) No 3972/86 of 22 December 1986 on food-aid policy and food-aid management ⁽¹⁾, as last amended by Regulation (EEC) No 1930/90 ⁽²⁾, and in particular Article 6 (1) (c) thereof,

Whereas Council Regulation (EEC) No 1420/87 of 21 May 1987 laying down implementing rules for Regulation (EEC) No 3972/86 on food-aid policy and food-aid management ⁽³⁾ lays down the list of countries and organizations eligible for food-aid operations and specifies the general criteria on the transport of food aid beyond the fob stage;

Whereas, following the taking of a number of decisions on the allocation of food aid, the Commission has allocated to certain beneficiaries 210 tonnes of cereal-based weaning food;

Whereas it is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community food aid ⁽⁴⁾, as amended by Regulation (EEC) No 790/91 ⁽⁵⁾; whereas it

is necessary to specify the time limits and conditions of supply and the procedure to be followed to determine the resultant costs,

HAS ADOPTED THIS REGULATION:

Article 1

Cereal-based weaning food shall be mobilized in the Community as Community food aid for supply to the recipients listed in the Annex, in accordance with Regulation (EEC) No 2200/87 and under the conditions set out in the Annex. Supplies shall be awarded by the tendering procedure.

The successful tenderer is deemed to have noted and accepted all the general and specific conditions applicable. Any other condition or reservation included in his tender is deemed unwritten.

Article 2

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

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

Done at Brussels, 19 January 1996.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 370, 30. 12. 1986, p. 1.

⁽²⁾ OJ No L 174, 7. 7. 1990, p. 6.

⁽³⁾ OJ No L 136, 26. 5. 1987, p. 1.

⁽⁴⁾ OJ No L 204, 25. 7. 1987, p. 1.

⁽⁵⁾ OJ No L 81, 28. 3. 1991, p. 108.

ANNEX

LOTS A and B

1. **Operation Nos** (1): 474/95 (A); 475/95 (B)
2. **Programme**: 1995
3. **Recipient** (2): Euronaid, Postbus 12, NL-2501 CA Den Haag (tel. (31 70) 33 05 757; fax 36 41 701; telex 30960 EURON NL)
4. **Representative of the recipient** (3): to be designated by the recipient
5. **Place or country of destination**: Haiti
6. **Product to be mobilized**: cereal-based weaning food
7. **Characteristics and quality of the goods** (3) (7) (8): see OJ No C 34, 6. 2. 1993, p. 3 (II. C (1) (b))
— Energy: minimum 450 kcal/100 g. A minimum of 30 % of the energy must be supplied in the form of lipids
8. **Total quantity**: 170 tonnes
9. **Number of lots**: 2 (A: 90 tonnes; B: 80 tonnes)
10. **Packaging and marking** (9) (8): OJ No C 34, 6. 2. 1993, p. 3 (II. C (2) (b) and II. C (3))
Markings in French
11. **Method of mobilization**: the Community market
12. **Stage of supply**: free at port of shipment
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: —
16. **Address of the warehouse and, if appropriate, port of landing**: —
17. **Period for making the goods available at the port of shipment**: A: 11 — 31. 3. 1996; B: 8 — 28. 4. 1996
18. **Deadline for the supply**: —
19. **Procedure for determining the costs of supply**: invitation to tender
20. **Date of expiry of the period allowed for submission of tenders**: 12 noon (Brussels time) on 5. 2. 1996
21. **In the case of a second invitation to tender**:
 - (a) deadline for the submission of tenders: 12 noon (Brussels time) on 19. 2. 1996
 - (b) period for making the goods available at the port of shipment: A: 25. 3 — 14. 4. 1996; B: 22. 4 — 12. 5. 1996
 - (c) deadline for the supply: —
22. **Amount of tendering security**: ECU 20 per tonne
23. **Amount of delivery security**: 10 % of the amount of the tender in ecus
24. **Address for submission of tenders and tendering securities** (1): Bureau de l'aide alimentaire, à l'attention de Monsieur T. Vestergaard, bâtiment Loi 120, bureau 7/46, rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel. Attention! New numbers: (telex 25670 AGREC B; fax (32 2) 296 70 03 / 296 70 04)
25. **Refund payable on application by the successful tenderer** (4): refunds applicable on 2. 2. 1996 (fixed in accordance with Article 4 (2), first subparagraph of Regulation (EEC) No 3035/80 (OJ No L 323, 29. 11. 1980, p. 27)

LOT C

1. **Operation No⁽¹⁾**: 401/95
2. **Programme**: 1995
3. **Recipient⁽²⁾**: CICR, 19, avenue de la Paix, CH-1202 Genève (Tel.: (41 22) 734 60 01; telex: 22269; CH CICR)
4. **Representative of the recipient**: Délégation du CICR, rue Malke, Tishreen S.Q., Abu Rummaneh BP 3579, Damas, République Arabe Syrienne
5. **Place or country of destination⁽¹⁰⁾**: Syria
6. **Product to be mobilized**: cereal-based weaning food
7. **Characteristics and quality of the goods⁽³⁾ (7) (8)**: see OJ No C 34, 6. 2. 1993, p. 3 (II. C (1) (b))
— Energy: minimum 450 kcal/100 g. A minimum of 30 % of the energy must be supplied in the form of lipids
8. **Total quantity**: 40 tonnes
9. **Number of lots**: one
10. **Packaging and marking⁽⁹⁾**: OJ No C 34, 6. 2. 1993, p. 3 (II. C (2) (b) and II. C (3))
Markings in English
11. **Method of mobilization**: the Community market
12. **Stage of supply**: free at port of landing — landed
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: Lattakia
16. **Address of the warehouse and, if appropriate, port of landing**: —
17. **Period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage**: 4 — 17. 3. 1996
18. **Deadline for the supply**: 7. 4. 1996
19. **Procedure for determining the costs of supply**: invitation to tender
20. **Date of expiry of the period allowed for submission of tenders**: 12 noon (Brussels time) on 5. 2. 1996
21. **In the case of a second invitation to tender**:
 - (a) deadline for the submission of tenders: 12 noon (Brussels time) on 19. 2. 1996
 - (b) period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage: 18 — 31. 3. 1996
 - (c) deadline for the supply: 21. 4. 1996
22. **Amount of tendering security**: ECU 20 per tonne
23. **Amount of delivery security**: 10 % of the amount of the tender in ecus
24. **Address for submission of tenders and tendering securities⁽¹⁾**: Bureau de l'aide alimentaire, à l'attention de Monsieur T. Vestergaard, bâtiment Loi 130, bureau 7/46, rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel. Attention! New numbers: (telex 25670 AGREC B; fax (32 2) 296 70 03 / 296 70 04)
25. **Refund payable on application by the successful tenderer⁽⁴⁾**: refunds applicable on 2. 2. 1996, fixed in accordance with Article 4 (2), first subparagraph of Regulation (EEC) No 3035/80 (OJ No L 323, 29. 11. 1980, p. 27)

Notes :

- (¹) The operation number should be mentioned in all correspondence.
- (²) The successful tenderer shall contact the recipient as soon as possible to establish which consignment documents are required.
- (³) The successful tenderer shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.

- (⁴) Commission Regulation (EEC) No 2330/87 (OJ No L 210, 1. 8. 1987, p. 56), as last amended by Regulation (EEC) No 2226/89 (OJ No L 214, 25. 7. 1989, p. 10), is applicable as regards the export refund. The date referred to in Article 2 of the said Regulation is that referred to in point 25 of this Annex.

The amount of the refund shall be converted into national currency by applying the agricultural conversion rate applicable on the day of completion of the customs export formalities. The provisions of Articles 13 to 17 of Commission Regulation (EEC) No 1068/93 (OJ No L 108, 1. 5. 1993, p. 106), as last amended by Regulation (EC) No 2853/95 (OJ No L 299, 12. 12. 1995, p. 1) shall not apply to this amount.

- (⁵) The supplier should send a duplicate of the original invoice to : Willis Corroon Scheuer, PO box 1315, NL-1000 BH Amsterdam.
- (⁶) Shipment to take place in 20-foot containers, condition FCL/FCL. The supplier shall be responsible for the cost of making the containers available in the stack position at the container terminal at the port of shipment. The recipient shall be responsible for all subsequent loading costs, including the cost of moving the containers from the container terminal.

The provisions of Article 13 (2), second paragraph, of Regulation (EEC) No 2200/87 shall not apply.

The successful tenderer has to submit to the recipient's agent a complete packing list of each container, specifying number of small packages belonging to each shipping number as specified in the invitation to tender.

The successful tenderer has to seal each container with a numbered locktainer (sysko locktainer 180 seal), the number of which is to be provided to the beneficiary's forwarder.

- (⁷) The successful tenderer shall supply to the beneficiary or its representative, on delivery, the following document :
- health certificate.
- (⁸) Notwithstanding OJ No C 34 of 6. 2. 1993, the third paragraph of point (b) on page 3 is replaced by the following : 'The product shall be prepared principally from one or more milled cereal products. It shall also contain a high-protein food, such as milk or soya concentrate.'

- (⁹) Notwithstanding OJ No C 34 of 6. 2. 1993, the first paragraph of point II.C.2 (b) on page 9 is replaced by the following :

A and B : 'The weaning food is to be packed in airtight sachets, maximum 1 kg, sealed at either end, sufficiently long and provided with a clip so that they can be resealed after opening.'

lot C : 'The weaning food is to be packed in 5 kg metal cans.'

- (¹⁰) Commission delegation to be contacted by the successful tenderer : OJ No C 114, 29. 4. 1991, p. 33.
-

COMMISSION REGULATION (EC) No 78/96
of 19 January 1996
amending Regulation (EEC) No 2742/90 laying down detailed rules for the
application of Council Regulation (EEC) No 2204/90

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2204/90 of 24 July 1990 laying down additional general rules on the common organization of the market in milk and milk products as regards cheese ⁽¹⁾, and in particular the second paragraph of Article 1 and the second subparagraph of Article 3 (3) thereof,

Whereas Article 4 (1) of Commission Regulation (EEC) No 2742/90 ⁽²⁾, as last amended by Regulation (EC) No 1802/95 ⁽³⁾, fixes the sum due for the quantities of casein and/or caseinates used without authorization having regard to the prices for casein and caseinates recorded on the markets in the first half of 1992; whereas the upward trend in those prices during the year 1995 requires that sum to be reduced;

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

Article 4 (1) of Regulation (EEC) No 2742/90 is hereby replaced by the following:

'1. The sum due in accordance with Article 3 (3) of Regulation (EEC) No 2204/90 shall be ECU 183 per 100 kilograms of casein and/or caseinates, having regard to the price for casein and caseinates recorded on the markets in the second half of 1995.'

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, 19 January 1996.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 201, 31. 7. 1990, p. 7.

⁽²⁾ OJ No L 264, 27. 9. 1990, p. 20.

⁽³⁾ OJ No L 174, 26. 7. 1995, p. 27.

COMMISSION REGULATION (EC) No 79/96

of 19 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 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 multilateral 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 20 January 1996.

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

Done at Brussels, 19 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 19 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	64,5	0805 20 13, 0805 20 15, 0805 20 17, 0805 20 19	052	60,0
	060	80,2		464	86,2
	064	59,6		624	79,5
	066	41,7		999	75,2
	068	62,3	0805 30 20	052	66,6
	204	49,0		204	45,8
	208	44,0		388	67,5
	212	117,9		400	50,9
	624	79,5		512	54,8
	999	66,5		520	66,5
0707 00 10	052	111,6		524	100,8
	053	166,9		528	87,1
	060	61,0		600	70,2
	066	53,8		624	57,1
	068	112,7		999	66,7
	204	144,3	0808 10 51, 0808 10 53, 0808 10 59	052	64,0
	624	159,9		053	148,4
0709 10 10	999	115,7		064	78,6
	220	445,7		388	39,2
	999	445,7		400	80,0
0709 90 71	052	99,5		404	69,1
	204	77,5		508	68,4
	412	54,2		512	51,2
	624	204,2		524	57,4
	999	108,8		528	48,0
0805 10 01, 0805 10 05, 0805 10 09	052	51,3		624	85,7
	204	44,7		728	107,3
	208	68,2		800	78,0
	212	42,1		804	21,0
	388	40,5		999	75,0
	448	29,6	0808 20 31	052	86,3
	600	62,5		064	72,5
	624	58,4		388	79,6
	999	48,7		400	91,4
0805 20 11	052	67,2		512	89,7
	204	72,6		528	84,1
	624	86,3		624	79,0
	999	72,0		728	115,4
				800	55,8
				804	112,9
				999	86,7

(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 80/96**of 19 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 65/96 ⁽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 20 January 1996.

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

Done at Brussels, 19 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 13, 18. 1. 1996, p. 19.

ANNEX

to the Commission Regulation of 19 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⁾	29,01	10,73
1701 99 10 ⁽²⁾	29,01	6,21
1701 99 90 ⁽²⁾	29,01	6,21
1702 90 99 ⁽³⁾	0,29	0,36

⁽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.

COUNCIL REGULATION (EC) No 81/96

of 19 January 1996

amending Regulation (EEC) No 2455/93 imposing definitive anti-dumping duties on imports of monosodium glutamate originating in Indonesia, the Republic of Korea and Taiwan and collecting definitively the provisional duties imposed and terminating the proceeding with regard to Thailand

THE COUNCIL OF THE EUROPEAN UNION,

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 Economic Community⁽²⁾, and in particular Articles 12, 14 and 15 thereof,

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

Whereas :

I. PREVIOUS PROCEDURE

- (1) The Council, by Regulation (EEC) No 1798/90⁽³⁾, imposed definitive anti-dumping duties on imports of monosodium glutamate originating in Indonesia, the Republic of Korea, Taiwan, and Thailand with the exception of imports from certain producers in these countries from which the Commission accepted undertakings by Regulation (EEC) No 547/90⁽⁴⁾, Decision 92/493/EEC⁽⁵⁾ and Decision 93/479/EEC⁽⁶⁾.

II. REVIEW INVESTIGATION

- (2) By a notice published in the *Official Journal of the European Communities*⁽⁷⁾, the Commission, after consulting the Advisory Committee and in

accordance with Article 14 of Regulation (EEC) No 2423/88 (hereinafter referred to as 'the Basic Regulation'), initiated a review of the anti-dumping measures in force, following an application lodged by the Community industry.

The application alleged, in particular, that the normal values established originally had generally increased, while the export prices for monosodium glutamate originating in most of the countries concerned had significantly decreased during 1993, thus resulting in increased dumping when compared to the original findings. It was also alleged that the monosodium glutamate originating in the countries concerned had been imported in the Community at prices lower than the price levels contained in the existing price undertakings and that, therefore, the price undertakings were not suitable measures in this proceeding. It was finally alleged that the aforementioned facts have resulted in renewed financial losses for the Community industry, thereby aggravating the injury suffered. The evidence of changed circumstances contained in the application was considered sufficient to justify the opening of a review investigation.

- (3) The Commission officially advised the complainant Community industry, the exporters and the importers known to be concerned and the representatives of the exporting countries, and gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

- (4) The Commission sent questionnaires to parties known to be concerned and received replies to its questionnaires from the complainant Community industry, one Indonesian producer and its related selling company, two Korean producers, two Taiwanese producers, one Thai producer and two importers in the Community.

- (5) One Korean exporter, one Indonesian exporter, one important consumer of monosodium glutamate and the *Fédération des Associations de l'Industrie des Bouillons et Potages de la CEE* requested, and were granted, a hearing.

⁽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 167, 30. 6. 1990, p. 1. Regulation as last amended by Regulation (EEC) No 2455/93 (OJ No L 225, 4. 9. 1993, p. 1).

⁽⁴⁾ OJ No L 56, 3. 3. 1990, p. 23.

⁽⁵⁾ OJ No L 299, 15. 10. 1992, p. 40.

⁽⁶⁾ OJ No L 225, 4. 9. 1993, p. 35.

⁽⁷⁾ OJ No C 187, 9. 7. 1994, p. 13.

- (6) The Commission sought and verified all information it deemed necessary for the purposes of a determination and carried out investigations at the premises of the following companies:

(a) complainant Community producer:

Orsan SA (France);

(b) producers/exporters:

Indonesia:

- PT Indomiwon Citra Inti,
- PT Jico Argung (related selling company of PT Indomiwon Citra Inti);

Republic of Korea:

- Cheil Foods & Chemicals Inc.,
- Miwon Co. Ltd,
- Miwon Trading & Shipping Co. Ltd (related selling company of Miwon Co. Ltd);

Taiwan:

- Ve Wong Corporation,
- Tung Hai Fermentation Ind. Corp.;

Thailand:

- Thai Fermentation Industry Corporation;

(c) importers:

GMS-Chemie-Handelsgesellschaft mbH (Germany).

- (7) As Thai Fermentation Industry Corporation submitted a deficient response to the Commission's questionnaire and refused to cooperate in the verification of the information it submitted, in accordance with Article 7 (7) (b) of the Basic Regulation, the findings had to be based on the facts available.
- (8) The investigation of dumping covered the period from 1 May 1993 to 30 April 1994 (hereinafter referred to as 'the investigation period').

III. CONTINUATION OF EXISTING MEASURES

- (9) As the review investigation was still in progress beyond the normal period of expiry of the measures, the Commission gave notice⁽¹⁾, in accordance with Article 15 (3) of the Basic Regulation, that the measures concerning monosodium glutamate originating in Indonesia, the Republic of Korea, Taiwan and Thailand would remain in force after the end of the relevant five-year period, pending the outcome of the review.

IV. PROVISIONAL MEASURES

- (10) In the course of the review investigation the Commission found that there were reasons to believe that the undertakings referred to in recital 1 were being violated and consequently, by Regulation (EC) No 1754/95 of 18 July 1995⁽²⁾, withdrew its acceptance of the undertakings previously accepted from Cheil Foods & Chemicals Inc., Miwon Co. Ltd, Ve Wong Corporation, Tung Hai Fermentation Ind. Corp., PT Indomiwon Citra Inti and Thai Fermentation Industry Corporation, and imposed instead a provisional anti-dumping duty.
- (11) By Regulation (EC) No 2678/95⁽³⁾, the Council extended the validity of these duties for a period of two months.

V. SUBSEQUENT PROCEDURE

- (12) Following the imposition of the provisional anti-dumping duties, Cheil Foods & Chemicals Inc., Miwon Co. Ltd, PT Indomiwon Citra Inti and Tung Hai Fermentation Ind. Corp. made their views known in writing. Parties who requested were granted a hearing by the Commission.
- (13) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. In particular, further investigations were carried out at the premises of the following importers:
- DCT Chemie BV (Netherlands),
 - Henry Lamotte GmbH (Germany),
 - Quimidroga SA (Spain),
 - Scanchem Ltd (United Kingdom),
 - Superfos Chemicals A/S (Denmark),
 - Tang Frères (France),
 - VOS BV (Netherlands).
- (14) The parties were informed in writing 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 collection of the amounts secured by way of a provisional duty. The parties were also granted a reasonable period within which to make representations subsequent to the disclosure.

The oral and written comments presented by the parties were considered and, where appropriate, the Commission's findings were modified to take account of them.

⁽¹⁾ OJ No C 164, 30. 6. 1995, p. 7.

⁽²⁾ OJ No L 170, 20. 7. 1995, p. 4.

⁽³⁾ OJ No L 275, 18. 11. 1995, p. 22.

- (15) The investigation exceeded the period of one year mentioned in Article 7 (9) (a) of the Basic Regulation due to the unusual complexity of this case. As indicated above, verifications were carried out at the premises of seven importers, the need to obtain and verify additional information only arising at an advanced stage of the investigation.

VI. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Description of the product concerned

- (16) The product covered by the complaint and for which the review investigation was initiated is monosodium glutamate produced in the form of crystals of various sizes and falling within CN code ex 2922 42 10. It is mainly used as flavour enhancer in soups, broths, fish and meat dishes and ready made foods. The product is the same as that in the Regulation under review.
- (17) Monosodium glutamate is available in various packing sizes, ranging from consumer packs of 0,5 gram to 1 000 kilo bulk bags. Smaller packing sizes are sold via retailers to private consumers, while the larger sizes of 25 kilo and more are destined for industrial users. However, there are no differences in the characteristics of monosodium glutamate packed in the various sizes.

2. Like product

- (18) It was found that the conclusions of the Regulation under review are still valid and that monosodium glutamate produced and sold by the Community industry on the Community market is a product like that produced in, and exported from, the four countries in question to the Community.

VII. DUMPING

1. Preliminary remark

- (19) With regard to Thai Fermentation Industry Corporation, it should be noted that this company which was the sole producer in Thailand having submitted information, although incomplete, in response to the Commission's questionnaire, refused to cooperate in the verification of this information. In addition, none of the cooperating importers was supplied by this company. In these circumstances, it was not possible to make an individual finding for this company, and findings

concerning Thailand had to be based on the facts available as described in recital 33.

2. Normal value

(a) *General*

- (20) For all the exporting countries concerned, normal values were established for the relevant product types exported to the Community during the investigation period, i.e. on the basis of packing sizes of 25 kilo bags.

(b) *Indonesia*

- (21) For the cooperating Indonesian producer normal value had to be constructed in accordance with Article 2 (3) (b) (ii) of the Basic Regulation, since almost all of its domestic sales were made at a loss during the investigation period.
- (22) The constructed normal value was based on the company's own manufacturing costs incurred during the investigation period, in accordance with Article 2 (3) (b) (ii) of the Basic Regulation. To these costs, an amount corresponding to the company's own selling, general and administrative expenses was added. In the absence of any information on profits by other Indonesian producers of the like product or in similar business sectors, it was considered that the average profit realised during the investigation period by all other cooperating exporters on their domestic sales of the like product made in the ordinary course of trade would form the most reasonable basis on which to determine profit, since the structure of the markets concerned were to a large extent similar to that in Indonesia.

(c) *Republic of Korea*

- (23) For the two Korean producers which replied to the Commission's questionnaire, normal value was established, in accordance with Article 2 (3) (a) of the Basic Regulation, on the basis of the price actually paid in the ordinary course of trade for domestic sales of the like product, which were made in sufficient quantities to permit a proper comparison.

(d) *Taiwan*

- (24) For the two Taiwanese producers which replied to the Commission's questionnaire, normal value was established, in accordance with Article 2 (3) (a) of the Basic Regulation, on the basis of the price actually paid in the ordinary course of trade for domestic sales of the like product, which were made in sufficient quantities to permit a proper comparison.

3. Export price

- (25) Export prices reported by all cooperating producers in Indonesia, Korea and Taiwan in their replies to the Commission's questionnaire corresponded to the price levels of the price undertakings. However, a verification of these export prices confirmed the allegation in the review application that the price undertakings had been violated and that the export prices reported were unreliable.
- (26) The above conclusion was reached after consideration of the following facts: the Commission requested information on resale prices for the product concerned as well as information on the costs between importation and resale from all importers having purchased monosodium glutamate from those exporters which cooperated in this review.

A number of importers supplied the requested information on resale prices and costs and this information was verified at the premises of those importers which agreed to cooperate further in the investigation. It was found that these latter importers, which had sourced the product concerned from the cooperating exporters in Korea, Indonesia and Taiwan, had all sold the product concerned on the Community market at a loss during the period investigated and, in some cases, the resale price did not even cover the purchase price. This was a regular pattern of pricing behaviour, spanning the entire investigation period, for which no convincing reason could be advanced other than the existence of compensatory arrangements. In addition, clear evidence was found during the verification visits to certain importers that the undertakings accepted from Miwon Co. Ltd (Korea) and PT Indomiwon Citra Inti (Indonesia) had been violated, i.e. that the import prices were not at the level of the price undertakings as demonstrated. In the case of the Indonesian company, the violation was evidenced by the issue of credit notes relating to sales of the product concerned and, in the case of the Korean company, on the existence of correspondence referring to prices substantially below the undertaking price. The above facts alone show that the actual export prices for the transactions concerned were significantly lower than those reported at the undertaking price level.

In the above circumstances, which strongly support the existence of compensatory arrangements and the unreliability of export prices reported, it was concluded that the export prices reported by the cooperating exporters should be reconstructed in accordance with Article 2 (8) (b) of the Basic Regulation i.e. on the basis of the prices at which the

imported product was first sold to independent customers, allowance being made for all costs incurred between importation and resale and for a reasonable profit margin for the importers concerned.

- (27) Accordingly, for the cooperating exporters in Korea, Taiwan and Indonesia, the export price was constructed by deducting from the weighted average resale prices of each of the cooperating importers to the first independent customer, an amount which corresponded to the importers' costs between importation and resale plus an amount for profit of 5 %. This amount of profit was considered reasonable as it was in line with that considered appropriate for the product concerned in previous investigations and was not contested. An additional deduction was made for customs duty and other costs, such as ocean freight and insurance, to arrive at an ex-works level in the countries of origin.
- (28) For those transactions by the cooperating producers for which information on resales by importers could not be obtained, it was concluded that, in the light of the facts revealed by the verification of resale prices of monosodium glutamate exported by those producers carried out at the seven importers referred to in recital 13, the export prices submitted by exporters had to be disregarded for the above same reasons. The export price therefore had to be established, in accordance with Article 7 (7) (b) of the Basic Regulation, on the basis of the facts available, i.e. it was considered that actual export prices in these cases were at the same level as the export prices reconstructed as described in recitals 25 to 27.

4. Comparison

- (29) The weighted average normal value of 25 kilo bags, for each cooperating exporter, was compared with the export price established as described in recitals 25 to 28 at the same level of trade and on an ex-works basis. For the purpose of a fair comparison, due allowance was made for the differences in selling expenses claimed to affect price comparability for which satisfactory evidence was submitted. Adjustments were made, in particular, in respect of transport, insurance, handling, loading and ancillary costs, packing costs, credit and salesmen's salaries.

5. Dumping margins

- (30) The comparison showed the existence of dumping margins, being equal to the amount by which the normal value, as established, exceeded the price for export to the Community.

- (31) The weighted average dumping margin for each producer, expressed as a percentage of the free-at-Community-frontier price, is as follows:

Indonesia

— PT Indomiwon Citra Inti : 64,7 % ;

Republic of Korea

— Cheil Foods & Chemicals Inc. : 13,3 % ,
— Miwon Co. Ltd : 32,7 % ;

Taiwan

— Tung Hai Fermentation Ind. Corp. : 44,2 % ,
— Ve Wong Corporation : 52,4 % .

- (32) For those producers in Indonesia, Korea and Taiwan which neither replied to the Commission's questionnaire nor otherwise made themselves known, the dumping margin was determined on the basis of the facts available in accordance with Article 7 (7) (b) of the Basic Regulation. In this respect, it was considered, in the light of the proportion of the total imports into the Community covered by the cooperating producers in each of the three countries concerned, that the findings made with regard to these companies provided the most appropriate basis for the determination of the dumping margin.

On this basis it was concluded that it would provide a bonus for non-cooperation, and might lead to circumvention of anti-dumping measures, should any of the producers concerned be deemed to have dumped at levels lower than the highest dumping margin found for any producer in the exporting country concerned which had co-operated.

It was, therefore, considered appropriate to use, for the non-cooperating producers concerned, the highest dumping margin found for a cooperating producer in the respective country, i.e. 64,7 % for Indonesia, 32,7 % for Korea and 52,4 % for Taiwan.

- (33) As far as Thailand is concerned, and for the reasons described in recital 19, it was considered appropriate, given the absence of any cooperating producer in this country, to base the country-wide dumping margin on the highest margin found for any cooperating producer in one of the other countries, i.e. 64,7 %.

VIII. INJURY

Preliminary remark

- (34) In accordance with Article 14 of the Basic Regulation, the investigation sought to determine the

extent of any changes in the circumstances established in the Regulation under review with regard to the behaviour of the exporters on the Community market or the situation of the Community industry. Since the original five-year period of validity of the measures being reviewed would normally have lapsed, the question of the likelihood of injury recurring in the absence of measures was also examined.

The examination of the injury trends covered the period from 1991 to 1993 and the investigation period.

A. COMMUNITY INDUSTRY

- (35) The complainant Community producer is the sole producer of the like product in the Community and, consequently, represents total Community production of the product concerned. Therefore, it constitutes the Community industry in the meaning of Article 4 (5) of the Basic Regulation.

B. SITUATION OF THE COMMUNITY INDUSTRY

- (36) As there is only one Community producer of the product concerned and due to the confidential nature of the information relating to injury indicators, the figures describing the development of production, capacity, capacity utilization, Community consumption, sales volume, market shares, price evolution and profitability are given in the form of indices, starting from a base of 100 for 1991 figures.

Production, capacity and capacity utilization

- (37) Production by the Community industry of the product concerned decreased in 1992 to 97,58, but recovered slightly in 1993 to 98,58. During the investigation period, Community production achieved 101,08.

The Community industry's production capacity for the product concerned remained by and large stable. The capacity decreased in 1992 to 99,8 and thereafter increased in 1993 to 101,76 and during the investigation period to 103,72. Between 1991 and the investigation period, the capacity utilization rate varied between 100 and 96,88.

Community consumption

- (38) Community consumption was stable during the period examined. It was, on an indexed basis, 100 in 1991 and decreased to 96,83 in 1992. In 1993, it increased to 101,08 and decreased subsequently to 100,25 during the investigation period.

Sales volume and market shares

- (39) The Community industry's sales volume in tonnes dropped from 100 in 1991 to 93,21 in 1992. In 1993, the quantity sold was 107,36 and during the investigation period it decreased slightly to 106,12.

The market share of the complainant Community producer dropped, also on an indexed basis, from 100 in 1991, to 92,43 in 1992, increased to 102,73 in 1993 and fell again slightly to 102,28 during the investigation period. It should be noted, however, that its market share was at all times very substantial.

Price evolution

- (40) Although the Commission industry's sales prices increased slightly to 101,66 in 1992, they fell substantially in the following year to 95,13. The situation improved somewhat during the investigation period, as the prices recovered to 95,91.

Profitability

- (41) At the outset, it should be noted that, despite the anti-dumping measures in force, the profitability of sales by the Community industry of the product concerned was at no time during the period examined at a satisfactory level, although the Community industry had achieved a reduction in costs of production. Indeed, the Community industry's actual level of profitability was not only far below the level considered by the Regulation under review as appropriate, as evidenced by the request for a review of the undertakings submitted by Community industry in 1992, but remained so low over an extended period of time that the industry's viability was jeopardized. The already low level prevailing in 1991 underwent a further sharp decrease in 1992. The downward trend continued in 1993, when the Community industry came very close to a loss-making situation. The investigation period saw some improvement of profitability which did not, however, reach the level of 1991. When considering profitability, it should also be borne in mind that, as mentioned above, its decline would have been even more significant had the Community producer not achieved a reduction in costs of production.

Conclusion

- (42) The examination of the abovementioned indicators shows that, notwithstanding certain positive effects of the anti-dumping measures currently in force, the financial situation of the Community industry remains precarious. While material injury was established by the Regulation subject to review for the period from January 1989 to September 1992, the examination of the facts established in the current review demonstrates that material injury has persisted in the subsequent period. This is shown in particular by the further decrease in prices and the persistent extremely low level of profitability.

C. BEHAVIOUR OF THE EXPORTERS CONCERNED

Volume of imports

- (43) The volume of imports from the four countries concerned increased from 11 228 tonnes in 1991 to 12 871 tonnes in 1992, but decreased thereafter to 7 921 tonnes in 1993 and 7 478 tonnes in the investigation period. With the exception of Thailand, the imports of the product concerned broken down by the four countries involved, follow, by and large, a similar pattern to the development of total imports of monosodium glutamate from Indonesia, Korea, Taiwan and Thailand. They represented the following market shares:

	(in %)			
	1991	1992	1993	Investigation period
Indonesia	2,99	3,55	3,21	2,34
Korea	9,94	12,34	6,78	7,39
Taiwan	7,56	8,55	4,61	4,24
Thailand	0,70	0,64	0,18	0,10

This represents a development of the total market share of the imports concerned from 21,18 % in 1991 to 25,07 % in 1992 with a subsequent decrease to 14,78 % in 1993 and 14,07 % in the investigation period.

Prices of the dumped imports

- (44) It was investigated whether the exporting producers had undercut the prices of the Community industry during the investigation period. A comparison was therefore made on the basis of the constructed weighted average export price (cif Community frontier, duty paid) as established in recitals 25 to 28 and the Community industry's weighted average ex-works selling price for monosodium glutamate sold in the Community.

The level of undercutting of the Community industry's prices was found to range between 20 % and 22 % for imports originating in Taiwan, between 9 % and 11 % for imports originating in the Republic of Korea and 26 % for imports originating in Indonesia. With regard to the Thai exporter, it was not considered possible to calculate undercutting given the fact that, as set out in recital 19, they did not cooperate in the investigation. In view of the conclusion reached on the existence of compensatory arrangements, entered into by the cooperating exporters (see recital 26), Eurostat figures concerning imports from Thailand could not be considered as a reliable source.

Conclusion

- (45) Although the market penetration of imports from the countries concerned has decreased considerably, their market share has remained substantial, and a clear pattern of price undercutting has emerged.

D. CAUSE OF INJURY

1. Cumulation

- (46) As far as imports from Thailand are concerned, it was concluded that these imports, whose market share decreased to 0,1 % in the investigation period, should not be analysed cumulatively with imports of the other countries concerned with a view to determining their effect on the situation of the Community industry as such a low import volume could not have any serious impact on the latter.

As in the original investigation and the reviews carried out prior to this review, it was found that the effects of the imports from Korea, Taiwan, and Indonesia have to be analysed cumulatively, since the imports of the product under consideration originating in each of these countries are alike in all respects, interchangeable and followed the same pricing behaviour. These imports competed with the like product manufactured by the Community industry and with each other.

2. Effect of the dumped imports from the countries concerned

- (47) In determining whether any changes had occurred in the causal link established by the Regulation and the Commission decision subject to review between the dumped imports and the material injury, the further developments since these earlier findings

were examined. While some of the Community industry's indicators improved, its performance remained poor in particular regarding its price level, which fell after the imposition of the measures, and its continuing low profitability. The latter can clearly be linked to the pricing behaviour of the exporters as established in recitals 25 to 28 which through price undercutting in a price sensitive market managed to maintain their pressure on the prices of the Community industry.

- (48) Taking this into consideration as well as the fact, as was outlined above, that the volume of imports from the three countries concerned remained at a substantial level, there cannot be any reasonable doubt that these imports have been a decisive factor on the Community industry's continuing poor financial situation.

In conclusion, although certain improvements occurred in the Community industry, it is still experiencing overall material injury as a result of the behaviour of the Indonesian, Korean and Taiwanese exporters which, through price undercutting, could not fail to affect severely an industry in the process of recovering from dumping.

3. Effect of other factors

- (49) The impact on the situation of the Community industry of factors other than the dumped imports concerned was also examined.

Imports from Brazil

- (50) It was alleged that the Community producer imported substantial quantities of the product concerned from Brazil at prices with which exporters from the four countries in question were prevented from competing. It was found that the Community producer imported monosodium glutamate from Brazil during the investigation period in order to meet a sudden surge in demand and to counteract the effects of industrial action. The Community producer's imports only however represented a small proportion of its output. Consequently, the purpose of these imports by the Community producer was to defend its competitive position in the Community and to maintain its market share. Moreover, contrary to the above allegation, these products were imported and resold at a price level which was comparable with the Community producer's own production costs and selling prices respectively.

- (51) Some interested parties claimed that imports of monosodium glutamate from Brazil were the reason for the difficult situation of the Community industry.

It was found that, while imports originating in Brazil increased substantially over the period examined (from 1 076 tonnes in 1991 to 4 376 tonnes during the investigation period), the price levels of these imports, on the basis of information from Eurostat, increased slightly. Even were it to be concluded that imports from Brazil had contributed to the injury suffered by the Community industry, this would not alter the fact that the injury caused by the dumped imports concerned, taken in isolation, is material.

Imports from the United States of America

- (52) One party claimed that imports of monosodium glutamate from the United States of America might be responsible for the difficult situation of the Community industry.

It was found, however, that imports from the United States during the period examined remained at negligible levels (23 tonnes in 1991 and 27 tonnes in 1993 and, in terms of market shares, 0,04 % in 1991 and 0,05 % in 1993) and were sold at prices well above those of the dumped imports. It was, in addition, claimed by the complainant that imports originating in the United States surged in July and August 1994. This development, however, took place after the investigation period and, therefore, could not be taken into consideration, in conformity with the Community institutions consistent practice, for the purpose of the present injury determination. Indeed, the final determination of the facts in an investigation always refers to the investigation period. Developments, which occurred after the end of this period, cannot be taken into consideration since any other method would render the investigation virtually permanent, so that operators concerned could manipulate the results by short-lived changes of the pricing policy. Finally, neither the Basic Regulation nor the Agreement on Implementation of Article VI of GATT 1994 warrant another method.

Therefore, imports from the United States could not have had any significant negative impact on the situation of the Community industry during the period considered which ended in April 1994.

Other imports

- (53) The effects of imports other than those from Brazil, the United States and the four countries concerned on the Community industry were also examined on the basis of the figures reported by Eurostat. These

imports, made mainly from Switzerland, Austria, China, Japan and Hong Kong, were, with the exception of Hong Kong, usually at significantly higher prices than those from the four countries concerned. The quantities imported from Hong Kong were, in any event, very low. In this context, it is interesting to note that neither Switzerland, Austria nor Hong Kong had any production facilities for monosodium glutamate.

In these circumstances, it can be ruled out that these other imports have had any significant adverse impact on the situation of the Community industry.

Mismanagement of the Community industry

- (54) One importer and the *Fédération des Associations de l'Industrie des Bouillons et Potages de la CEE* alleged that the Community industry used outdated technology in order to produce the product concerned. It was also alleged that the injury sustained by the Community industry was due, at least in part, to the Community industry's own deficient management and know-how.

However, these allegations were not substantiated and, therefore, had to be rejected. They were also contradicted by the Commission's own findings on the productivity and efficiency of the Community industry, as shown by its successful rationalization efforts.

4. Conclusion

- (55) In these circumstances, it was concluded that, even were it accepted that the factors mentioned above had an adverse effect on the situation of the Community industry, the dumped imports from Indonesia, Korea, and Taiwan had, taken in isolation, continued to cause material injury to the Community industry.

E. RECURRENCE OF INJURY

- (56) In the light of the above analysis and in order to assess the effect of expiry of the measures in force, the following was considered :
- (57) — as far as Thailand is concerned, as stated in recital 46, the impact of exports from this country is negligible and there is no indication of a possible resurgence of dumped imports. The measures should therefore be repealed,

- monosodium glutamate is a commodity and price is the key factor in customer choice, all customers being industrial users. Sales at low prices have therefore inevitable substitution effects as certain customers choose to be supplied at the lowest price offered,
 - undercutting margins of up to 26 % have been established. These injurious prices would most likely persist in the future and would continue to prevent the Community industry recovering from injury, the situation of which would be further aggravated should the anti-dumping measures currently in force not be continued.
 - further evidence of the need for the Community industry to continue to be protected against injurious dumping is the behaviour of the exporters which led to the withdrawal of the undertakings by the Commission. Export prices reported by the exporters had to be considered as unreliable because of low resale prices on the Community market which can only be explained by the existence of compensatory arrangements. The likelihood of injurious dumping recurring is also confirmed by information received by the Commission concerning exports of monosodium glutamate originating in the four countries concerned which were made to the three new Member States before their Accession. These exports were found to have been made at prices substantially lower than the price level in the Community, demonstrating the propensity for dumping by the countries concerned.
- (58) Under these circumstances it is concluded that the injury already suffered by the Community industry and caused by dumped imports from Korea, Taiwan and Indonesia could only worsen if measures were allowed to lapse.
- (61) One interested party argued that to maintain the anti-dumping measures at their current level would allow the Community industry to reinforce its strong position on the Community market to the detriment of users of monosodium glutamate. In this respect, it should be noted that, notwithstanding the significant share of the Community market held by the Community industry, there is sufficient competition in that market as demonstrated by the presence of imports from seven other countries during the investigation period, equal in volume to those from the countries concerned. As far as the impact of anti-dumping measures on the situation of the Community users of monosodium was concerned, it was acknowledged that any increase of the price of inputs was of importance to them. However, although the industry using monosodium glutamate refused to indicate the percentage of its total costs attributable to monosodium glutamate, it did not deny that, as revealed by the investigation, the price of monosodium glutamate has only a minor effect on the costs of the products in which it was used.
- (62) In the light of the above, it is considered to be in the interest of the Community that the anti-dumping measures remain in force, duly amended, in order to give the Community industry the necessary opportunity to continue to redress its precarious financial situation.

IX. COMMUNITY INTEREST

- (59) In Regulation (EEC) No 2455/93, the Council concluded that it was in the Community interest that measures be imposed on imports of monosodium glutamate from the four countries concerned. It was found that the conclusion on Community interest as set out in the Regulation subject to review should remain unchanged since in the subsequent period the development of the facts underlying this conclusion have only strengthened the case for maintaining the measures.
- (60) It should be noted that monosodium glutamate production is subject to strict environmental stan-

X. AMENDMENT OF THE MEASURES IN FORCE

1. Cooperating exporters

- (63) The cooperating exporters, on being informed of the findings of the investigation, offered new minimum price undertakings in respect of exports to the Community of the product concerned. However, for the reasons described in recitals 25 to 28 above, it was considered that undertakings were not an appropriate measure for removing the injury being suffered by the Community industry. Indeed, the undertakings previously accepted had to be

withdrawn owing to violation and no appropriate guarantees were given by the exporters regarding price levels or compliance that could justify the acceptance of such undertakings. Accordingly, the undertakings offered were, after consultation, not accepted by the Commission.

- (64) For the purpose of establishing the level of the duty to be imposed, account was taken of the dumping margins found and of the amount of duty necessary to eliminate the remaining injury sustained by the Community industry.

Since the remaining injury consisted mainly of price depression and continuing abnormal low profitability, the removal of such injury required that the industry be put in a position in which its prices could be increased to a profitable level. In order to achieve this, export prices should be increased accordingly. For calculating the necessary price increase, it was considered that prices of the dumped imports had to be compared with the cost of production of the Community industry plus a margin of profit sufficient to ensure the viability of that industry.

On this basis, the weighted average export prices were compared, for the investigation period, on a free-at-Community-frontier level increased by customs duties, where appropriate, with the cost of production of the Community producer concerned, plus a margin of profit. This profit level used, which cannot be stated for reasons of confidentiality and which did not reach the level of profits made by that producer prior to the impact of the imports concerned, is considered to be obtainable in the absence of dumped imports and is in line with that considered reasonable by the Commission in the original investigation.

These comparisons showed injury margins which, expressed on a weighted average basis as a percentage of the free-at-Community-frontier price, ranged from 25,4 % to 35,7 %.

- (65) For one exporter, the margin of dumping found was below the corresponding increase in export prices necessary to remove the injury as calculated

above. The duty to be imposed for this company should, therefore, correspond to the dumping margin established. For the other cooperating exporters, as the margins of dumping found were above the corresponding increases in export prices necessary to remove the injury, as calculated above, the duties to be imposed for these companies should, therefore, correspond to the injury margins established.

- (66) Given the potential for absorption of the effect of an *ad valorem* anti-dumping duty and given the violation of the undertakings, as established, a duty should be imposed in the form of a specific duty, i.e. fixed amount of ecus per kilo.

2. Other producers in the exporting countries concerned

- (67) The cooperating exporters accounted for a very high proportion of total exports of the product concerned to the Community. In establishing the level of duty for producers in the countries concerned which neither replied to the Commission's questionnaire nor otherwise made themselves known, it was, therefore, considered appropriate to establish the level of duty applicable to such producers at the highest amount of duty found for an exporter in each country.

3. Conclusion

- (68) The Regulation subject to review should therefore be amended in accordance with the above findings.

XI. COLLECTION OF THE PROVISIONAL DUTY

- (69) In view of the dumping margins established, the violation of the undertakings and of the seriousness of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty be definitively collected, with the exception of those collected for imports from Thailand for the reasons set out in recital 57,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1 of Regulation (EEC) No 2455/93 shall be replaced by the following:

Article 1

1. Definitive anti-dumping duties are hereby imposed on imports of monosodium glutamate, falling within CN code 2922 42 10, originating in Indonesia, the Republic of Korea and Taiwan.
2. The rates of duty applicable of the net free-at-Community-frontier price, before duty, shall be as follows:

Country	Products manufactured by	Amount of duty (ECU per kilogram)	Taric additional code
Indonesia	All companies	0,334	—
Republic of Korea	— Cheil Foods & Chemicals Ltd	0,129	8843
	— All other companies	0,286	8876
Taiwan	All companies	0,289	—

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

Article 2

The amounts secured by way of provisional anti-dumping duties pursuant to Regulation (EC) No 1754/95 shall be definitively collected in full. The amount secured by way of provisional duty on imports from Thailand 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, 19 January 1996.

For the Council

The President

W. LUCCHETTI

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 4 October 1995

concerning aid granted by the Flemish region of Belgium to the truck producer
DAF

(Only the French and Dutch texts are authentic)

(Text with EEA relevance)

(96/75/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Agreement establishing the European Economic Area, and in particular point (a) of Article 62 (1) thereof,

Having given the parties concerned the opportunity to submit their comments, in accordance with the above-mentioned Articles⁽¹⁾,

Whereas :

I

By letter dated 2 December 1993, the Commission informed the Belgian government of its decision to initiate the procedure provided for in Article 93 (2) of the EC Treaty in respect of the public intervention of the Flemish Region of Belgium in the new DAF company as well as of any possible aid elements contained in the dissolution of the former DAF company and requested it to submit its comments within one month from the date of that letter.

In opening the procedure, the Commission expressed its serious doubts as to the compatibility of the aid with the common market for the following reasons :

⁽¹⁾ OJ No C 31, 2. 2. 1994, p. 4.

- the public interventions concerned a company in difficulties, operating in a sector which suffers from surplus capacity,
- the public participation in the new DAF company, (including an equity participation and a risk-bearing loan) could possibly not be in conformity with standard company practice in a market economy,
- no premium was charged for the transfer from the old to the new company of commercial loans which partly contained a State guarantee,
- the sale of the assets of the old company DAF to the new company and the role of the public authorities may imply that a financial advantage, in the form of a lower purchase price of those assets, has been conferred on the new company.

Since the guidelines on State aid to the motor vehicle industry apply, the Commission added that aid could be subjected to appropriate strict conditions. Such conditions could only be imposed by a final decision following this procedure.

II

Following the opening of the procedure, the Belgian Permanent Representation submitted the comments of the Flemish government by letter dated 23 February 1994. By letter from the Belgian Permanent Representation dated 12 October 1994, the Commission received supplementary information from the Flemish authorities in response to the Commission's detailed questionnaire of 14 June 1994.

In order to prepare the visit to the DAF plants in Westerlo and Eindhoven, the Commission requested additional information in its letter of 14 November 1994, addressed to the Flemish authorities and the Dutch government. By letter dated 23 January 1995 the Dutch government replied to those questions. The two company visits took place on 30 January 1995, followed by a final meeting between the Commission, the authorities of both Member States, and DAF's management in Eindhoven on 1 February 1995.

By fax dated 6 February 1995, the Commission raised some final questions to which the Dutch and Flemish authorities replied at their meeting with Commission staff on 14 February 1995.

On 6 March 1995, a further meeting was held between the Commission and the Flemish and Dutch authorities, focussing on the circumstances of the receivership of DAF NV and its take-over by DAF Trucks NV. During the discussion, some questions relating to the bankruptcy procedure were raised by the Commission. The answers drawn up by the legal advisers of the Dutch State dated 23 March 1995 were faxed to the Commission on the same day. At the meetings focused on the Dutch receivership, the Belgian authorities did not formally submit any comments.

III

By letter dated 16 February 1994, the Commission requested the Belgian government to submit its comments on observations made by Klesch & Company Limited which the Commission received on 30 November 1993. That company had argued that it submitted an offer, subject to contract, to the receivers on 24 February 1993 for the same assets purchased by DAF Trucks NV. Their offer was rebuffed because, in their view, the receivers wished to sell the assets to a government-led group below the market price.

The Belgian government replied by letter of 12 October 1994, basically arguing that they were never informed about such offer.

On 28 February 1994, several shareholders of DAF Trucks NV — the VDL Groep, Nationale Nederlanden, DAF Trucks NV and Evicar — submitted their comments following the opening of procedure. By that date the Commission had also received comments from DAF Trucks NV as well as from the Dutch receivers where they stated they were ready to send further information if necessary. By letter dated 1 June 1994, the Commission addressed a request for information to the receivers who answered on 1 August 1994.

The comments of the abovementioned parties, who all supported the view expressed by the Belgian government,

were transmitted to the latter for its observations on 18 May 1995. The Belgian authorities did not formally react to them.

The Commission did not receive any comments from other interested parties or from Member States following the publication of the opening of the Article 93 (2) procedure in the *Official Journal of the European Communities*.

IV

In the view of the Flemish authorities, a distinction has to be made with regard to the State participation between the subordinated loan and the share capital.

As regards the subordinated loan of Bfrs 370 million, the Flemish government argued that the loan was granted by the NMKN and not by the Flemish Region and is thus not paid from State resources and consequently cannot contain State aid. In 1984, the NMKN had awarded an investment credit of Bfrs 2,1 billion to a Belgian company NV DAF Trucks, which was absorbed by DAF België NV and, therefore, the credit was transferred to the latter company in 1990. When this company was declared bankrupt on 26 February 1993, this credit was guaranteed by a mortgage on the buildings and a pledge on the business concern, both in the first rank, and by guarantees of the State as well as the Flemish Region. When DAF Trucks Vlaanderen took over DAF België NV this credit was transferred again and by this transfer Bfrs 370 million was subordinated. Since this transferred part of the credit is guaranteed by the Flemish Region, the NMKN does not consider this loan as subordinated or risk-bearing. So, if the subordinated loan could contain a State aid element, it can relate only to the public guarantee covering that amount. However, the Flemish government admitted that awarding subordinated loans does not constitute a regular practice of Belgian financial institutions and that only one other subordinated loan was awarded by the NMKN during the same period, apart from the DAF case.

As regards the actual participation by the Flemish authorities in DAF Trucks NV, the NV Truck Financiering, which is founded and financed by the Gewestelijke Investeringsmaatschappij voor Vlaanderen (called 'GIMV') has participated in the equity capital of the NV DAF Trucks Vlaanderen to an amount of Bfrs 251,3 million and in the risk capital of the NV DAF Trucks to an amount of Bfrs 743,2 million. Thus, the Flemish Region holds an indirect participation of 25,13 % in the Belgian subsidiary and a direct participation in the parent company of 10,78 %. The Flemish Government argued that, apart from the distinction between A and B shares, the Flemish Region as well as other shareholders participated under equal conditions. Moreover, the Flemish Region sought to acquire only preferred A shares in NV DAF Trucks and

only B shares which are also the preferential shares in NV DAF Trucks Vlaanderen. From 1 January 2000, the distinction between the A and B shares will lapse. Furthermore, the Flemish Region, as other investors, based its decision on a business plan, different from the former restructuring plan, whose feasibility was assessed by external consultants and which showed good prospects of viability and profitability. Also, the Flemish Government attached great importance to regional interests and to the possibility of maintaining a good part of DAF's workforce. Hence, the Flemish Region did not participate under less favourable conditions than the other shareholders.

As regards the 'legal succession', the Flemish government points out that this is only the case when all the assets and liabilities are transferred to the new company and in the case at issue only the assets were transferred for an amount of Fl 75 million. Of this amount, 3 million was paid in cash and 72 million was paid by a transfer of debts to the new company, which constitutes a normal form of payment. NMKN, as secured creditor agreed with this form of payment provided the mortgage, the pledge and the State and regional guarantee were preserved, which has been the case. Taking into account the above-mentioned arguments and the fact that the new company would no longer be a full-line truck manufacturer, the Flemish government concludes that there is no question of legal succession.

With regard to the risk premium, linked to the transfer of the partly privileged and partly subordinated credits to the new company, which contained a public guarantee, the Flemish government argued that the State and regional guarantee were maintained but that the total value of the guarantee was decreased to Bfrs 1 014,6 million keeping, however, the level of interest rate in line with the market rate. The subordinated part was covered by the Flemish Region guarantee while the rest of the transferred credit is covered, like the original credit, by a mortgage and a pledge in the first rank in favour of the NMKN, and partly by a State and Region guarantee. In order to maintain the Flemish Region guarantee, an additional premium was charged and paid but it was based only on the increased amount of outstanding guarantee, i.e. Bfrs 390 million. In line with the approved aid system and in the light of the duration of the loan, a 1,5 % premium or Bfrs 5,975 million was charged to the company and 0,5 % to the lending financial institution.

With regard to the purchase price of the Belgian assets and the role of the public authorities in the sale of the assets, the Flemish government argued that:

- according to Belgian bankruptcy law, the Belgian subsidiary was declared bankrupt on 26 February 1993, as a receivership (*surséance van betaling*) does not exist. Three administrators (*curatoren*) were appointed, who must sell the company's assets at as high a price as possible and divide the proceeds of sale among the creditors. They exercise their duties under the supervision of a judge (*rechter-commissaris*). As such, total independence of any public authority is safeguarded by law,
- the rapidity of the sale constitutes a normal practice since the administrators were dealing with the sale of a company as a going concern which would normally result in a higher price than a piecemeal sale of the assets,
- the secured creditors agreed with the proposal purchase price of Fl 75 million and no other creditor protested against the contemplated sale,
- in January and February 1993, there was a lot of publicity with regard to DAF's problems, also on an international level. Although other interested parties had the opportunity, no other potential buyer made an offer. Neither the Belgian administrators, nor the supervisory judge were ever informed of any higher bid made to the Dutch receivers for the assets of DAF located in Belgium,
- the sale of assets of DAF België NV was decided on 2 March 1993 after meetings with the president of the relevant commercial court and the supervisory judge, on the basis of available independent appraisal reports forwarded by the prospective buyers. Put under pressure by these candidate buyers, the administrators had no other option than to seek the court's agreement for the sale at the price of Fl 75 million,
- the future of DAF België NV was linked to that of the Dutch parent company. The purchase as a going concern of DAF België NV was only possible in the framework of a global purchase of at least a part of the assets of the Belgo-Dutch company,
- the total purchase price of the assets was higher than the liquidation value and lower than the value as a going concern (or value as part of a global sale). By accepting the proposed purchase price, at least the liquidation could be avoided. The task of the receivers is to sell the bankrupt's estate at as high a price as possible, which they have tried to do.

With regard to the purchase price of the assets purchased by DAF Trucks NV, the Flemish government argued that:

- the global sale price for the Dutch and Flemish assets of DAF NV of Fl 482 million based on independent appraisal reports was higher than the liquidation value of Fl 293,5 million and lower than the value as part of a global sale of Fl 640 million on the basis that it would continue as a going concern. However, the difference as regards the last-named sum is explained by the lower production planned by the new owners, by the fact that only part of the assets remained as a going concern because the company had declined during the receivership, by commercial obligations that had to be taken over as well as some creditors' claims, by the need to put the Eindhoven plant back into order and by the need to recruit 3 500 employees. Thus, according to the Flemish government, the price reflected a fair market value and did not contain a State aid element,
- all the shareholders took their investment decision on the basis of a business plan the feasibility of which was assessed by external consultants. This business plan is not as stated by the Commission, the same plan as the restructuring plan which existed when the company went into receivership (full line-manufacturer against manufacturer of medium-sized and heavy trucks). The business plan gives the new company good prospects of viability and profitability and for this reason private investors were sought to participate,
- the Flemish authorities attached great importance to regional interests and to the possibility of maintaining a large part of the old workforce. DAF Trucks NV would continue to employ 3 500 people and would allow the production of cabins and axles in Westerlo to continue. The Flemish government argued that since the necessary investments existed at Westerlo and since the number of 3 500 was meant for the two new companies, which offers some room for flexibility, these conditions are not in conflict with the private investor principle and do not limit the optimal allocation of resources. The Flemish Region has operated like an ordinary investor who invests its capital with a view to normal long-term remuneration (see the Court of Justice's judgments in Cases C-305/89 and C-303/88).

V

When initiating the Article 93 (2) procedure, the Commission cited the following public interventions of the Flemish Region in favour of DAF which required

further analysis with regard to Article 92 of the EC Treaty and for the following reasons:

- the sale of the assets of the former DAF to the new company and the role of the public authorities may imply that a financial advantage in the form of a lower purchase price of those assets, including new technology and a large stock of unsold trucks, at a price lower than could have been obtained in a competitive bid, has been conferred on the new company. This made it possible for the new legal entity, but essentially the same company as before, to continue to compete without the burden of the past,
- the terms of the public participation in the risk capital of the new company (Bfrs 983,7 million equity capital and Bfrs 370 risk-bearing loan) should be examined in the light of the private investor principle and be compared with the terms at which private investors participated in the new company. To the extent that these measures contained State aid elements to the new company, the business plan should be examined in the light of the provisions of the guidelines on State aid for the motor vehicle industry as regards restructuring aid,
- the fact that no premium for the public guarantee was requested by either the Belgian State or the Flemish Region on the Bfrs 644,5 million commercial debt which has been transferred by the NMKN from the old to the new company.

Consequently, immediately in opening the procedure, the Commission concluded that all aid granted to the Belgian subsidiary of the old DAF company was fully recovered in the sale of those assets, so that there was no State aid granted by the Belgian authorities to the former DAF company in this context.

Following a detailed examination of the information received during the course of this procedure as well as the procedure with regard to aid granted by the Dutch authorities to DAF, it is the Commission's view as concerns the sale of the assets of DAF België NV and the role of the public authorities in the sale that the administrators have acted in an independent manner, as was required of them. Considering the economic dependency of those assets on the assets of the parent company, for which a global price was already agreed beforehand subject to the acceptance by the Belgian administrators of the offer for the Belgian assets of DAF NV, they have sold those assets at a reasonable price, which is superior to the liquidation value of those assets. While it can be argued from an economic point of view that DAF Trucks Vlaanderen NV obtained a financial advantage in the form of a lower purchase price of those assets than possible in a competitive bid, it is not mandatory for the administrators to organize such a bid. Considering also the information at their disposal and the time pressure imposed on them by the prospective

buyers, it is fair to conclude that the administrators have carried out their duties by selling the assets in question at as high a price as possible. Finally, it was confirmed that the two companies (DAF België NV and DAF Trucks Vlaanderen NV) are legally different entities, fully independent one from another.

As regards the sale of the assets of the parent company DAF NV and the role of the public authorities in that sale, reference is made to the parallel decision taken by the Commission in case C-38/93.

With regard to the State participation in the risk capital of DAF Trucks NV and DAF Trucks Vlaanderen NV, the presumption mentioned in opening the procedure that the State participation may constitute State aid can, according to the Commission, not be maintained. Upon verification of the shareholders' agreement and other relevant material, it must be concluded that the State provided risk capital under the same conditions as the private shareholders, whose holding has real economic significance. Detailed examination of the business plan has shown that a reasonable return on the shareholders' capital can be expected. Reviewing also the comments on the conditions attached by the Flemish authorities to their shareholding, it must be concluded that this shareholding corresponds to the market investor principle⁽¹⁾. It does, therefore, not contain any State aid.

With respect to the risk premiums on the public guarantees on commercial and risk-bearing loans to DAF Trucks Vlaanderen NV charged or not charged by the Belgian State or the Flemish Region, it is the Commission's view that this transfer and rescheduling of loans and guarantees by the NMKN and the public authorities is in conformity with Belgian law and practice. While the Commission shares the view of the Flemish authorities that this transfer of debt does not mean that the new company is the legal successor of the old company, it cannot be concluded that the old company has in part already paid, for the benefit of the new company, the risk premiums on the public guarantees.

DAF Trucks Vlaanderen NV is benefiting from a State guarantee of Bfrs 223,35 million and a guarantee from the Flemish Region of Bfrs 791,25 million. In only paid a risk premium of 1,5 % on Bfrs 395 million to the Flemish Region, corresponding to the degree of increase in guarantee by the Flemish Region. It is also worth noting that the decrease in guarantee by the Belgian State more than compensates for the said increase. By not paying the

risk premium of 1,5 % on the remaining public guarantees provided by the Belgian State and the Flemish Region totalling Bfrs 619,6 million, the new DAF company obtained an artificial financial advantage which the Commission valued at Bfrs 9,294 million at the moment of transfer of the debt and guarantees.

Considering that DAF Trucks Vlaanderen NV produces axles and cabins for the trucks sold by DAF Trucks NV on the highly competitive European truck market where DAF holds a 6,8 % share (above 6 tonnes GVW), it must be concluded that this aid measure falls under the provisions of Article 92 (1) of the EC Treaty and Article 61 (1) of the EEA Agreement.

VI

By not notifying the abovementioned aid measure in favour of DAF Trucks Vlaanderen NV, the Belgian government has infringed Article 93 (3) of the EC Treaty. Since the Belgian government did not notify the aid measures in good time, the Commission was not able to submit its comments on the measures before they were implemented. As the aid was thus granted in breach of Article 93 (3) of the EC Treaty, it is unlawful.

VII

It is the Commission's view that the illegal aid of Bfrs 9,294 million awarded to DAF Trucks Vlaanderen NV in the form of not charging the usual risk premium on Bfrs 619,6 million of public guarantees taken over from the bankrupt company DAF België NV, is not compatible with the EC Treaty.

Article 92 (1) lays down the principle that, except where otherwise provided, aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade among Member States, incompatible with the common market. However, Article 92 (2) and (3) set out the circumstances in which such aid is or may be allowed.

Article 92 (2) specifies certain types of aid that are compatible with the common market. Because of the character, location and purpose of the aid in question, it does not satisfy the criteria specified.

Article 92 (3) adds that other aid may be compatible with the common market. Compatibility must be determined in the context of the Community and not of a single Member State. In order to safeguard the proper functioning of the common market and, taking into account

⁽¹⁾ See Commission communication on the financial activities between Member States and public undertakings (OJ No C 273, 18. 10. 1991).

the principles of Article 3 (g) of the EC Treaty, the exceptions to the principle set out in Article 92 (1) to be found in Article 92 (3) must be construed narrowly when scrutinizing any aid scheme or individual award.

In particular, the Commission has, for the motor vehicle industry, adopted Community guidelines setting out the criteria for assessing the compatibility with the common market of aid to this industry, thereby limiting the scope of discretion under Article 92 (3).

Given that the aid was awarded to the subsidiary of a motor vehicle manufacturer producing truck axles and cabins, and that the aid was not based on an approved aid scheme and was not linked to a particular project, such aid should have been notified according to the guidelines for State aid to the motor vehicle industry. The Commission has therefore to consider whether this aid was compatible with the said assessment criteria.

It is the Commission's view that the aid was evidently not linked to any of the six initial criteria listed in the guidelines namely rescue and restructuring aid, regional aid, investment aid for innovation or fundamental rationalization, aid for research and development, aid for environmental protection or energy saving and aid for vocational training. The Belgian authorities have, moreover, not argued that any such objectives were envisaged by this financial investment. In particular, although the area where the plant is located is eligible for regional aid under point (c) of Article 92 (3), it must be concluded that the aid under examination does not correspond to a normal application of regional aid nor can it be considered as having a regional objective. This therefore leaves the seventh case, namely operating aid. The guidelines provide that no new operating aid will be authorized in this sector, given the particular distortive effects of such aid and the absence of any link with the abovementioned objectives.

Consequently, the Commission must conclude that the Bfrs 9,29 million operating aid awarded by the Belgian authorities to DAF Trucks Vlaanderen NV is not compatible with the conditions which have to be fulfilled in order to apply the exception provided in point (c) of Article 92 (3), as specified in the Community guidelines on State aid to the motor vehicle industry.

In view of all the foregoing considerations, the aid measure in support of the DAF Trucks Vlaanderen NV is

not only illegal because the Belgian government did not fulfil its obligations under Article 93 (3) but is also incompatible with the common market as it does not meet the conditions which must be satisfied in order to apply any of the exceptions set out in Article 92. Consequently, it is also incompatible with the functioning of the EEA Agreement,

HAS ADOPTED THIS DECISION :

Article 1

The aid awarded by the Flemish Region of Belgium to DAF Trucks Vlaanderen NV and valued at Bfrs 9 294 000 on the date of its award is illegal and incompatible with the common market within the meaning of Article 92 (1) of the EC Treaty and, therefore, incompatible with the functioning of the EEA Agreement.

Article 2

The Belgian government shall recover the Bfrs 9 294 000 from DAF Trucks Vlaanderen NV and shall charge interest on this amount from the date of its award at a rate equal to the percentage value on that date of the reference rate used for the calculation of the net grant equivalent of regional aid in Belgium.

Article 3

The Belgian government shall inform the Commission within two months of the date of notification of this Decision of the measures taken to comply.

Article 4

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 4 October 1995.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION

of 4 October 1995

concerning aid granted by the Netherlands to the truck producer DAF

(Only the Dutch text is authentic)

(Text with EEA relevance)

(96/76/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Agreement establishing the European Economic Area, and in particular point (a) of Article 62 (1) thereof,

Having given the parties concerned the opportunity to submit their comments, in accordance with the above-mentioned Articles (¹),

Whereas :

I

By letter dated 16 November 1993, the Commission informed the Dutch government of its decision to initiate the procedure provided for in Article 93 (2) of the EC Treaty in respect of the public intervention of the Dutch government in the new DAF company (DAF Trucks NV) as well as of any possible aid elements contained in the dissolution of the former DAF company (DAF NV) and requested it to submit its comments within one month from the date of that letter.

In opening the procedure, the Commission expressed its serious doubts as to the compatibility of the aid for the following reasons :

- the public intervention concerned a company in difficulties, operating in a sector which suffers from surplus capacity,
- the rescheduling since 1990 of the first TOK (*Technische Ontwikkelingskrediet*) loan resulted in a not yet quantified important saving to the company,
- the justification for and the moment of granting the latest TOK loan,
- the granting of part of the notified research subsidy prior to approval by the Commission,

- the postponement by the NIB of the first repayment on a loan of Fl 30 million,
- the granting of bridging loan,
- the public participation in the new DAF company, including an equity participation and a risk-bearing loan, could possibly not be in conformity with standard company practice in a market economy,
- the sale of the assets of the old company to the new company and the role of the public authorities may imply that a financial advantage, in the form of a lower purchase price of those assets, has been conferred on the new company.

Since the guidelines on State aid to the motor vehicle industry apply, the Commission added that aid could be subjected to appropriate strict conditions. Such conditions could only be imposed by a final decision following this procedure.

II

Following the opening of procedure, the Dutch government submitted its comments by letter dated 2 February 1994. By letter dated 14 September 1994, the Commission received supplementary information from the Netherlands in response to the Commission's detailed questionnaire of 14 June 1994.

In order to prepare the visit to the DAF plants in Eindhoven and Westerlo, the Commission requested additional information in its letter of 14 November 1994, addressed to both the Belgian and the Dutch governments. By letter dated 23 January 1995 the Dutch government replied to those questions. The company visit took place on 30 January 1995, followed by a final meeting between the Commission, the authorities of both Member States and DAF's management in Eindhoven on 1 February 1995.

By fax dated 8 February 1995, the Commission raised some final questions to which the Dutch and Belgian authorities replied at their meeting with Commission staff on 14 February 1995.

(¹) OJ No C 31, 2. 2. 1994, p. 9.

On 6 March 1995, a further meeting was held between the Commission and the Dutch and Belgian authorities, focusing on the circumstances of the receivership of DAF NV and its take-over by DAF Trucks NV. During the discussion some questions relating to the bankruptcy procedure were raised by the Commission. The answers drawn up by the legal advisers of the Dutch State dated 23 March 1995 were faxed to the Commission on the same day.

On 7 April 1995, the Dutch authorities, following a further bilateral contact on 28 March 1995, provided the Commission with further information on the circumstances of the bankruptcy and take-over of DAF NV.

On 24 April 1995, the Commission asked the Dutch authorities to provide further information on the circumstances of the take-over, necessary in order to formulate a draft decision. By letter dated 23 May 1995, the Dutch authorities answered that request of information.

By letters dated 24 May and 7 June 1995 the Dutch authorities supplied further information on the aid provided to DAF NV before its receivership.

III

By letter dated 16 February 1994, the Commission requested the Dutch government to submit its comments on observations made by Klesch & Company Limited which the Commission received on 30 November 1993. That company had argued that it submitted an offer, subject to contract, to the receivers on 24 February 1993 for the same assets purchased by DAF Trucks NV. Their offer was rebuffed because, in their view, the receivers wished to sell the assets to a government led group below the market price.

The Dutch government replied by letter of 19 July 1994, basically arguing that this offer came too late.

On 15 February 1994 the NIB submitted its comments following the initiation of this procedure. On 28 February 1994, several shareholders of DAF Trucks NV — the VDL Groep, Nationale Nederlanden, DAF Trucks NV and Evicar — submitted their comments. On the same day, the Commission also received comments from DAF Trucks NV as well as from the Dutch receivers of DAF NV following the publication of the opening of procedure where they stated they were ready to send further information if necessary. By letter dated 1 June 1994 the Commission addressed a request for information to the receivers who answered on 1 August 1994.

The Dutch authorities' reaction to the comments of the abovementioned interested parties, who all supported

their opinion, is contained in the fax dated 23 March 1995.

The Commission did not receive any comments from other Member States or from other interested parties following the publication of the opening of the Article 93 (2) procedure in the *Official Journal of the European Communities*.

IV

With regard to the rescheduling since 1990 of the first TOK loan, NTG (*Nieuwe Truck Generatie*)-TOK, the Dutch Government argued that:

- it was not certain whether a notification was required because of the fact that they were acting in conformity with standard commercial practice as regards this TOK loan. By rescheduling the loan, in their view, they better secured its repayment. They could not agree with the parallel, drawn in the opening of the procedure, with the Volvo Cars case because that case concerned a loan by the State as a shareholder and not a TOK loan, which is granted on the basis of an approved scheme,
- whether a TOK loan is repayable depends on the commercial success of the products developed by the aided project. This instrument is approved by the Commission. If the project fails there is no aid since there is no product which can distort the competition and if the project succeeds there is no question of aid either because interest is charged until the loan is fully repaid. In fact, since the part of the TOK loan which relates to the costs made for the F 80, which failed, has not been remitted, as it could have been under the rules of a TOK loan, the company even has to repay more since it has to repay the entire loan, relating to the F 80 and the F 95, and this only with the profits of the F 95. Relating the repayment to the profits offers more control possibilities and was decided after long discussions with DAF NV. As regards securities, it is unusual to ask for securities for TOK loans since they involve risky projects and it is only when commercial borrowers are reluctant to finance a project that companies apply for a TOK loan.

With regard to the latest TOK loan, NML (*Nieuwe Medium Line*)-TOK, awarded in 1991, and increase with a second tranche in 1992, the Dutch government argued that:

- this TOK loan concerned innovative products. Detailed information was provided to prove that the new medium truck series (DAF 75/85) were innovative products in the truck market,

- the company was suffering losses at that time but DAF was listed on the stock exchange and had effected a successful share issue. As far as the loan increase in July 1992 is concerned, the Netherlands argued that even at that time they had no doubts about the continuity of the company because the long-term perspectives were good. It was only in November 1992 that the first signals emerged concerning DAF's solvency problems. After that, events moved very fast,
- the Dutch authorities further argued that they might recover the amount paid of Fl 33,5 million plus interest charges as they have registered it as an unsecured debt with the receivers of DAF NV.

As regard the research subsidy of Fl 1,55 million, the Dutch government argued that:

- this first payment was made subject to approval of the notified aid by the Commission. It corresponded to 80 % of the aid proposed in respect of research expenditure effected prior to mid-1992. For further research realized until the receivership DAF did not receive any advance,
- this notified aid is compatible with the guidelines for the motor vehicle industry because it is genuine R&D aid in support of the development of technologies concerning cleaner and less energy-consuming diesel engines,
- the Dutch government further argued that they might recover this amount by registering it as an unsecured debt by the receivers of DAF NV.

With regard to the postponement by the NIB of the first repayment of Fl 2,5 million on a loan of Fl 30 million, the Dutch authorities argued that since the term was never suspended and DAF was never awarded suspension of payment for this redemption, the relevant part of the loan was no longer subordinated but became an unsecured debt like the other unsecured debt. Moreover several other commercial loans were at that time not repaid by DAF NV. Consequently, there is no difference in the behaviour of the different lenders towards DAF NV. The position of the Dutch State is thus in conformity with commercial practice and contains no State aid.

With regard to the bridging loan of Fl 120 million, of which Fl 60 million was guaranteed by the State, and which had to allow the company to continue its activities for three weeks in order to reduce as much as possible the losses occurring from non-activity, the Dutch government stated, similar to the abovementioned reasoning, that

sufficient security was provided. Furthermore, the receivers expressed the expectation that the credit would be fully repaid. In the meantime, the authorities have confirmed that the loan has been fully reimbursed, including interest charges.

With regard to the State participation of Fl 155 million in DAF Trucks NV, i.e. 41,78 % of the equity capital, the Dutch government argued that:

- no aid element is involved since it was based on a business plan which is different from the restructuring plan made up before the suspension of payment and of which the feasibility was assessed by external consultants,
- the private investors participated on the same basis and their participation under equal conditions proves that one could have confidence in DAF Trucks NV. As far as the distinction between A and B shares is concerned the Dutch government claimed that holders of B stocks have the same dividend rights as regards their extent and also the potential arrears to B shares will be taken over. From 1 January 2000, the distinction will lapse,
- except for the economic argument, great importance should be attached to the impact of the company on the Objective 2 area, South East Brabant, where DAF is located,
- as regards the 'legal succession', changing DAF NV into DAF Trucks NV, referred to in the opening of the procedure, the Dutch authorities stated that the shareholders of the two companies are not the same, that DAF Trucks NV has a different production plan and that the business plan is different from the former restructuring plan. Furthermore, 46 % of DAF NV's shareholders were unknown. The participation of the Flemish Region as well as of the Dutch State are two separate decisions of two different authorities. The Flemish Region held no participation in the former DAF companies and the Dutch government's participation was limited to 1,8 %. Therefore, it cannot be maintained that the new company is the legal successor of the former one,
- in preparation for the plant visit, as well as during the visit, the Dutch authorities and the company provided a lot of evidence to support their view that the business plan which formed the basis of their participation is duly executed and has nearly produced the level of profits forecast by the plan so that dividends have been paid to the shareholders. As such, their investment in DAF Trucks NV is profitable and reflects a normal business attitude,

- finally, the public participation in DAF Trucks NV has fallen below 50 % since the sale by the Dutch and Flemish authorities of 100 million shares. Therefore, they have achieved the combined level of shareholding reflected in the shareholding agreement.

As regards the purchase of the assets and the role of the public authorities, the Dutch government argued that:

- other interested parties had the opportunity to bid since there has been a daily publicity since January 1993. Besides the candidate shareholders of DAF Trucks NV, nobody else had bid by 20 February 1993, the date on which an agreement in principle was reached between the receivers and the secured banks concerning the price of the assets. The offer of Klesch on 24 February therefore came too late. Moreover, in the interest of the company, the receivers had to act fast given that it is well known that in the case of sale as a going concern continued uncertainty could have further damaged the commercial position and value of the company,
- the fixed settlement price (407 million) is higher than the liquidation value (256,8 million), but lower than the fair market value on a going concern basis (498,075 million). The selling price is a fair price, otherwise the independent receivers would not have sold at that price and the judge would not have approved the transfer. Moreover, under the Dutch legal system, the Dutch State cannot exert any influence on the receivers. The price obtained is a fair price obtained after commercial negotiations and it has to be taken into account that DAF's position was deteriorating. Furthermore, the secured creditors have to agree with the purchase price while the receivers decide in the interest of the non-secured creditors. The valuation reports by independent appraisers and the assessment made by the receivers of the purchase price in the light of this valuation exclude the possibility of any aid element.

The position of the Dutch State was further reinforced by their legal advisers and the receivers of DAF NV who argued that under Dutch bankruptcy law:

- the winding up of DAF NV and the related asset transaction took place in accordance with current Dutch law on company winding-up. Dutch law affords the receivers freedom regarding the method of sale but private sales are generally given preference. So, by taking the initiative to find a buyer, the receivers of DAF NV acted within the law,

- only the secured and not the unsecured creditors have to give their consent to a sales agreement so that the Dutch State as an unsecured creditor could not have blocked the sales agreement,
- a company in the course of creation can legitimately be a party to a sales agreement and such an agreement — even being oral and not fully complete and not yet approved by the supervisory judge — has legal binding effects on all the parties concerned so that the Dutch State, at the time it was informed about a possible higher offer, could not have withdrawn from such an agreement. The receivers were also bound by the agreement of 20 February 1993, so that they were no longer free to enter into negotiations concerning the offer of Klesch & Company which had simply come too late and was subject to contract,
- even under the hypothesis that the receivers could nevertheless have accepted the alternative higher bid, the difference would have been paid to Ofasec, given its securities on all the assets of DAF Group, and would have indirectly benefited the privileged and non-privileged creditors of the UK assets. So, the Dutch State — not having granted credit to the UK companies of DAF — could not have benefited from the higher price.

V

When initiating the Article 93 (2) procedure, the Commission cited the following public interventions of the Dutch government in favour of DAF which required further analysis with regard to Article 92 of the EC Treaty and for the following reasons:

- the non-notified new and rescheduled development credits ('TOK') awarded to the former DAF of which Fl 35,6 million was outstanding, as well as the rescheduling of earlier development credits, of which the effect could not yet be quantified, may constitute illegally granted State aid and may be incompatible with the provisions of the guidelines on State aid for the motor vehicle industry. The same held for the research subsidy of Fl 1,55 million,
- even when it was evident that the former DAF was in serious financial difficulties, the Dutch government omitted to secure its interests in the company by means of requiring sufficient collateral before rescheduling old financial arrangements. The Fl 2,5 million postponement of repayment on an earlier NIB loan, which the Dutch government could not recover from the former DAF, may therefore constitute State aid,

- given that the bridging loan was at the time not in proportion to the involvement of the Dutch government in the former DAF as a shareholder or a secured creditor, the Fl 7,5 million which was so far not repaid may constitute State aid,
- the sale of the assets of the former DAF to the new company and the role of the public authorities may imply that a financial advantage in the form of a lower purchase price of those assets, including new technology and a large stock of unsold trucks, at a price lower than could have been obtained in a competitive bid, has been conferred on the new company. This made it possible for the new legal entity, but essentially the same company as before, to continue to compete without the burden of the past,
- the terms of the participation by the Dutch State in the risk capital of the new company (Fl 155 million equity capital and Fl 45 million risk-bearing loans by the Dutch government) should be examined in the light of the private investor principle and be compared with the terms at which private investors participated in the new company. To the extent that these measures contained State aid elements to the new company, the business plan should be examined in the light of the provisions of the guidelines on State aid for the motor vehicle industry as regards restructuring aid.

Following a detailed examination of the information received during the course of this procedure as well as the procedure with regard to aid granted by the Belgian authorities to DAF, it is the Commission's final view with regard to the rescheduling in 1990 of the first TOK loan (NTG-TOK) that :

- despite the fact that the original loan was awarded in 1983 on the basis of an approved aid scheme, the rescheduling of this loan in 1990 when the motor vehicle guidelines were in operation had to be notified. Around the same time, the Commission was dealing with a notification concerning Case C 3/92 (development loans awarded by the Dutch State and Volvo Car Corp. to Volvo Car BV) which also concerned a modification of the repayment scheme and which was notified to the Commission. The Dutch government must therefore have known that the rescheduling had to be notified. Moreover, they could not identify any other TOK loan where a similar rescheduling had taken place. In such circumstances, there were at least doubts as to the existence of State aid elements in such loan revisions⁽¹⁾,
 - the rescheduling did contain additional State aid since it consisted of making repayment necessary only in years of profits and this at a moment when the company was suffering heavy losses, thereby providing an additional financial support to the company. The Commission valued this financial advantage at Fl 10 742 000 at the date of receivership (2 February 1993) assuming a rather optimistic scenario of three years of losses in the period 1993 to 2002 and sufficient profits in all other years to reimburse the necessary instalments. This calculation takes account of the interest advantage obtained by DAF NV between the award of the aid and the date of receivership, using the reference rate by which the net grant equivalent of regional aid in the Netherlands is calculated. Under this revised repayment schedule the loan would be fully repaid in the year 2002 instead of 1998,
 - the rescheduling also permitted the conversion of the reimbursement covering the year 1989 and due on 1 October 1990 into a loan at 8 % which was again postponed in January 1993. This increases the aid at the rescheduling by an amount equal to Fl 6 979 000,
 - the NTG-TOK loan was granted for the development of a new heavy truck (F 95) range. Even if the Dutch government argued that since part of the TOK loan was used for developing another truck series F 80, which failed, and could have been remitted, it is *stricto sensu* normal under the TOK rules to claim that the company has to repay the entire loan from the turnover of the F 95, considering that the aid contract did not specify that the project would generate two trucks. So, repayment could legitimately be based on the revenues of the single truck developed by the aided project,
 - the Dutch Government did not ask for any securities although they knew the financial situation, since they were shareholders of the company. While the Commission recognizes that this would be an exceptional measure, it is equally convinced that the agreed rescheduling is exceptional given that the Dutch authorities could not provide any other similar example in the long history of TOK loans.
- With regard to the latest TOK loan (NML-TOK) awarded in 1991, and increased by a second tranche in 1992, it is the Commission's view that :

⁽¹⁾ OJ No C 318, 24. 11. 1983, p. 3.

- illegal aid was awarded through this TOK loan since it had not been notified. This TOK loan enabled the company to renew its model range at a time when it would not have been possible to finance such expenditure entirely from its own resources or other external borrowings,
- TOK loans represent an approved aid system which does not only contain State aid in case of failure but also in case of success given that they are awarded at an interest rate below the market rate and the interest is compounded to the capital without charging compound interest. The Commission values the aid given on the date of receivership as Fl 35 990 000 constituted by Fl 33 489 000 principal and Fl 2 501 000 interest charges. This includes the interest advantage obtained by the company between the award of the aid and the date of receivership, using the reference rate by which the net grant equivalent of regional aid in the Netherlands is calculated. The fact that the Dutch State only requests reimbursement from the bankrupt company DAF NV of Fl 35 597 000, leaves an amount of Fl 393 000 which constitutes the abovementioned additional aid element of the loan,
- granting a new TOK loan in 1991 was not economically justified since DAF already faced difficulties in the repayment of the first TOK loan. The repayment of the older loan had to be made in years of profitability of the company; the reimbursement of any new TOK loan would necessarily affect that profitability in the future, thus jeopardizing the recovery of the old loan,
- as far as the increase of the NML-TOK loan of July 1992 is concerned, this was even more questionable since it had been granted at a time of severe financial difficulties for the company, which went into receivership half a year later.

As regards the research subsidy of Fl 1,55 million, this amount was paid as an advance to aid, outside any approved system, which was notified to the Commission for approval. As such, it clearly constitutes State aid as it alleviated the company from part of its normal R&D expenditure.

With regard to the postponement by the NIB on the first repayment of Fl 2,5 million on a loan of Fl 30 million, the Commission shares the point of view of the Dutch authorities that the Dutch State did not act differently than other unsecured creditors of DAF NV. Therefore, this instalment of a public loan which was not reimbursed by DAF NV before the receivership does not constitute State aid.

With regard to the outstanding amount of the bridging loan of Fl 7,5 million, guaranteed by the Dutch State, the

Commission received confirmation from the Dutch authorities that the entire sum of the loan including interest charges has in the meantime been reimbursed. As such, this unnotified State aid has disappeared.

With regard to the State participation of Fl 155 million, i.e. 41,78 % of the shareholding of the new company, the presumption mentioned in the opening of the procedure that the State participation may constitute State aid can, according to the Commission, not be maintained. Considering that the State provided capital under the same conditions as the private shareholders, whose holding has real economic significance, and that the examination of the business plan has proven that a reasonable return on the shareholders' capital can be expected it must be concluded that this shareholding corresponds to the market investor principle⁽¹⁾. It does not, therefore, contain any State aid.

As regards the sale of the assets of the former DAF company to the new company and the role of the public authorities in it, it is the Commission's view that, as the oral agreement of the 20 February 1993 was binding for all the parties involved, the Dutch State could not have unilaterally withdrawn from that agreement even when it was afterwards informed of a possible more attractive offer. Moreover, the legal advisers of the Dutch State and the receivers have demonstrated that any higher sale price than the one paid by DAF Trucks NV could not have benefited the Dutch State as an unsecured creditor of DAF NV but rather the creditors of the UK subsidiaries of DAF. Therefore, it can be concluded that the public authorities as creditors of DAF NV have acted as a private investor in the bankruptcy proceedings.

It must be stressed that under Dutch law the receivers of DAF must act independently and the State is not therefore in a position to issue instructions to the receivers. While it can be economically argued that DAF Trucks NV obtained a financial advantage in the form of a purchase price for these assets which was lower than could have been obtained in a competitive bid, it is not mandatory for the receivers to organize such a bid. Considering also the information at their disposal and the time pressure imposed on them by the lenders of the bridging loan, it is fair to conclude that the receivers have complied with the law. Finally, it was confirmed that the two companies (DAF NV and DAF Trucks NV) are legally different entities, fully independent one from another.

⁽¹⁾ See Commission communication on the financial relations between Member States and public undertakings — OJ No C 273, 18. 10. 1991, p. 2.

As regards the three remaining elements of State aid to DAF NV referred to above, it must be concluded that they fall within the provisions of Article 92 (1) of the EC Treaty and Article 61 (1) of the EEA Agreement because there is a very high level of intra-Community trade in the European van and truck markets wherein DAF NV was actively participating, as it captured respectively 2,7 % and 8 % of these markets in 1992, its last year of existence.

VI

By not notifying the abovementioned two remaining aid measures related to two different TOK loans and by advancing Fl 1,55 million on a notified research loan before its approval by the Commission, which were all granted to DAF NV before its bankruptcy, the Dutch government has infringed Article 93 (3) of the EC Treaty. Since the Dutch government did not notify the aid measures in good time, the Commission was not able to submit its comments on the measures before they were implemented. As the aid was thus granted in breach of Article 93 (3) of the EC Treaty, it is unlawful.

VII

Article 92 (1) lays down the principle that, except where otherwise provided, aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade among Member States, incompatible with the common market. However, Article 92 (2) and (3) set out the circumstances in which such aid is or may be allowed.

Article 92 (2) specifies certain types of aid that are compatible with the common market. Because of the character, location and purpose of the aid in question, none is applicable.

Article 92 (3) adds that other aid may be compatible with the common market. Compatibility must be determined in the context of the Community and not of a single Member State. In order to safeguard the proper functioning of the common market and, taking into account the principles of Article 3 (g) of the EC Treaty, the exceptions to the principle set out in Article 92 (1) to be found in Article 92 (3) must be construed narrowly when scrutinizing any aid scheme or individual award.

In particular, the Commission has for the motor vehicle industry adopted Community guidelines setting out the

criteria for assessing the compatibility with the common market of State aid to this industry, thereby limiting the scope of discretion under point (c) of Article 92 (3).

As explained above and in the opening of the procedure, the Commission is convinced that both aid measures were notifiable under the motor vehicle industry guidelines, which were in operation at the time of the aid award (1990, 1991 and 1992). The Commission has therefore to consider whether these aid measures were compatible with the assessment criteria of those guidelines.

While the region of South East Brabant where the plant of DAF is located in the Netherlands has recently been considered by the Commission as an Objective 2 area, the area was at the time the aid was granted (1990, 1991 and 1992) not a regionally assisted area within the meaning of points (a) or (c) of Article 92 (3) of the EC Treaty nor can any of these aid measures be considered as having a regional objective.

As regards the Fl 1,55 million advance to a notified but not approved R&D aid, the Commission has obtained evidence that DAF NV, before its receivership, spent Fl 18,3 million on a project known as Volem (accelerated development of low emission engines) which according to its motor expert contains sufficient elements of pre-competitive research to justify the level of aid actually paid. This concerns, in particular, the research relating to the study of air flow of the engine by using mathematical computer models with visual display of air flow rigs. Therefore, this grant is in conformity with the guidelines for assessment of R&D aid of the guidelines on State aid to the motor vehicle industry and thus satisfies the conditions for the application of the exception provided in point (c) of Article 92 (3).

As regards the rescheduling of the NTG-TOK loan, the provisions of the guidelines relating to rescue and the restructuring aid are the only relevant provisions given that the company had already obtained the maximum possible aid under the approved TOK aid scheme and, therefore, any increase of the aid intensity cannot be deemed necessary for attaining the original objective of the aid.

The rescheduling of the TOK-loan in December 1990 which enabled DAF NV not to reimburse part of that loan during the difficult years 1990 to 1992, in which the company made accumulated consolidated losses of Fl 880 million, contains rescue aid elements which could only have been approved in exceptional circumstances. According to the guidelines, such aid 'must be linked to a

satisfactory restructuring plan, and only granted where it can be demonstrated that the Community interest is best served by keeping a manufacturer in business and by reestablishing its viability. It will be necessary to ensure that the aid will not allow a beneficiary to increase its market share at the expense of its unaided competitors. In cases where certain companies still have excess capacity, e.g. in the commercial vehicle sector, the Commission may require reductions in capacity in order to contribute to the overall recovery of the sector'. While DAF NV suffered at that time from excess capacity, the company did not develop and implement a restructuring plan which included the reduction of its surplus capacity. Only at the end of 1992, when the financial situation had deteriorated to such a point that its banks threatened to cut the credit lines, did DAF NV draft a radical restructuring plan including the reduction of part of its surplus capacity. This plan was never put into operation given that the company entered into receivership in February 1993 when it failed to secure finance for such a plan.

With regard to the award of the NML-TOK loan, different provisions of the guidelines are relevant. Under aid for R&D the framework stipulates that 'the Commission will continue to have a positive attitude towards aid for pre-competitive R&D. However, the Commission will ensure, in keeping with its Framework on State aid for R&D⁽¹⁾, at the same time that a clear distinction is established between genuine research and development and the introduction of new technologies inherent to production investment (modernization)'. Under aid for modernization and innovation, the guidelines stipulate that 'in the context of a genuine internal market for motor vehicles, competition between producers will become even more intense and the distortive impact of aid will be greater. Therefore, the Commission will take a strict attitude towards aid for modernization and innovation. These are activities to be undertaken by the companies themselves and normally financed from their own resources or by commercial loans as part of their normal company operation in a competitive market environment'. ... 'Proposed aid for innovation will be examined in order to determine whether it really relates to the introduction of genuinely innovative products or processes at Community level'. Under aid for environmental and energy saving, the guidelines state that 'the development of less polluting and energy saving vehicles is a standard requirement for the industry, partly imposed by Community legislation, and should thus be financed from the company's own resources.'

Taking into account the advice of its motor industry expert, the Commission is of the view that the activities

aided by the TOK loan do not constitute pre-competitive research which can be classified as either basic or applied research. The aided project concerned the last development stage of new medium-sized truck models and the engineering costs related to the industrialization of those models. As such, it relates to the development and pre-industrialization phases of the R&D cycle. The aided activities took place between January 1991 and July 1992 i.e. shortly before the DAF 75 and 85 series were introduced into the market (autumn 1992). Any pre-competitive research described in part in the documentation provided by the Dutch authorities must have taken place in the early stages of the project (1988 to 1990) which were not aided by the TOK loan or were the object of the Volem project separately notified for R&D aid (see *supra*).

Upon analysis of the material provided by the Dutch authorities, and in particular upon review of the comparative tests of this model series with its competitors, it is also the view of the expert consulted by the Commission that the new model series does not represent an innovation neither as regards its design concept nor as regards performance in terms of fuel efficiency, operating costs, output, noise or exhaust emissions. This does not imply any negative view on the merits of the products which are systematically classified in market surveys as among the best in the market segment of medium trucks in Europe.

As prescribed by the guidelines, the development of new models, which are less polluting and more fuel efficient than their predecessors, is a standard requirement for a truck company in order to remain competitive on the European truck market. Such normal business activity should in principle not be aided.

Consequently, for the latter two aid measures the conditions which have to be satisfied in order to apply the exception provided in point (c) of Article 92 (3), as specified by the motor vehicle industry guidelines, are not met.

In view of all the foregoing considerations, the two former aid measures in support of the DAF NV are not only illegal because the Dutch government did not fulfil its obligations under Article 93 (3) but are also incompatible with the common market as they do not meet the conditions which must be satisfied in order to apply any of the exceptions set out in Article 92. Consequently, they are also incompatible with the functioning of the EEA Agreement.

⁽¹⁾ OJ No C 83, 11. 4. 1986, p. 2.

VIII

As explained in the opening of the procedure, the Commission would check, if the assessment of the case should confirm that any illegal and incompatible State aid was granted to the old DAF company which could not be recovered from the liquidated company, whether such aid should be reimbursed by the new DAF company, DAF Trucks NV.

Given the earlier conclusion that DAF NV and DAF Trucks NV are legally entirely different companies and that the assets of DAF NV were sold in compliance with the Dutch bankruptcy procedure, the Commission should not require the recovery of these aid measures from DAF Trucks NV, even if it would later appear that these aid measures cannot be (entirely) reimbursed by the company in liquidation, DAF NV,

HAS ADOPTED THIS DECISION :

Article 1

The Fl 1,55 million aid paid by the Dutch government to DAF NV in advance of the Commission's approval of a notified R&D aid project is illegal. However, it is compatible with the common market by virtue of point (c) of Article 92 (3) of the EC Treaty and, therefore, is compatible with the functioning of the EEA Agreement.

Article 2

The two aid measures awarded by the Dutch government to DAF NV in the context of the TOK aid scheme and valued respectively at Fl 17 721 000 and Fl 393 000 on the date of the receivership of the company, calculated on

the basis of the reference rate used for the calculation of the net grant equivalent of regional aid in the Netherlands, are illegal and incompatible with the common market within the meaning of Article 92 (1) of the EC Treaty and, therefore, incompatible with the functioning of the EEA Agreement.

Article 3

The Dutch government shall recover from DAF NV the amount of aid referred to in Article 2, which includes interest from the date of its award at a rate equal to the percentage value on that date of the reference rate used for the calculation of the net grant equivalent of regional aid in the Netherlands.

Article 4

The Dutch government shall inform the Commission within two months of the date of notification of this Decision of the measures taken to comply.

Article 5

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 4 October 1995.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION

of 18 January 1996

establishing the conditions for the harvesting and processing of certain bivalve molluscs coming from areas where the paralytic shellfish poison level exceeds the limit laid down by Council Directive 91/492/EEC

(Text with EEA relevance)

(96/77/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/492/EEC of 15 July 1991 fixing the health conditions for the production and the placing on the market of live bivalve molluscs⁽¹⁾, as last amended by the Act of Accession of Austria, Finland and Sweden, and in particular Chapter V, point 8, last subparagraph of the Annex, thereof,

Whereas the level of 'paralytic shellfish poison' (PSP) of 80 µg for 100 g laid down by directive 91/492/EEC for public health protection must not be exceeded in the bivalve molluscs intended for human consumption;

Whereas for the bivalve molluscs belonging to the species *Acanthocardia tuberculatum*, the scientific studies show that a suitable heat treatment can guarantee the the PSP toxin rate is reduced to a non-detectable level when the initial level of contamination does not exceed 300 µg for 100 g;

Whereas the Scientific Veterinary Committee was consulted and gave a favourable opinion for the use of this heat treatment method, this type of toxin and this species of mollusc;

Whereas in the light of the opinion of the Scientific Veterinary Committee, it is important at the present time to envisage a PSP level higher than the limit laid down for the harvesting and a suitable heat treatment, only for the bivalve molluscs belonging to the species referred to above, under a specific decision limited to this objective;

Whereas the 'own health' check procedures defined in Commission Decision 94/356/EC of 20 May 1994 laying down detailed rules for the application of Council Directive 91/493/EEC as regard own health checks on fishery products⁽²⁾ are in a position to ensure satisfactory application of the suitable heat treatment;

Whereas it up to the competent authorities of Member States to specifically authorize the establishments carrying out the treatment of these bivalve molluscs and to check the satisfactory application of the 'own health' checks procedures;

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

HAS ADOPTED THIS DECISION:

Article 1

This Decision applies only to the bivalve molluscs belonging to the species *Acanthocardia tuberculatum*.

Article 2

1. Spain can authorize the harvesting of the bivalve molluscs referred to in Article 1 in production areas where the PSP level in the edible parts of these molluscs is higher than 80 µg for 100 g but lower than 300 µg for 100 g.

The harvested molluscs must:

- be transported in containers or vehicles sealed by the competent authority, directly to an approved establishment, especially authorized to carry out their treatment,
- be accompanied by a document issued by the competent authority which authorizes the transport, attesting to the nature and quantity of the product, area of origin and plant of destination,
- the subjected to the heat treatment defined in the Annex to this Decision.

2. The final products resulting from the molluscs referred to in paragraph 1 must not contain a PSP level detectable by the bioassay method after the application of this heat treatment. Each lot shall be tested. This provision will be reviewed six months after the entry into force of this Decision following a report presented by the Spanish authorities.

Article 3

The competent authority shall check that the 'own health' checks provided for in Article 6 of Council Directive 91/493/EEC⁽³⁾, drawn up and implemented by the person responsible for the establishment authorized in accordance with Decision 94/356/EC, shall apply specifically to the heat treatment defined in the Annex to this Decision.

⁽¹⁾ OJ No L 268, 24. 9. 1991, p. 1.

⁽²⁾ OJ No L 156, 23. 6. 1994, p. 50.

⁽³⁾ OJ No L 268, 24. 9. 1991, p. 15.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 18 January 1996.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

Heat treatment applicable to bivalve molluscs *Acanthocardia tuberculatum* with the objective of reducing the PSP toxin to a level lower than 80 µg per 100 g

Molluscs have to undergo the following operations sequentially :

1. Preliminary cleaning in fresh water for a minimum of two minutes at a temperature of 20 °C, plus or minus 2 °C.
 2. Pre-cooking in fresh water for a minimum of three minutes at a temperature of 95 °C, plus or minus 5 °C.
 3. The separation of flesh and shells.
 4. Second cleaning in running fresh water for a minimum of 30 seconds at a temperature of 20 °C, plus or minus 2 °C.
 5. Cooking in fresh water for a minimum of nine minutes at a temperature of 98 °C, plus or minus 3 °C.
 6. Cooling in running cold fresh water for approximately 90 seconds.
 7. The separation of the edible parts (foot) from the non-edible parts (gills, viscera and mantle) mechanically with water pressure.
 8. Conditioning in containers closed hermetically in a non-acidified liquid medium.
 9. Sterilization in autoclave at a minimum temperature of 116 °C for a time calculated according to the dimension of the containers used but which can not be lower than 51 minutes.
-