

Official Journal

of the European Communities

ISSN 0378-6978

L 75

Volume 39

23 March 1996

English edition

Legislation

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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 498/96**of 19 March 1996**

on the conclusion of the Protocol defining, for the period 21 May 1995 to 20 May 1998, the fishing opportunities and the financial contribution provided for by the Agreement between the European Economic Community and the Government of the Republic of Madagascar on fishing off Madagascar

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 in conjunction with the first sentence of Article 228 (2) and the first subparagraph of Article 228 (3) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

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

Whereas, in accordance with the Agreement between the European Economic Community and the Government of the Republic of Madagascar on fishing off Madagascar ⁽³⁾, the two parties have held negotiations with a view to determining the amendments or additions to be made to the Agreement at the end of the period of application of the first Protocols;

Whereas, as a result of these negotiations, a new Protocol was initialled on 18 May 1995 defining, for the period 21 May 1995 to 20 May 1998, the fishing opportunities and the financial contribution provided for by the said Agreement;

Whereas it is in the Community's interest to approve this Protocol,

HAS ADOPTED THIS REGULATION:

Article 1

The Protocol defining, for the period 21 May 1995 to 20 May 1998, the fishing opportunities and the financial contribution provided for by the Agreement between the European Economic Community and the Government of the Republic of Madagascar on fishing off Madagascar is hereby approved on behalf of the Community.

The text of the Protocol is attached to this Regulation.

Article 2

The President of Council is hereby authorized to designate the persons empowered sign the Protocol in order to bind the Community ⁽⁴⁾.

Article 3

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

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

Done at Brussels, 19 March 1996.

For the Council

The President

W. LUCHETTI

⁽¹⁾ OJ No C 201, 8. 8. 1992, p. 19.

⁽²⁾ OJ No C 65, 4. 3. 1996.

⁽³⁾ OJ No L 73, 18. 3. 1986, p. 26.

⁽⁴⁾ The date of entry into force of the Protocol will be published in the *Official Journal of the European Communities* by the General Secretariat of the Council.

PROTOCOL

defining, for the period 21 May 1995 to 20 May 1998, the fishing opportunities and the financial contribution provided for by the Agreement between the European Economic Community and the Government of the Republic of Madagascar on fishing off Madagascar

Article 1

Pursuant to Article 2 of the Agreement, licences authorizing simultaneous fishing in Madagascar's fishing zone shall be granted to 42 freezer tuna seiners and 16 surface longliners for a period of three years beginning on 21 May 1995.

In addition, at the request of the Community, authorization may be granted for other categories of fishing vessel under conditions to be laid down in the Joint Committee referred to in Article 9 of the Agreement.

Article 2

The amount of the contribution referred to in Article 7 of the Agreement shall be ECU 1 350 000 for the duration of the Protocol, payable in three equal annual instalments. This amount is to cover an annual catch of 9 000 tonnes of tuna in Malagasy waters; if the tuna caught by Community vessels in Madagascar's fishing zone exceeds this weight, the amount referred to above shall be proportionately increased.

Article 3

1. The Community shall also, during the period referred to in Article 1, contribute ECU 375 000 to finance a Malagasy scientific programme to improve knowledge of the highly migratory species existing in the Indian Ocean around Madagascar.

At the request of the Government of Madagascar, this contribution may take the form of assistance with the costs of international meetings to improve knowledge of those species and the management of fishery resources.

2. The competent Malagasy authorities shall send the Commission a summary report on the use of those funds.

3. The Community contribution to the scientific programme shall be paid into the account indicated by the Malagasy authorities.

Article 4

1. The two parties hereby agree that increasing the skills and knowledge of those concerned with sea fishing is essential to the success of their cooperation. The Community shall therefore facilitate the entry of Malagasy nationals to establishments in its Member States and, for this purpose, shall make available to them study or practical training awards lasting a maximum of five years in the various scientific, technical and economic fields and in related activities linked to the development of the fisheries and aquaculture sectors, as judged necessary by the Government of Madagascar. The total cost of these grants may not exceed ECU 450 000. The grants may also be used in any other State linked to the Community by a Cooperation Agreement.

2. The amount referred to in paragraph 1 shall be payable as and when used.

Article 5

Should the Community not make the payments referred to in Articles 2 and 3 of this Protocol, the Fisheries Agreement may be suspended.

Article 6

The Annex to the Agreement between the European Economic Community and the Government of the Republic of Madagascar on fishing off Madagascar is hereby repealed and replaced by the Annex to this Protocol.

Article 7

This Protocol shall enter into force on the date of its signature.

It shall apply from 21 May 1995.

ANNEX

CONDITIONS GOVERNING FISHING ACTIVITIES BY COMMUNITY VESSELS IN
MADAGASCAR'S FISHING ZONE

1. Formalities concerning applications for, and the issue of, licences

The procedure for applications for, and the issue of, licences authorizing Community vessels to fish in Malagasy water shall be as follows:

- (a) through its representative in Madagascar, the European Commission shall present to the Malagasy authorities, at least 20 days before the beginning of the desired period of validity, a licence application completed by the shipowner in respect of each vessel for which authority to fish under the Agreement is requested. The application must be made on the form provided by Madagascar for this purpose, in accordance with the specimen given in Appendix 1; it shall be accompanied by proof of payment of the advance due from the shipowner;
- (b) the licence shall be issued for a specific vessel and shall not be transferable.

However, in the event of *force majeure*, a licence for one vessel may be replaced by a new licence for another vessel of similar characteristics should the European Commission so request. The owner of the vessel being replaced shall return the cancelled licence to the Malagasy Ministry with responsibility for sea fisheries via the Delegation of the Commission of the European Communities in Madagascar.

The new licence shall indicate:

- the date of issue,
- the fact that it cancels and replaces the licence of the previous vessel.

The fee provided for in Article 5 of the Agreement shall not be due for the remaining period of validity;

- (c) the Malagasy authorities shall send the licence to the representative of the Commission of the European Communities in Madagascar;
- (d) the licence must be kept on board at all times; however, on reception of notification of payment of the advance sent to the Malagasy authorities by the European Commission, the vessel shall be entered on a list of vessels authorized to fish, which shall be sent to the Malagasy authorities responsible for fisheries inspection. A copy of the said licence may be obtained by fax pending arrival of the licence itself; that copy shall be kept on board;
- (e) owners of tuna boats must be represented in Madagascar by an agent;
- (f) before the entry into force of the Protocol, the Malagasy authorities shall supply full details of the bank accounts to be used for the payment of fees.

2. Validity of, and payment for, licences

- (a) Licences shall be valid for one year. They shall be renewable.
- (b) The fee shall be ECU 20 per tonne caught in waters under Madagascar's jurisdiction. Licences shall be issued on advance payment to the Malagasy Treasury of an annual sum of ECU 1 500 per tuna seiner and an annual sum of ECU 500 per surface longliner.
- (c) At the end of each calendar year, the European Commission shall draw up a final statement of the fees due in respect of the fishing year on the basis of catch declarations completed by each shipowner and confirmed by the scientific institutes competent for verifying catch statistics such as Orstom (Office of Overseas Scientific and Technical Research), IEO (Spanish Oceanographical Institute) or USTA (Antsiranana Tuna Statistical Unit). The statement shall simultaneously be notified to the Malagasy sea fisheries authorities and the shipowners. Shipowners shall make any additional payments to the Malagasy fisheries authorities within 30 days of notification of the final statement.

However, where the final statement is less than the abovementioned advance, the balance shall not be recoverable by the shipowner.

3. Declaration of catches

- (a) Vessels authorized to fish in Madagascar's fishing zone pursuant to the Agreement shall notify their catch statistics to the sea fisheries authorities, with a copy for the Delegation of the Commission of the European Communities in Madagascar, in accordance with the following procedure:

tuna seiners and surface longliners shall complete a fishing form corresponding to the specimen given in Appendix 2 for each period spent fishing in Madagascar's fishing zone. The form shall be sent to the competent authorities within 45 days of the end of fishing activities in Madagascar's fishing zone.

The form must be filled in legibly and signed by the captain of the ship.

- (b) In the event of failure to comply with these provisions, the Malagasy authorities reserve the right to suspend the licence of the offending vessel until the formalities have been completed. In such cases, the Delegation of the Commission of the European Communities in Madagascar shall be informed without delay.

4. Radio communications

The captain shall give notification, at least 24 hours in advance, either via the coastal radio station at Antsiranana or by telex or fax, of his intention of bringing his vessel into Madagascar's fishing zone.

The radio frequency and the telex and fax numbers to be used will be indicated on the licence.

5. Observers

At the request of the Malagasy authorities, tuna boats shall take an observer on board who shall be treated as an officer. The time spent on board by the observer shall be fixed by the Malagasy authorities, but, as a general rule, it should not exceed the time required to carry out his duties.

The conditions governing his embarkation shall be agreed between the shipowner or his agent and the Malagasy authorities.

The shipowner shall, via his agent, make a payment of ECU 10 to the Malagasy Government for each day spent by an observer on board a tuna boat.

Should a tuna boat with a Malagasy observer on board leave Madagascar's fishing zone, every step shall be taken to ensure that the observer returns to Madagascar as soon as possible, at the shipowner's expense.

6. Employment of seamen

At least two Malagasy seamen shall be employed by the tuna seiner fleet for the duration of the fishing season.

In the event that the seamen are not so employed, the shipowners shall pay the full amount of the wages of the seamen or seaman not employed; this sum is to be used for the training of Malagasy fishermen and shall be paid into an account whose number shall be notified to the agents.

The employment contracts for the seamen shall be concluded by the agents and the seamen concerned.

7. Fishing zones

Community vessels shall have access to all waters under Madagascar's jurisdiction outside the zone of two nautical miles.

Should the Malagasy authorities decide to install experimental fish concentration devices (FCDs), they shall inform the European Commission and the agents of the shipowners concerned, indicating the geographical position of the devices.

From the 30th day after such notification, it shall be forbidden to approach within 1,5 nautical miles of the FCDs. The dismantling of any FCD must be immediately notified to the same parties.

8. Use of port facilities

The authorities of Madagascar and the beneficiaries of the Agreement shall lay down the conditions for using port facilities.

9. Inspection and monitoring of fishing activities

Vessels holding a licence shall permit and assist any Malagasy official responsible for the inspection and monitoring of fishing activities to board the ship and carry out his duties.

10. Transhipment

When fish are transhipped, freezer tuna seiners shall hand over the fish which they do not intend to keep to a company or body nominated by the Malagasy authorities in charge of fisheries.

11. Provision of services

Community vessel owners operating in the Malagasy fishing zone shall practise positive discrimination in favour of Malagasy services (careening, handling, fuel-oil bunkering, consignment, etc.).

*Appendix 1***APPLICATION FORM FOR A FISHING LICENCE**

1. New application or renewal:
2. Name and flag of vessel:
3. Period of validity: from to
4. Name of shipowner:
5. Address of shipowner:
.....
6. Name and address of charterer (if different from 4 and 5):
.....
.....
7. Name and address of official representative in Madagascar:
.....
8. Name of captain:
9. Type of vessel:
10. Registration number:
11. External identification of vessel:
12. Port and country of registration:
13. Overall length and breadth of vessel:
14. Gross and net tonnage of vessel:
15. Make and power of main engine:
16. Freezer capacity (t/d):
17. Hold capacity (m³):
18. Radio call sign:
19. Other communications equipment (telex, fax):
20. Fishing appliances:
.....
21. Number of crew broken down by nationality:
.....
22. Number of fishing licence (in the case of a renewal, attach licence):
.....

I, the undersigned,, certify that the above information is correct and undertake to comply therewith.

Stamp and signature of shipowner:

Date:

.....

.....

ICCAT LOGBOOK for TUNA FISHERY

Vessel name

Flag country

Registration No

Company or Owner

Address

Gross tons

Capacity (M. T.)

Captain

No of crew

Reporting date

Reported by

month

day

year

19

port

Boat LEFT

Boat RETURNED

Number of days at sea

Number of fishing days or number of sets made

days

Trip number

19

--

Page

of

pages

Longline

Baitboat

Purse seine

Trolling

Others

Dates

Area

Effort (Number of Hooks used)

Surf. Water Temp (in °C)

E or W

Latitude

Longitude

Month

Day

Bluefin tuna
Thunnus thynnus
or *maccoyii*

weight
in kg

number
fish

Yellowfin tuna
Thunnus albacares

No

kg

Bigeye tuna
Thunnus obesus

No

kg

Albacore
Thunnus alalunga

No

kg

Swordfish
Xiphias gladius

No

kg

Striped marlin
White marlin
Tetrapturus audax
or *albidus*

No

kg

Black marlin
Makaira indica

No

kg

Sailfish
Istiophorus
albicans or
platypterus

No

kg

Skipjack
Katsuwonus
pinnatus

No

kg

Miscellaneous
fishes

Sp

kg

Daily total
(in weight)
kg only

Bait used

Saury

Squid

Lure/bait

Others

Landing weight (in kg)

01

02

03

04

05

06

07

08

09

10

11

12

13

14

15

16

17

18

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31

Remarks

- 1 Use one sheet per month, and one line per day.
- 2 At the end of each trip, forward a copy of the log to your correspondent or to ICCAT, General Mola 17, Madrid 1, Spain
- 3 'Day' refers to the day you set the line
- 4 Fishing area refers to the noon position of the boat. Round off minutes, and record degrees of latitude and longitude. Be sure to record N/S and E/W
- 5 The bottom line (landing weight) should be completed only at the end of the trip. Actual weight at the time of unloading should be recorded
- 6 All information reported herein will be kept strictly confidential.

COUNCIL REGULATION (EC) No 499/96

of 19 March 1996

opening and providing for the administration of Community tariff quotas for certain fishery products and live horses originating in Iceland

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Whereas an Agreement was concluded between the European Economic Community and the Republic of Iceland⁽¹⁾;

Whereas, following the accession of Austria, Finland and Sweden, the abovementioned Agreement should be adjusted to take into account, in particular, the existing trade arrangements for fishery products between Austria, Finland and Sweden, of the one part, and Iceland, of the other part;

Whereas to that end an Additional Protocol to the above Agreement, approved by Decision 96/147/EC⁽²⁾ as well as an Agreement in the form of an Exchange of Letters approved by Decision 95/582/EC⁽³⁾ have been concluded between the Community and Iceland; whereas by virtue of those instruments the Community has undertaken to open, subject to certain conditions, from 1 January to 31 December each year Community tariff quotas at zero duty for a number of products originating in Iceland;

Whereas the tariff quotas in question relate to an indefinite period and accordingly, for reasons of efficiency and in order to simplify implementation of the measures concerned, it appears appropriate to provide for the application of this Regulation to be placed on a multiannual footing;

Whereas, for reasons of simplification, provision should be made to empower the Commission to give effect, following receipt of the opinion of the Customs Code Committee, to necessary amendments and technical adaptations of this Regulation arising from amendments to the combined nomenclature and Taric codes, extensions of tariff measures, necessary adaptations following the conclusion of protocols or exchanges of letters, amendments to this Regulation for the implementation of any other instrument in the framework of the abovementioned Agreement as well as adaptations of volume, periods and quota rates arising from decisions by the Council;

Whereas all Community importers should be ensured equal and continuous access to the said quota and the duty rate laid down for the quota should be applied without interruption to all imports of the product in

question into all Member States until the quota is exhausted, during the whole period of the validity of the agreements with Iceland;

Whereas the decision for the opening, in execution of its international obligations, of tariff quotas should be taken by the Community; whereas, to ensure the efficiency of a common administration of these quotas, there is no reason why the Member States should not be authorized to draw from the quota volumes the necessary quantities corresponding to actual imports; whereas this method of administration requires close cooperation between the Member States and the Commission and the latter must in particular be able to monitor the rate at which the quotas are being used up and inform the Member States accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

1. From 1 January to 31 December of each year, the customs duties applicable to imports of the products originating in Iceland referred to in this Regulation shall be suspended within the limit of the Community tariff quotas shown for each product.

2. Imports of fishery products shall not qualify for the tariff quotas unless the free-at-frontier price laid down in Article 22 of Council Regulation (EEC) No 3759/92 of 17 December 1992 on the common organization of the market in fishery and aquaculture products⁽⁴⁾ is at least equal to any reference price which has been fixed by the Community for the products or categories of products in question.

3. The provisions of Protocol 3 of the Agreement between the European Economic Community and the Republic of Iceland defining the concept of originating products and setting out the arrangements for administrative cooperation, as last amended by Decision No 1/94 of the EC-Iceland Joint Committee⁽⁵⁾, shall apply.

Article 2

The tariff quotas referred to in Article 1 shall be administered by the Commission, which may take any appropriate administrative measures in order to ensure efficient administration.

⁽¹⁾ OJ No L 301, 31. 12. 1972, p. 2.

⁽²⁾ OJ No L 34, 13. 2. 1996, p. 33.

⁽³⁾ OJ No L 327, 30. 12. 1995, p. 17.

⁽⁴⁾ OJ No L 388, 31. 12. 1992, p. 1. Regulation as last amended by Regulation (EC) No 3318/94 (OJ No L 350, 31. 12. 1994, p. 15).

⁽⁵⁾ OJ No L 204, 6. 8. 1994, p. 62.

Article 3

If an importer presents in a Member State a declaration of entry into free circulation including a request for preferential benefit for a product covered by this Regulation, and if this declaration is accepted by the customs authorities, the Member State concerned shall draw, from the quota volume by means of notification to the Commission, a quantity corresponding to those needs.

The requests for drawing, with an indication of the date of acceptance of the said declarations, must be communicated to the Commission without delay.

The drawings are granted by the Commission on the basis of the date of acceptance of the declaration of entry into free circulation by the customs authorities of the Member States concerned, to the extent that the available balance so permits.

If a Member State does not use the quantities drawn, it shall return them as soon as possible to the corresponding quota volume.

If the quantities requested are greater than the available balance of the quota volume, allocation shall be made on a *pro rata* basis with respect to the requests. Member States shall be informed thereof by the Commission.

Article 4

Each Member State shall guarantee importers of the products in question equal and continuous access to the quotas as long as the balance of the corresponding quota volume allows.

Article 5

1. The provisions necessary for the application of this Regulation, in particular:

- (a) the amendments and technical adaptations, in so far as necessary, arising from amendments of the combined nomenclature and Taric codes;
- (b) the necessary adaptations resulting from the conclusion by the Council of protocols or Exchanges of Letters between the Community and Iceland in the framework of the Agreement referred to in this Regulation;
- (c) the prorogation of tariff measures conforming to the provisions contained in the Agreement referred to in this Regulation;
- (d) the necessary adaptations of volumes, periods and quota duty arising from decisions adopted by the Council; and
- (e) the amendments to this Regulation necessary for the putting into practice of any other act within the framework of the Agreement referred to in this Regulation

shall be adopted in accordance with the procedure laid down in Article 6 (2).

2. The provisions adopted pursuant to paragraph 1 shall not authorize the Commission to:

- carry over a balance of preferential quantities from one quota period to another,
- modify the timetable laid out in the agreements or protocols,
- transfer quantities from one quota to another,
- open and manage quotas resulting from new agreements,
- adopt legislation effecting the management of quotas which are the subject of certificates of importation.

Article 6

1. The Commission shall be assisted by the Customs Code Committee set up by Article 247 of Regulation (EEC) No 2913/92⁽¹⁾.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on a draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt the measures, which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall be communicated by the Commission to the Council forthwith. In that event:

- the Commission shall defer application of the measures which it has decided for three months from the date of such communication,
- the Council, acting by qualified majority, may take a different decision within the period referred to in the first paragraph.

3. The Committee may examine any question concerning the application of this Regulation which is raised by its chairman either on his own initiative or at the request of a Member State.

Article 7

Member States and the Commission shall cooperate closely in order to ensure that this Regulation is complied with.

Article 8

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

It shall apply from 1 January 1995.

⁽¹⁾ OJ No L 302, 19. 10. 1992, p. 1. Regulation as amended by the 1994 Act of Accession.

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

Done at Brussels, 19 March 1996.

For the Council

The President

W. LUCHETTI

ANNEX

Order No	CN code	Taric code	Description	Amount of quotas (in t)	Quota duty (%)
09.0791	0101 19 10 0101 19 90	— —	Live horses	100 head	0
09.0793	0302 12 00 0304 10 13 0304 20 13	— — —	Salmon, fresh or chilled Salmon fillets, fresh or chilled Frozen salmon fillets	50	0
09.0794	0302 23 00 0302 29 0302 69 85 0303 32 00 0303 79 96 0304 10 19 0304 10 33 0304 10 35 ex 0304 10 38 0304 10 98 0304 20 19 0304 90 35 0304 90 38 0304 90 39 0304 90 41 0304 90 47 0304 90 59 ex 0304 90 97	— — — — — — — — 0304 10 38 *10 *20 *50 *90 — — — — — — — — 0304 90 97 *31 *39 *50 *60 *70 *80 *90	Sole, fresh or chilled Megrim and other flat fish, fresh or chilled Blue whiting, fresh or chilled Frozen plaice Other frozen fish Coalfish fillets, chilled or frozen Fish of coalfish, fresh or chilled Redfish fillets, fresh or chilled Other fish fillets, other than herring and mackerel, fresh or chilled Other fish meat, fresh or chilled Frozen fillets of other freshwater fish Frozen cod meat of the species <i>Gadus macrocephalus</i> Frozen cod meat of the species <i>Gadus morhua</i> Frozen cod meat of the species <i>Gadus ogac</i> and frozen fish meat of the species <i>Boreogadus saida</i> Frozen coalfish meat Frozen hake meat of the genus <i>Merluccius</i> Frozen blue whiting meat Other frozen fish meat, except mackerel	250	0
09.0795	0305 61 00	—	Herring, salted but not dried or smoked, and herring in brine	1 750	0
09.0796	0306 19 30	—	Frozen Norway lobsters (<i>Nephrops norvegicus</i>)	50	0

Order No	CN code	Taric code	Description	Amount of quotas (in t)	Quota duty (%)
09.0797	1604 12 91	—	Other prepared or preserved herring, in hermetically sealed containers	2 400	0
	1604 12 99	—	Other prepared or preserved herring, other		
09.0798	1604 19 98	—	Other prepared or preserved fish, whole or in pieces	50	0
	ex 1604 20 90	1604 20 90 *20/80 *30/80 *35/80 *50/80 *90/80	Other prepared or preserved fish meat, except herring and mackerel		

COMMISSION REGULATION (EC) No 500/96

of 22 March 1996

amending Regulation (EC) No 1203/95 opening and providing for the administration of tariff quotas for high-quality fresh, chilled and frozen beef and for frozen buffalo meat for the period 1 July 1995 to 30 June 1996

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3379/94 of 22 December 1994 opening and administering certain Community tariff quotas in 1995 for certain agricultural products and for beer⁽¹⁾, as amended by Regulation (EC) No 2857/95⁽²⁾, and in particular Article 5(1) thereof,

Having regard to Council Regulation (EC) No 3093/95 of 22 December 1995 laying down the rates of duty to be applied by the Community resulting from negotiations under GATT Article XXIV:6 consequent upon the accession of Austria, Finland and Sweden to the European Union⁽³⁾, and in particular Article 5 thereof,

Whereas Commission Regulation (EC) No 1203/95 opening and providing for the administration of tariff quotas for high-quality fresh, chilled and frozen beef and for frozen buffalo meat for the period 1 July 1995 to June 1996⁽⁴⁾ lays down the detailed rules for preferential imports of high quality beef in the 1995/96 quota year; whereas Annex III of Regulation (EC) No 3093/95 provides for supplementary import quantities of high quality beef from Australia and New Zealand;

Whereas Council Regulation (EC) No 2857/95 provided for an autonomous import quota of 200 tonnes of high quality beef for the period from 1 July to 31 December 1995; whereas due to the late adoption and publication of that Regulation detailed rules for application could not be laid down in time before the end of the year; whereas, under those circumstances, the quantity concerned should be admitted for import in the first six months of 1996;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1203/95 is amended as follows:

1. In Article 1 (1) the figure of '54 300' is replaced by '55 650'.

⁽¹⁾ OJ No L 366, 31. 12. 1994, p. 3.

⁽²⁾ OJ No L 300, 13. 12. 1995, p. 1.

⁽³⁾ OJ No L 334, 30. 12. 1995, p. 1.

⁽⁴⁾ OJ No L 119, 30. 5. 1995, p. 13.

2. In Article 2:

- (a) at point (b) the figure of '5 000' is replaced by the figure of '6 000'.

- (b) at point (e) the figure of '10 000' is replaced by the figure of '10 200'.

- (c) after point (e), the following point (f) is added:

'(f) 150 tonnes product weight of meat, falling within CN codes 0201 20 90, 0201 30 00, 0202 20 90, 0202 30, 0206 10 95 and 0206 29 91 and meeting the following definition:

"Selected chilled or frozen premium beef cuts derived from exclusively pasture-grazed bovine animals which do not have more than four permanent incisor teeth in wear, the carcasses of which have a dressed weight of not more than 325 kilograms, a compact appearance with a good eye of meat of light and uniform colour and adequate but not excessive fat cover. All cuts will be vacuum packaged and referred to as 'high-quality beef'."

3. Article 8(1) is replaced by the following:

'1. Imports of the quantities set out in the second indent of Article 1 (1) and in Article 2 (a), (b), (c), (d) and (f) shall be subject to presentation, on release for free circulation, of import licences issued in accordance with Article 4 (c) and (d) of paragraph 2 of this Article.'

4. The following indent is added at the end of Annex II:

— NEW ZEALAND MEAT PRODUCERS BOARD

for meat originating in New Zealand, meeting the definition in Article 2 (f).'

Article 2

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

It shall apply from 1 January 1996.

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

Done at Brussels, 22 March 1996.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 501/96
of 22 March 1996
amending Regulation (EC) No 393/96 on the supply of cereals 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 Commission Regulation (EC) No 393/96 ⁽³⁾ issued an invitation to tender for the supply, as food aid, of 24 951 tonnes of cereals; whereas some of the conditions specified in Annex I to that Regulation should be altered,

HAS ADOPTED THIS REGULATION:

Article 1

Note ⁽⁷⁾ of Annex I to Regulation (EC) No 393/96 is replaced by the following:

⁽⁷⁾ The successful tenderer shall supply to the beneficiary or its representative, on delivery, the following documents:

- phytosanitary certificate (lot A + B1: + expiry date),
- lot A: fumigation certificate (cereals/cereals derivatives are to be fumigated prior to shipment by way of magnesium phosphide (min. 2g/m³) for a minimum period of five days between the application of the fumigant and the venting process. The appropriate certification must be made available at the time of shipment.)

Article 2

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

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

Done at Brussels, 22 March 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 54, 5. 3. 1996, p. 1.

COMMISSION REGULATION (EC) No 502/96

of 22 March 1996

determining the percentage of quantities covered by applications for export licences for poultrymeat which may be accepted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1372/95 of 16 June 1995 laying down detailed rules for implementing the system of export licences in the poultrymeat sector⁽¹⁾, as last amended by Regulation (EC) No 180/96⁽²⁾, and in particular Article 3 (4) thereof,

Whereas Regulation (EC) No 1372/95 provides for specific measures where applications for export licences concern quantities and/or expenditure which exceed the normal trade patterns or where there is a risk that they will be exceeded, taking account of the limit referred to in Article 8 (11) of Council Regulation (EEC) No 2777/75⁽³⁾, as last amended by Commission Regulation (EC) No 2916/95⁽⁴⁾, and/or the corresponding expenditure during the period in question;

Whereas uncertainty is a feature of the market in certain poultrymeat products; whereas the impending adjustment of the refunds applicable to those products has led to the submission of applications for export licences for specula-

tive ends; whereas there is a risk that the issue of licences for the quantities applied for from 18 to 20 March 1996 may lead to an overrun in the quantities of the products concerned normally disposed of by way of trade; whereas applications covering the products concerned in respect of which export licences have not yet been granted should be rejected,

HAS ADOPTED THIS REGULATION:

Article 1

No further action shall be taken in respect of applications pending for export licences for poultrymeat submitted pursuant to Regulation (EC) No 1372/95 in respect of categories 3 to 8 of the Annex to that Regulation which should have been issued from 25 March 1996.

Article 2

This Regulation shall enter into force on 25 March 1996.

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

Done at Brussels, 22 March 1996.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 133, 17. 6. 1995, p. 26.

⁽²⁾ OJ No L 25, 1. 2. 1996, p. 27.

⁽³⁾ OJ No L 282, 1. 11. 1975, p. 77.

⁽⁴⁾ OJ No L 305, 19. 12. 1995, p. 49.

COMMISSION REGULATION (EC) No 503/96

of 22 March 1996

amending Regulation (EEC) No 2219/92 laying down detailed rules for the application of the specific supply arrangements for Madeira relating to milk products regarding the amounts of aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1600/92 of 15 June 1992 concerning specific measures for the Azores and Madeira relating to certain agricultural products⁽¹⁾, as last amended by Regulation (EC) No 2537/95⁽²⁾, and in particular Article 10 thereof,

Whereas Commission Regulation (EEC) No 1696/92⁽³⁾, as last amended by Regulation (EEC) No 2596/93⁽⁴⁾, lays down in particular the detailed rules for the application of the specific arrangements for the supply of certain agricultural products to the Azores and Madeira;

Whereas Annex II to Regulation (EEC) No 2219/92 of 30 July 1992 laying down detailed rules for the application of the specific supply arrangements for Madeira relating to milk products and establishing the forecast supply balance⁽⁵⁾, as last amended by Regulation (EC) No 326/96⁽⁶⁾, fixes the aid for milk products;

Whereas Commission Regulation (EC) No 2996/95 of 19 December 1995 amending Regulation (EEC) No 3846/87

establishing an agricultural product nomenclature for export refunds⁽⁷⁾, adjusts the nomenclature for export refunds on certain milk products; whereas Commission Regulation (EC) No 468/96 of 14 March 1996 fixing the export refunds on milk and milk products⁽⁸⁾, as last amended by Regulation (EC) No 497/96⁽⁹⁾, fixes the refunds on those products; whereas Annex II to Regulation (EEC) No 2219/92 should be adapted to take account of those adjustments,

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to amended Regulation (EEC) No 2219/92 is hereby replaced by the Annex hereto.

Article 2

This Regulation shall enter into force on 23 March 1996.

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

Done at Brussels, 22 March 1996.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 173, 27. 6. 1992, p. 1.

⁽²⁾ OJ No L 260, 31. 10. 1995, p. 10.

⁽³⁾ OJ No L 179, 1. 7. 1992, p. 6.

⁽⁴⁾ OJ No L 238, 23. 9. 1993, p. 24.

⁽⁵⁾ OJ No L 218, 1. 8. 1992, p. 75.

⁽⁶⁾ OJ No L 45, 23. 2. 1996, p. 29.

⁽⁷⁾ OJ No L 312, 23. 12. 1995, p. 31.

⁽⁸⁾ OJ No L 65, 15. 3. 1996, p. 8.

⁽⁹⁾ OJ No L 74, 22. 3. 1996, p. 4.

ANNEX

ANNEX II

(in ECU/100 kg weight, if no other indication)

CN code	Description of goods	Product code	Notes	Amount of aid
(1)	(2)	(3)	(4)	(5)
0401	Milk and cream, not concentrated nor containing added sugar or other sweetening matter ⁽¹⁾ :			
0401 10	— Of a fat content, by weight, not exceeding 1 %:			
0401 10 10	— — In immediate packings of a net content not exceeding 2 litres	0401 10 10 000	(¹)	4,748
0401 10 90	— — Other	0401 10 90 000	(¹)	4,748
0401 20	— Of a fat content, by weight, exceeding 1 % but not exceeding 6 %:			
	— — Not exceeding 3 %:			
0401 20 11	— — — In immediate packings of a net content not exceeding 2 litres:			
	— — — Of a fat content, by weight, not exceeding 1,5 %	0401 20 11 100	(¹)	4,748
	— — — Of a fat content, by weight, exceeding 1,5 %	0401 20 11 500	(¹)	7,340
0401 20 19	— — — Other:			
	— — — Of a fat content, by weight, not exceeding 1,5 %	0401 20 19 100	(¹)	4,748
	— — — Of a fat content, by weight, exceeding 1,5 %	0401 20 19 500	(¹)	7,340
	— — Exceeding 3 %:			
0401 20 91	— — — In immediate packings of a net content not exceeding 2 litres:			
	— — — Of a fat content, by weight, not exceeding 4 %	0401 20 91 100	(¹)	9,775
	— — — Of a fat content, by weight, exceeding 4 %	0401 20 91 500	(¹)	11,39
0401 20 99	— — — Other:			
	— — — Of a fat content, by weight, not exceeding 4 %	0401 20 99 100	(¹)	9,775
	— — — Of a fat content, by weight, exceeding 4 %	0401 20 99 500	(¹)	11,39
0401 30	— Of a fat content, by weight, exceeding 6 %:			
	— — Not exceeding 21 %:			
0401 30 11	— — — In immediate packings of a net content not exceeding 2 litres:			
	— — — Of a fat content, by weight:			
	— — — Not exceeding 10 %	0401 30 11 100	(¹)	14,62
	— — — Exceeding 10 % but not exceeding 17 %	0401 30 11 400	(¹)	22,55
	— — — Exceeding 17 %	0401 30 11 700	(¹)	33,87
0401 30 19	— — — Other:			
	— — — Of a fat content, by weight:			
	— — — Not exceeding 10 %	0401 30 19 100	(¹)	14,62
	— — — Exceeding 10 % but not exceeding 17 %	0401 30 19 400	(¹)	22,55
	— — — Exceeding 17 %	0401 30 19 700	(¹)	33,87
	— — Exceeding 21 % but not exceeding 45 %:			
0401 30 31	— — — In immediate packings of a net content not exceeding 2 litres:			
	— — — Of a fat content, by weight:			
	— — — Not exceeding 35 %	0401 30 31 100	(¹)	40,34
	— — — Exceeding 35 % but not exceeding 39 %	0401 30 31 400	(¹)	63,00
	— — — Exceeding 39 %	0401 30 31 700	(¹)	69,47

<i>(in ECU/100 kg weight, if no other indication)</i>				
CN code	Description of goods	Product code	Notes	Amount of aid
(1)	(2)	(3)	(4)	(5)
0401 30 39	— — — Other: — Of a fat content, by weight: — Not exceeding 35 % — Exceeding 35 % but not exceeding 39 % — Exceeding 39 % — — Exceeding 45 %:			
		0401 30 39 100	(1)	40,34
		0401 30 39 400	(1)	63,00
		0401 30 39 700	(1)	69,47
0401 30 91	— — — In immediate packings of a net content not exceeding 2 litres: — Of a fat content, by weight: — Not exceeding 68 % — Exceeding 68 % but not exceeding 80 % — Exceeding 80 %			
		0401 30 91 100	(1)	79,18
		0401 30 91 400	(1)	116,37
		0401 30 91 700	(1)	135,80
0401 30 99	— — — Other: — Of a fat content, by weight: — Not exceeding 68 % — Exceeding 68 % but not exceeding 80 % — Exceeding 80 %			
		0401 30 99 100	(1)	79,18
		0401 30 99 400	(1)	116,37
		0401 30 99 700	(1)	135,80
ex 0402	Skimmed-milk powder of a fat content, by weight, not exceeding 1,5 %	0402 10 11 000 0402 10 19 000	(2)	49,00
ex 0402	Whole milk powder of a fat content, by weight, not exceeding 27 %	0402 21 11 900 0402 21 19 900	(2)	98,05
ex 0405	Butter and other fats and oils derived from milk; dairy spreads:			
0405 10	— Butter: — — Of a fat content, by weight, not exceeding 85 %: — — — Natural butter:			
0405 10 11	— — — — In immediate packings of a net content not exceeding 1 kg: — — — — — Of a fat content by weight: — — — — — — Of 80 % or more but less than 82 % — — — — — — Of 82 % or more	0405 10 11 500 0405 10 11 700		156,10 160,00
0405 10 19	— — — — — Other: — — — — — — Of a fat content by weight: — — — — — — — Of 80 % or more but less than 82 % — — — — — — — Of 82 % or more	0405 10 19 500 0405 10 19 700		156,10 160,00
0405 10 30	— — — — — Recombined butter: — — — — — — In immediate packings of a net content not exceeding 1 kg: — — — — — — — Of a fat content by weight: — — — — — — — — Of 80 % or more but less than 82 % — — — — — — — — Of 82 % or more — — — — — — Other: — — — — — — — Of a fat content by weight: — — — — — — — — Of 80 % or more but less than 82 % — — — — — — — — Of 82 % or more	0405 10 30 100 0405 10 30 300 0405 10 30 500 0405 10 30 700		156,10 160,00 156,10 160,00

(in ECU/100 kg weight, if no other indication)				
CN code	Description of goods	Product code	Notes	Amount of aid
(1)	(2)	(3)	(4)	(5)
0405 10 50	— — — Whey butter:			
	— — — — In immediate packings of a net content not exceeding 1 kg:			
	— — — — — Of a fat content by weight:			
	— — — — — — Of 80 % or more but less than 82 %	0405 10 50 100		156,10
	— — — — — — Of 82 % or more	0405 10 50 300		160,00
	— — — — — Other:			
	— — — — — — Of a fat content by weight:			
	— — — — — — Of 80 % or more but less than 82 %	0405 10 50 500		156,10
	— — — — — — Of 82 % or more	0405 10 50 700		160,00
0405 10 90	— — Other	0405 10 90 000		165,85
ex 0405 20	— Dairy spreads:			
0405 20 90	— — Of a fat content by weight of more than 75 % but less than 80 %:			
	— — — Of a fat content by weight:			
	— — — — Of more than 75 % but less than 78 %	0405 20 90 500		146,34
	— — — — Of 78 % or more	0405 20 90 700		152,20
0405 90	— Other:			
0405 90 10	— — Of a fat content by weight of 99,3 % or more and of a water content by weight not exceeding 0,5 %:	0405 90 10 000		205,00
0405 90 90	— — Other	0405 90 90 000		160,00
ex 0406	Cheeses:			
0406 90 23	Edam	0406 90 23 900		90,00
0406 90 25	Tilsit	0406 90 25 900		99,59
0406 90 76	— — — — — — Danbo, Fontal, Fontina, Fynbo, Havarti, Maribo, Samsø	0406 90 76 100		81,52
0406 90 78	— — — — — — Gouda	0406 90 78 100		77,40
	— — — — — — Other cheeses, of a water content, calculated by weight, of the non-fatty matter			
0406 90 79	Esrom, Italico, Kernhem, Saint-Nectaire, Saint-Paulin, Taleggio	0406 90 79 900		84,39
0406 90 81	Cantal, Cheshire, Wensleydale, Lancashire, Double Gloucester, Blarney, Colby, Monterey	0406 90 81 900		95,66
0406 90 86	— — — — — — Exceeding 47 % but not exceeding 52 %:			
	— Cheeses produced from whey	0406 90 86 100		—
	— Other:			
	— Of a fat content, by weight, in the dry matter:			
	— — Of less than 5 %	0406 90 86 200	(³)	65,84
	— — Of 5 % or more but less 19 %	0406 90 86 300	(³)	72,20
	— — Of 19 % or more but less than 39 %	0406 90 86 400	(³)	81,52
	— — Of more than 39 %	0406 90 86 900	(³)	95,66

(²) In the case of cheeses presented in containers which also contain conserving liquid, in particular brine, the aid is granted on the net weight, the weight of the liquid being deducted.'

**COMMISSION REGULATION (EC) No 504/96
of 22 March 1996**

**amending Regulation (EC) No 2993/94 fixing the aid for the supply of milk
products to the Canary Islands under the arrangements provided for in Articles 2
to 4 of Council Regulation (EEC) No 1601/92**

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

Having regard to Council Regulation (EEC) No 1601/92 of 15 June 1992 concerning specific measures for the Canary Islands with regard to certain agricultural products⁽¹⁾, as last amended by Regulation (EC) No 2537/95⁽²⁾, and in particular Article 3 (4) thereof,

Whereas Commission Regulation (EC) No 2790/94⁽³⁾, as amended by Regulation (EC) No 2883/94⁽⁴⁾, lays down in particular the detailed rules for the application of the specific arrangements for the supply of certain agricultural products to the Canary Islands;

Whereas Commission Regulation (EC) No 2993/94⁽⁵⁾, as last amended by Regulation (EC) No 327/96⁽⁶⁾, fixed the amount of aid for milk products;

Whereas Commission Regulation (EC) No 2996/95 of 19 December 1995⁽⁷⁾ amending Regulation (EEC) No

3846/87 establishing an agricultural product nomenclature for export refunds adjusts the nomenclature for export refunds on certain milk products; whereas Commission Regulation (EC) No 468/96 of 14 March 1996 fixing the export refunds on milk and milk products⁽⁸⁾, as last amended by Regulation (EC) No 497/96⁽⁹⁾, fixes the refunds on those products; whereas the Annex to Regulation (EC) No 2993/94 should be adapted to take account of those adjustments,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to amended Regulation (EC) No 2993/94 is hereby replaced by the Annex hereto.

Article 2

This Regulation shall enter into force on 23 March 1996.

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

Done at Brussels, 22 March 1996.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 173, 27. 6. 1992, p. 13.

⁽²⁾ OJ No L 260, 31. 10. 1995, p. 10.

⁽³⁾ OJ No L 296, 17. 11. 1994, p. 23.

⁽⁴⁾ OJ No L 304, 29. 11. 1994, p. 18.

⁽⁵⁾ OJ No L 316, 9. 12. 1994, p. 11.

⁽⁶⁾ OJ No L 45, 23. 2. 1996, p. 29.

⁽⁷⁾ OJ No L 312, 23. 12. 1995, p. 31.

⁽⁸⁾ OJ No L 65, 15. 3. 1996, p. 8.

⁽⁹⁾ OJ No L 74, 22. 3. 1996, p. 4.

ANNEX

(in ECU/100 kg weight, if no other indication)

CN code	Description of goods	Product code	Notes	Amount of aid
(1)	(2)	(3)	(4)	(5)
0401	Milk and cream, not concentrated nor containing added sugar or other sweetening matter ⁽¹⁾ :			
0401 10	– Of a fat content, by weight, not exceeding 1 %:			
0401 10 10	– – In immediate packings of a net content not exceeding 2 litres	0401 10 10 000	⁽¹⁾	4,748
0401 10 90	– – Other	0401 10 90 000	⁽¹⁾	4,748
0401 20	– Of a fat content, by weight, exceeding 1 % but not exceeding 6 %:			
	– – Not exceeding 3 %:			
0401 20 11	– – – In immediate packings of a net content not exceeding 2 litres:			
	– Of a fat content, by weight, not exceeding 1,5 %	0401 20 11 100	⁽¹⁾	4,748
	– Of a fat content, by weight, exceeding 1,5 %	0401 20 11 500	⁽¹⁾	7,340
0401 20 19	– – – Other:			
	– Of a fat content, by weight, not exceeding 1,5 %	0401 20 19 100	⁽¹⁾	4,748
	– Of a fat content, by weight, exceeding 1,5 %	0401 20 19 500	⁽¹⁾	7,340
	– – Exceeding 3 %:			
0401 20 91	– – – In immediate packings of a net content not exceeding 2 litres:			
	– Of a fat content, by weight, not exceeding 4 %	0401 20 91 100	⁽¹⁾	9,775
	– Of a fat content, by weight, exceeding 4 %	0401 20 91 500	⁽¹⁾	11,39
0401 20 99	– – – Other:			
	– Of a fat content, by weight, not exceeding 4 %	0401 20 99 100	⁽¹⁾	9,775
	– Of a fat content, by weight, exceeding 4 %	0401 20 99 500	⁽¹⁾	11,39
0401 30	– Of a fat content, by weight, exceeding 6 %:			
	– – Not exceeding 21 %:			
0401 30 11	– – – In immediate packings of a net content not exceeding 2 litres:			
	– Of a fat content, by weight:			
	– Not exceeding 10 %	0401 30 11 100	⁽¹⁾	14,62
	– Exceeding 10 % but not exceeding 17 %	0401 30 11 400	⁽¹⁾	22,55
	– Exceeding 17 %	0401 30 11 700	⁽¹⁾	33,87
0401 30 19	– – – Other:			
	– Of a fat content, by weight:			
	– Not exceeding 10 %	0401 30 19 100	⁽¹⁾	14,62
	– Exceeding 10 % but not exceeding 17 %	0401 30 19 400	⁽¹⁾	22,55
	– Exceeding 17 %	0401 30 19 700	⁽¹⁾	33,87
	– – Exceeding 21 % but not exceeding 45 %:			
0401 30 31	– – – In immediate packings of a net content not exceeding 2 litres:			
	– Of a fat content, by weight:			
	– Not exceeding 35 %	0401 30 31 100	⁽¹⁾	40,34
	– Exceeding 35 % but not exceeding 39 %	0401 30 31 400	⁽¹⁾	63,00
	– Exceeding 39 %	0401 30 31 700	⁽¹⁾	69,47

(in ECU/100 kg weight, if no other indication)

CN code	Description of goods	Product code	Notes	Amount of aid
(1)	(2)	(3)	(4)	(5)
0401 30 39	-- -- Other: -- Of a fat content, by weight: -- Not exceeding 35 % -- Exceeding 35 % but not exceeding 39 % -- Exceeding 39 % -- -- Exceeding 45 %:	0401 30 39 100 0401 30 39 400 0401 30 39 700	(1) (1) (1)	40,34 63,00 69,47
0401 30 91	-- -- In immediate packings of a net content not exceeding 2 litres: -- Of a fat content, by weight: -- Not exceeding 68 % -- Exceeding 68 % but not exceeding 80 % -- Exceeding 80 %	0401 30 91 100 0401 30 91 400 0401 30 91 700	(1) (1) (1)	79,18 116,37 135,80
0401 30 99	-- -- Other: -- Of a fat content, by weight: -- Not exceeding 68 % -- Exceeding 68 % but not exceeding 80 % -- Exceeding 80 %	0401 30 99 100 0401 30 99 400 0401 30 99 700	(1) (1) (1)	79,18 116,37 135,80
0402	Milk and cream, concentrated or containing added sugar or other sweetening matter:			
0402 10	-- In powder, granules or other solid forms, of a fat content, by weight, not exceeding 1,5 % (7): -- -- Not containing added sugar or other sweetening matter (2):			
0402 10 11	-- -- In immediate packings of a net content not exceeding 2,5 kg	0402 10 11 000	(2)	49,00
0402 10 19	-- -- Other	0402 10 19 000	(2)	49,00
	-- -- Other (3):			
0402 10 91	-- -- In immediate packings of a net content not exceeding 2,5 kg	0402 10 91 000	(3)	0,4900
0402 10 99	-- -- Other	0402 10 99 000	(3)	0,4900
	-- In powder, granules or other solid forms, of a fat content, by weight, exceeding 1,5 % (7):			
0402 21	-- -- Not containing added sugar or other sweetening matter (2):			
	-- -- Of a fat content, by weight, not exceeding 27 %:			
0402 21 11	-- -- In immediate packings of a net content not exceeding 2,5 kg:			
	-- Of a fat content, by weight:			
	-- Not exceeding 11 %	0402 21 11 200	(2)	49,00
	-- Exceeding 11 % but not exceeding 17 %	0402 21 11 300	(2)	86,53
	-- Exceeding 17 % but not exceeding 25 %	0402 21 11 500	(2)	91,16
	-- Exceeding 25 %	0402 21 11 900	(2)	98,05
	-- -- -- Other:			
0402 21 17	-- -- -- Of a fat content, by weight, not exceeding 11 %	0402 21 17 000	(2)	49,00
0402 21 19	-- -- -- Of a fat content, by weight, exceeding 11 % but not exceeding 27 %:			
	-- Not exceeding 17 %	0402 21 19 300	(3)	86,53
	-- Exceeding 17 % but not exceeding 25 %	0402 21 19 500	(2)	91,16
	-- Exceeding 25 %	0402 21 19 900	(2)	98,05
	-- -- -- Of a fat content, by weight, exceeding 27 %:			

(in ECU/100 kg weight, if no other indication)				
CN code	Description of goods	Product code	Notes	Amount of aid
(1)	(2)	(3)	(4)	(5)
0402 21 91	— — — — In immediate packings of a net content not exceeding 2,5 kg: — Of a fat content, by weight: — Not 28 % — Exceeding 28 % but not exceeding 29 % — Exceeding 29 % but not exceeding 41 % — Exceeding 41 % but not exceeding 45 % — Exceeding 45 % but not exceeding 59 % — Exceeding 59 % but not exceeding 69 % — Exceeding 69 % but not exceeding 79 % — Exceeding 7 %	0402 21 91 100 0402 21 91 200 0402 21 91 300 0402 21 91 400 0402 21 91 500 0402 21 91 600 0402 21 91 700 0402 21 91 900	(2) (2) (2) (2) (2) (2) (2) (2)	98,77 99,45 100,67 107,61 110,00 119,21 124,61 130,71
0402 21 99	— — — — Other: — Of a fat content, by weight: — Not exceeding 28 % — Exceeding 28 % but not exceeding 29 % — Exceeding 29 % but not exceeding 41 % — Exceeding 41 % but not exceeding 45 % — Exceeding 45 % but not exceeding 59 % — Exceeding 59 % but not exceeding 69 % — Exceeding 69 % but not exceeding 79 % — Exceeding 79 %	0402 21 99 100 0402 21 99 200 0402 21 99 300 0402 21 99 400 0402 21 99 500 0402 21 99 600 0402 21 99 700 0402 21 99 900	(2) (2) (2) (2) (2) (2) (2) (2)	98,77 99,45 100,67 107,61 110,00 119,21 124,61 130,71
ex 0402 29	— — Other ⁽³⁾ : — — — Of a fat content, by weight, not exceeding 27 %: — — — — Other:			
0402 29 15	— — — — — In immediate packings of a net content not exceeding 2,5 kg: — Of a fat content, by weight: — Not exceeding 11 % — Exceeding 11 % but not exceeding 17 % — Exceeding 17 % but not exceeding 25 % — Exceeding 25 %	0402 29 15 200 0402 29 15 300 0402 29 15 500 0402 29 15 900	(3) (3) (3) (3)	0,4900 0,8653 0,9116 0,9805
0402 29 19	— — — — — Other: — Of a fat content, by weight: — Not exceeding 11 % — Exceeding 11 % but not exceeding 17 % — Exceeding 17 % but not exceeding 25 % — Exceeding 25 % — — — Of a fat content, by weight, exceeding 27 %:	0402 29 19 200 0402 29 19 300 0402 29 19 500 0402 29 19 900	(3) (3) (3) (3)	0,4900 0,8653 0,9116 0,9805

(in ECU/100 kg weight, if no other indication)

CN code	Description of goods	Product code	Notes	Amount of aid
(1)	(2)	(3)	(4)	(5)
0402 29 91	— — — — In immediate packings of a net content not exceeding 2,5 kg: — Of a fat content, by weight: — Not exceeding 41 % — Exceeding 41 %	0402 29 91 100 0402 29 91 500	(³) (³)	0,9877 1,0761
0402 29 99	— — — — Other: — Of a fat content, by weight: — Not exceeding 41 % — Exceeding 41 % — Other:	0402 29 99 100 0402 29 99 500	(³) (³)	0,9877 1,0761
0402 91	— — Not containing added sugar or other sweetening matter⁽²⁾: — — — Of a fat content, by weight, not exceeding 8 %:			
0402 91 11	— — — — In immediate packings of a net content not exceeding 2,5 kg: — Of a non-fat lactic dry matter content: — Of less than 15 % and of a fat content, by weight: — Not exceeding 3 % — Exceeding 3 % — Of 15 % or more and of a fat content, by weight: — Not exceeding 3 % — Exceeding 3 % but not exceeding 7,4 % — Exceeding 7,4 %	0402 91 11 110 0402 91 11 120 0402 91 11 310 0402 91 11 350 0402 91 11 370	(²) (²) (²) (²) (²)	4,748 9,775 16,36 20,06 24,39
0402 91 19	— — — — Other: — Of a non-fat lactic dry matter content: — Of less than 15 % and of a fat content, by weight: — Not exceeding 3 % — Exceeding 3 % — Of 15 % or more and of a fat content, by weight: — Not exceeding 3 % — Exceeding 3 % but not exceeding 7,4 % — Exceeding 7,4 % — — — Of a fat content, by weight, exceeding 8 % but not exceeding 10 %:	0402 91 19 110 0402 91 19 120 0402 91 19 310 0402 91 19 350 0402 91 19 370	(²) (²) (²) (²) (²)	4,748 9,775 16,36 20,06 24,39
0402 91 31	— — — — In immediate packings of a net content not exceeding 2,5 kg: — Of a non-fat lactic dry matter content: — Of less than 15 % — Of 15 % or more	0402 91 31 100 0402 91 31 300	(²) (²)	19,31 28,83
0402 91 39	— — — — Other: — Of a non-fat lactic dry matter content: — Of less than 15 % — Of 15 % or more — — — Of a fat content, by weight, exceeding 10 % but not exceeding 45 %:	0402 91 39 100 0402 91 39 300	(²) (²)	19,31 28,83
0402 91 51	— — — — In immediate packings of a net content not exceeding 2,5 kg	0402 91 51 000	(²)	22,55
0402 91 59	— — — — Other	0402 91 59 000	(²)	22,55

(in ECU/100 kg weight, if no other indication)

CN code	Description of goods	Product code	Notes	Amount of aid
(1)	(2)	(3)	(4)	(5)
	— — — Of a fat content, by weight, exceeding 45 %:			
0402 91 91	— — — — In immediate packings of a net content not exceeding 2,5 kg	0402 91 91 000	(2)	79,18
0402 91 99	— — — — Other	0402 91 99 000	(2)	79,18
2 0402 99	— — Other:			
	— — — Of a fat content, by weight, not exceeding 9,5 %:			
0402 99 11	— — — — In immediate packings of a net content not exceeding 2,5 kg:			
	— Of a non-fat lactic dry matter content of less than 15 % and of a fat content, by weight (3):			
	— Not exceeding 3 %	0402 99 11 110	(3)	0,0475
	— Exceeding 3 % but not exceeding 6,9 %	0402 99 11 130	(3)	0,0978
	— Exceeding 6,9 %	0402 99 11 150	(3)	0,1562
	— Of a non-fat lactic dry matter content of 15 % or more and of a fat content, by weight (4):			
	— Not exceeding 3 %	0402 99 11 310	(4)	18,88
	— Exceeding 3 % but not exceeding 6,9 %	0402 99 11 330	(4)	22,65
	— Exceeding 6,9 %	0402 99 11 350	(4)	30,11
0402 99 19	— — — — Other:			
	— Of a non-fat lactic dry matter content of less than 15 % and of a fat content, by weight (3):			
	— Not exceeding 3 %	0402 99 19 110	(3)	0,0475
	— Exceeding 3 % but not exceeding 6,9 %	0402 99 19 130	(3)	0,0978
	— Exceeding 6,9 %	0402 99 19 150	(3)	0,1562
	— Of a non-fat lactic dry matter content of 15 % or more and of a fat content, by weight (4):			
	— Not exceeding 3 %	0402 99 19 310	(4)	18,88
	— Exceeding 3 % but not exceeding 6,9 %	0402 99 19 330	(4)	22,65
	— Exceeding 6,9 %	0402 99 19 350	(4)	30,11
	— — — Of a fat content, by weight, exceeding 9,5 % but not exceeding 45 %:			
0402 99 31	— — — — In immediate packings not exceeding 2,5 kg:			
	— Of a fat content, by weight, not exceeding 21 %:			
	— Of a non-fat lactic dry matter content, by weight, of less than 15 % (3)	0402 99 31 110	(3)	0,2094
	— Of a non-fat lactic dry matter content, by weight, of 15 % or more (4)	0402 99 31 150	(4)	31,35
	— Of a fat content, by weight, exceeding 21 % but not exceeding 39 % (3)	0402 99 31 300	(3)	0,4034
	— Of a fat content, by weight, exceeding 39 % (3)	0402 99 31 500	(3)	0,6947

(in ECU/100 kg weight, if no other indication)

CN code	Description of goods	Product code	Notes	Amount of aid
(1)	(2)	(3)	(4)	(5)
0402 99 39	— — — — Other: — Of a fat content, by weight, not exceeding 21 %: — Of a non-fat lactic dry matter content, by weight, of less than 15 % ⁽³⁾ 0402 99 39 110 ⁽³⁾ 0,2094 — Of a non-fat lactic dry matter content, by weight, of 15 % or more ⁽⁴⁾ 0402 99 39 150 ⁽⁴⁾ 31,35 — Of a fat content, by weight, exceeding 21 % but not exceeding 39 % ⁽³⁾ 0402 99 39 300 ⁽³⁾ 0,4034 — Of a fat content, by weight, exceeding 39 % ⁽³⁾ 0402 99 39 500 ⁽³⁾ 0,6947			
0402 99 91	— — — — In immediate packings not exceeding 2,5 kg ⁽³⁾	0402 99 91 000	⁽²⁾	0,7918
0402 99 99	— — — — Other ⁽³⁾	0402 99 99 000	⁽²⁾	0,7918
ex 0405	Butter and other fats and oils derived from milk; dairy spreads:			
0405 10	— Butter: — — Of a fat content, by weight, not exceeding 85 %: — — — Natural butter:			
0405 10 11	— — — — In immediate packings of a net content not exceeding 1 kg: — — — — — Of a fat content by weight: — — — — — — Of 80 % or more but less than 82 % 0405 10 11 500 156,10 — — — — — — Of 82 % or more 0405 10 11 700 160,00			
0405 10 19	— — — — Other: — — — — — Of a fat content by weight: — — — — — — Of 80 % or more but less than 82 % 0405 10 19 500 156,10 — — — — — — Of 82 % or more 0405 10 19 700 160,00			
0405 10 30	— — — Recombined butter: — — — — In immediate packings of a net content not exceeding 1 kg: — — — — — Of a fat content by weight: — — — — — — Of 80 % or more but less than 82 % 0405 10 30 100 156,10 — — — — — — Of 82 % or more 0405 10 30 300 160,00 — — — — Other: — — — — — Of a fat content by weight: — — — — — — Of 80 % or more but less than 82 % 0405 10 30 500 156,10 — — — — — — Of 82 % or more 0405 10 30 700 160,00			
0405 10 50	— — — Whey butter: — — — — In immediate packings of a net content not exceeding 1 kg: — — — — — Of a fat content by weight: — — — — — — Of 80 % or more but less than 82 % 0405 10 50 100 156,10 — — — — — — Of 82 % or more 0405 10 50 300 160,00 — — — — Other: — — — — — Of a fat content by weight: — — — — — — Of 80 % or more but less than 82 % 0405 10 50 500 156,10 — — — — — — Of 82 % or more 0405 10 50 700 160,00			
0405 10 90	— — Other	0405 10 90 000		165,85

(in ECU/100 kg weight, if no other indication)

CN code	Description of goods	Product code	Notes	Amount of aid
(1)	(2)	(3)	(4)	(5)
ex 0405 20	— Dairy spreads:			
0405 20 90	— — Of a fat content by weight of more than 75 % but less than 80 %:			
	— — — Of a fat content by weight:			
	— — — — Of more than 75 % but less than 78 %	0405 20 90 500		146,34
	— — — — Of 78 % or more	0405 20 90 700		152,20
0405 90	— Other:			
0405 90 10	— — Of a fat content by weight of 99,3 % or more and of a water content by weight not exceeding 0,5 %:	0405 90 10 000		205,00
0405 90 90	— — Other	0405 90 90 000		160,00
0406	— Cheese:			
0406 30	— Processed, cheese, not grated or powdered (6):			
0406 30 10	— — In the blending of which only Emmentaler, Gruyere and Appenzell have been used and which may contain, as an addition, Glarus herb cheese (known as Schabziger); put up for retail sale, of a fat content by weight in the dry matter, not exceeding 56 %:			
	— — — In the blending of which only Emmentaler and Gruyere have been used of a fat content by weight in the dry matter, not exceeding 56 %:			
	— — — — Of a fat content, by weight, not exceeding 36 % and of a fat content, by weight, in the dry matter:			
	— — — — — Not exceeding 48 %:			
	— — — — — Of a dry matter content, by weight:			
	— — — — — — Of less than 27 %	0406 30 10 100		—
	— — — — — — Of 27 % or more but less than 33 %	0406 30 10 150		13,95
	— — — — — — Of 33 % or more but less than 38 %	0406 30 10 200		29,75
	— — — — — — Of 38 % or more but less than 43 % and of a fat content, by weight, in the dry matter:			
	— — — — — — — Of less than 20 %	0406 30 10 250		29,75
	— — — — — — — Of 20 % or more	0406 30 10 300		43,65
	— — — — — — Of 43 % or more and of a fat content, by weight, in the dry matter:			
	— — — — — — — Of less than 20 %	0406 30 10 350		29,75
	— — — — — — — Of 20 % or more but less than 40 %	0406 30 10 400		43,65
	— — — — — — — Of 40 % or more	0406 30 10 450		63,51
	— — — — — Exceeding 48 %:			
	— — — — — — Of a dry matter content, by weight:			
	— — — — — — — Of less than 33 %	0406 30 10 500		—
	— — — — — — — Of 33 % or more but less than 38 %	0406 30 10 550		29,75
	— — — — — — — Of 38 % or more but less than 43 %	0406 30 10 600		43,65

(in ECU/100 kg weight, if no other indication)

CN code	Description of goods	Product code	Notes	Amount of aid
(1)	(2)	(3)	(4)	(5)
0406 30 10 (cont'd)	— Of 43 % or more but less than 46 % — Of 46 % or more and of a fat content, by weight, in the dry matter: — Of less than 55 % — Of 55 % or more — — — Of a fat content, by weight, exceeding 36 % — — — Other — — Other: — — — Of a fat content, by weight, not exceeding 36 % and of a fat content, by weight, in the dry matter:	0406 30 10 650		63,51
		0406 30 10 700		63,51
		0406 30 10 750		75,33
		0406 30 10 800		75,33
		0406 30 10 900		—
0406 30 31	— — — Not exceeding 48 %: — Of a dry matter content, by weight: — Of less than 27 % — Of 27 % or more but less than 33 % — Of 33 % or more but less than 38 % — Of 38 % or more but less than 43 % and of a fat content, by weight, in the dry matter: — Of less than 20 % — Of 20 % or more — Of 43 % or more and of a fat content, by weight, in the dry matter: — Of less than 20 % — Of 20 % or more but less than 40 % — Of 40 % or more	0406 30 31 100		—
		0406 30 31 300	(⁹)	13,95
		0406 30 31 500	(⁹)	29,75
		0406 30 31 710	(⁹)	29,75
		0406 30 31 730	(⁹)	43,65
		0406 30 31 910	(⁹)	29,75
		0406 30 31 930	(⁹)	43,65
		0406 30 31 950	(⁹)	63,51
0406 30 39	— — — Exceeding 48 %: — Of a dry matter content, by weight: — Of less than 33 % — Of 33 % or more but less than 38 % — Of 38 % or more but less than 43 % — Of 43 % or more but less than 46 % — Of 46 % or more and of a fat content, by weight, in the dry matter: — Of less than 55 % — Of 55 % or more	0406 30 39 100		—
		0406 30 39 300	(⁹)	29,75
		0406 30 39 500	(⁹)	43,65
		0406 30 39 700	(⁹)	63,51
0406 30 90	— — — Of a fat content, by weight, exceeding 36 %	0406 30 90 000	(⁹)	75,33
0406 90 23	— — — Edam: — Of a fat content, by weight, in the dry matter: — Of less than 39 % — Of 39 % or more	0406 90 23 100		—
		0406 90 23 900	(⁹)	90,00
0406 90 25	— — — Tilsit: — Of a fat content, by weight, in the dry matter: — Of less than 39 % — Of 39 % or more	0406 90 25 100		—
		0406 90 25 900	(⁹)	99,59

(in ECU/100 kg weight, if no other indication)

CN code	Description of goods	Product code	Notes	Amount of aid
(1)	(2)	(3)	(4)	(5)
0406 90 27	— — — Butterkäse: — Of a fat content, by weight, in the dry matter: — Of less than 39 % — Of 39 % or more	 0406 90 27 100 0406 90 27 900	 (°)	 — 84,39
0406 90 76	— — — — — Danbo, Fontal, Fontina, Fynbo, Havarti, Maribo, Samsø: — Of a fat content, by weight, in the dry matter of less than 39 % — Of a fat content, by weight, in the dry matter of 39 % or more but less than 55 % — Of a fat content, by weight, in the dry matter of 55 % or more	 0406 90 76 100 0406 90 76 300 0406 90 76 500	 (°) (°) (°)	 81,52 99,59 99,59
0406 90 78	— — — — — Gouda: — Of a fat content, by weight, in the dry matter of less than 39 % — Of a fat content, by weight, in the dry matter of 39 % or more but less than 55 % — Of a fat content, by weight, in the dry matter of 55 % or more — — — — — Other cheeses, of a water content, calculated by weight, of the non-fatty matter	 0406 90 78 100 0406 90 78 300 0406 90 78 500	 (°) (°) (°)	 77,40 94,50 94,50
0406 90 79	— — — — — Estrom, Italico, Kernhem, Saint-Nectaire, Saint-Paulin and Taleggio: — Of a fat content, by weight, in the dry matter of less than 39 % — Of a fat content, by weight, in the dry matter of 39 % or more	 0406 90 79 100 0406 90 79 900	 (°)	 — 84,39
0406 90 81	— — — — — Cantal, Cheshire, Wensleydale, Lancashire, Double Gloucester, Blarney, Colby and Monterey: — Of a fat content, by weight, in the dry matter of less than 39 % — Of a fat content, by weight, in the dry matter of 39 % or more	 0406 90 81 100 0406 90 81 900	 (°)	 — 95,66
0406 90 86	— — — — — Exceeding 47 % but not exceeding 52 %: — Cheeses produced from whey — Other: — Of a fat content, by weight, in the dry matter: — Of less than 5 % — Of 5 % or more but less than 19 % — Of 19 % or more but less than 39 % — Of more than 39 %	 0406 90 86 100 0406 90 86 200 0406 90 86 300 0406 90 86 400 0406 90 86 900	 (°) (°) (°) (°)	 — 65,84 72,20 81,52 95,66

(in ECU/100 kg weight, if no other indication)

CN code	Description of goods	Product code	Notes	Amount of aid
(1)	(2)	(3)	(4)	(5)
0406 90 87	— — — — — Exceeding 52 % but not exceeding 62 %: — Cheeses produced from whey — Other: — Of a fat content, by weight, in the dry matter: — Of less than 5 % — Of 5 % or more but less than 19 % — Of 19 % or more but less than 39 % — Of more than 39 %: — Idiazabal, Manchego and Roncal, manufactured exclusively from sheep's milk — Maasdam — Manouri, of a fat content, by weight, of 30 % or more — Other	0406 90 87 100 0406 90 87 200 0406 90 87 300 0406 90 87 400 0406 90 87 951 0406 90 87 971 0406 90 87 972 0406 90 87 979	(³) (³) (³) (³) (³) (³) (³) (³)	— 65,84 72,20 81,52 119,48 99,59 37,95 99,59
0406 90 88	— — — — — Exceeding 62 % but not exceeding 72 %: — Cheeses produced from whey — Other: — Of a fat content, by weight, in the dry matter: — Of less than 5 % and of a dry matter content, by weight, of 32 % or more — Of 5 % or more but less than 19 % and of a dry matter content, by weight, of 32 % or more — Other	0406 90 88 100 0406 90 88 200 0406 90 88 300 0406 90 88 900	(³) (³) (³)	— 65,84 72,20 —

(¹) When the product falling within this subheading is a mixture containing added whey and/or added lactose and/or casein and/or caseinates, no aid shall be granted.

When completing customs formalities, the applicant shall state on the declaration provided for this purpose, whether or not whey and/or lactose and/or casein and/or caseinates have been added to the product.

(²) The weight of the added non-lactic matter and/or added whey and/or added lactose and/or added casein and/or added caseinates shall not be taken into account for the purpose of calculation of the fat content by weight. When the product falling within this subheading is a mixture containing added whey and/or added lactose and/or added casein and/or added caseinates, the whey and/or added casein and/or caseinates shall not be taken into account in the added calculation of the amount of aid.

When completing customs formalities, the applicant shall state, on the declaration provided for this purpose, whether or not whey and/or lactose and/or casein and/or caseinates have been added, and where this is the case:

- the actual content by weight of whey and/or lactose and/or casein and/or caseinates added per 100 kilograms of finished product, and in particular,
- the lactose content of the added whey.

(³) The weight of added non-lactic matter and/or added whey and/or added lactose and/or added casein and/or added caseinates shall not be taken into account for the purpose of calculation of the fat content, by weight.

The aid per 100 kilograms of product falling within this subheading shall be equal to the sum of the following components:

- (a) the amount per kilogram shown, multiplied by the weight of the lactic part contained in 100 kilograms of product; however, where whey and/or lactose and/or casein and/or caseinates have been added to the product, the amount per kilogram shown shall be multiplied by the weight of lactic part excluding the weight of added whey and/or added lactose and/or added caseinates, contained in 100 kilograms of product;

- (b) a component calculated in accordance with the provisions of Article 2 (3) of amended Regulation (EEC) No 1098/68 (OJ No L 184, 29. 7. 1968, p. 10).
When completing customs formalities, the applicant shall state, on the declaration provided for this purpose, whether or not whey and/or lactose and/or casein and/or caseinates have been added, and where this is the case:
- the actual content by weight of whey and/or lactose and/or casein and/or caseinates added per 100 kilograms of finished products, and in particular,
 - the lactose content of the added whey.
- (*) The aid on 100 kilograms of product falling within this subheading is equal to the sum of the following elements:
- (a) the amount per 100 kilograms shown; however, where whey and/or lactose and/or casein and/or caseinates have been added to the products, the amount per 100 kilograms shown shall be:
- multiplied by the weight of the lactic part other than the added whey and/or added lactose and/or added casein and/or added caseinates contained in 100 kilograms of product, and then
 - divided by the weight of the lactic part contained in 100 kilograms of product;
- (b) a component calculated in accordance with the provisions of Article 2 (3) of Regulation (EEC) No 1098/68.
When completing customs formalities, the applicant shall state, on the declaration provided for this purpose, whether or not whey and/or lactose and/or casein and/or caseinates have been added, and where this is the case:
- the actual content by weight of whey and/or lactose and/or casein and/or caseinates added per 100 kilograms of finished product, and, in particular,
 - the lactose content of the added whey.
- (5) In the case of cheeses presented in containers which also contain conserving liquid, in particular brine, the aid is granted on the net weight, the weight of the liquid being deducted.
- (6) Where the product contains casein and/or caseinates, the part corresponding to the casein and/or the added caseinates will not be taken into account for the purpose of calculating the aid.
When completing customs formalities, the party concerned is to state, on the declaration provided for the purpose, whether or not casein and/or caseinates have been added per 100 kilograms and where this is the case, the actual content by weight of added casein and/or added caseinates of finished product.
- (7) The aid on frozen condensed milk is the same as that on products falling within CN codes 0402 91 or 0402 99.
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COMMISSION REGULATION (EC) No 505/96

of 22 March 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 Commis-

sion fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto;

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 23 March 1996.

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

Done at Brussels, 22 March 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 22 March 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	86,2	0805 30 20	052	132,2
	060	80,2		204	88,8
	064	59,6		220	74,0
	066	41,7		388	78,7
	068	62,3		400	61,7
	204	70,6		512	54,8
	208	44,0		520	66,5
	212	46,9		524	100,8
	624	166,1		528	100,6
	999	73,1		600	71,1
				624	86,8
0707 00 15	052	104,3	0808 10 51, 0808 10 53, 0808 10 59	999	83,3
	053	156,2		052	64,0
	060	61,0		064	78,6
	066	53,8		388	118,0
	068	69,1		400	80,1
	204	144,3		404	66,7
	624	87,1		508	121,3
	999	96,5		512	83,1
				524	108,5
				528	102,9
				624	86,5
0709 10 10	220	76,5		728	107,3
	999	76,5		800	78,0
				804	21,0
0709 90 73	052	104,3		999	85,8
	204	77,5	0808 20 31	039	90,4
	412	54,2		052	86,2
	624	241,0		064	72,5
	999	119,3		388	76,1
0805 10 01, 0805 10 05, 0805 10 09	052	41,6		400	99,8
	204	43,3		512	63,3
	208	58,0		528	67,9
	212	47,7		624	79,0
	220	53,3		728	115,4
	388	40,5		800	55,8
	400	40,1		804	112,9
	436	41,6		999	83,6
	448	26,1			
	600	43,1			
	624	52,7			
	999	44,4			

⁽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 506/96

of 22 March 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 487/96⁽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 23 March 1996.

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

Done at Brussels, 22 March 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 70, 20. 3. 1996, p. 31.

ANNEX

to the Commission Regulation of 22 March 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⁾	25,18	3,73
1701 11 90 ⁽¹⁾	25,18	8,94
1701 12 10 ⁽¹⁾	25,18	3,60
1701 12 90 ⁽¹⁾	25,18	8,51
1701 91 00 ⁽²⁾	31,60	9,43
1701 99 10 ⁽²⁾	31,60	4,91
1701 99 90 ⁽²⁾	31,60	4,91
1702 90 99 ⁽³⁾	0,32	0,34

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

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

⁽³⁾ By 1 % sucrose content.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 14 November 1995

declaring a concentration to be compatible with the common market and the functioning of the EEA Agreement

(Case No IV/M.603 — Crown Cork & Seal/CarnaudMetalbox)

(Only the English text is authentic)

(Text with EEA relevance)

(96/222/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings⁽¹⁾, and in particular Article 8 (2) thereof,

Having regard to the EEA Agreement, and in particular Article 57 (1) thereof,

Having regard to the Commission Decision of 25 July 1995 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission,

Having regard to the opinion of the Advisory Committee on Concentrations⁽²⁾,

Whereas:

On 23 June 1995, Crown Cork & Seal Company, Inc. notified the Commission of a proposed concentration by

which it intends to acquire sole control of CarnaudMetalbox SA. On 25 July 1995, the Commission adopted a decision pursuant to Article 6 (1) (c) of Regulation (EEC) No 4064/89.

I. THE PARTIES

- (1) Crown Cork & Seal Company, Inc. (Crown), a United States corporation, is a multinational manufacturer of metal and plastic packaging, including cans, bottles, crowns and closures (metal and plastic) and machinery for filling, packaging and handling.
- (2) CarnaudMetalbox SA (CMB), a French company, is one of the world's largest packaging manufacturers. The group focuses its operations on metal and plastic packaging and is the leading manufacturer of food cans in Europe.

II. THE OPERATION

- (3) The agreement being notified has been entered into between Crown and Compagnie Générale d'Industrie et de Participations (CGIP) which holds a 32 % controlling interest in CMB, and due to double voting rights accruing to some of its shares,

⁽¹⁾ OJ No L 395, 30. 12. 1989, p. 1. Corrigendum: OJ No L 257, 21. 9. 1990, p. 13.

⁽²⁾ OJ No C 86, 23. 3. 1996, p. 3.

currently carries 45 % of the total voting rights. Under this agreement, Crown commits itself to acquiring at least 51 % of the voting rights in CMB, and CGIP commits to sell its 32 % controlling interest to Crown.

- (4) The execution of this agreement will take place as part of a French public exchange share offer (offre publique d'échange — OPE) which will be launched by Crown for the entire common stock of CMB as soon as reasonably practicable.
- (5) The offer will be made to all of CMB's shareholders on the same terms. All shareholders except GCIP (which will irrevocably elect to receive stock) will have a choice as to whether to accept cash or Crown shares in exchange for their CMB shares.

III. CONCENTRATION

- (6) CGIP has consistently held a majority of the votes present at CMB's general meetings. Although CGIP's double voting rights will not be transferred to Crown, Crown will nonetheless have a controlling interest: by removing GCIP's double voting rights, but holding all other factors constant, CGIP would have voted [...] ⁽¹⁾ of the shares at the 1993 general meeting (with double voting rights, CGIP actually voted [...] ⁽²⁾ and [...] ⁽³⁾ of the shares at the 1994 general meeting (with double voting rights, CGIP's interest translated into [...] ⁽⁴⁾ at that meeting). The acquisition of CGIP's stake in CMB will thus confer to Crown sole control of CMB.
- (7) Crown's acquisition of sole control of CMB constitutes a concentration within the meaning of Article 3 (1) (b) of the 'Merger' Regulation.

IV. COMMUNITY/EEA DIMENSION

- (8) The undertakings concerned have a combined aggregate worldwide turnover in excess of ECU 5 000 million (Crown's 1994 turnover: ECU 3 743 million; and CMB's 1994 turnover: ECU 3 781 million). Each party has a Community-wide turnover in excess of ECU 250 million (Crown: ECU 465 million; and CMB: ECU 2 954 million) and neither achieves more than two-thirds of its turnover in one and the same Member State. The notified operation therefore has a Community

dimension, and constitutes a cooperation case under the EEA Agreement.

V. COMPATIBILITY WITH THE COMMON MARKET

AFFECTED MARKETS

Relevant product markets

- (9) Both companies are active in the packaging industry. The European packaging industry as a whole encompasses packaging products made of metal (tinplate and aluminium), plastic, glass and paper.
- (10) The view of the Commission is that this industry does not constitute a single market but is divided into several markets. This conclusion is based on the existing differences in terms of the packaging material involved and the end use for the packaging product. For the purposes of this Decision, it is only necessary to examine the product markets affected by the notified operation: tinplate aerosol cans, food cans, beverage can ends and beverage bottle closures.

A. Tinplate aerosol cans

- (11) Aerosol cans are used to fulfil specialized packaging needs for a wide variety of products, including health and beauty products, food products (e.g. whipped cream), cleaning and household products, and products for the pharmaceutical and automotive industries. Aerosol cans may be manufactured from tinplate or aluminium.

The parties submit in their notification that tinplate aerosol cans and aluminium aerosol cans compete in the same market. They also propose that the market for aerosol packaging may include various types of packaging other than cans.

Based on the results of its investigation, the Commission concludes that there is a distinct relevant product market for tinplate aerosol cans, and that neither alternative packaging nor aluminium aerosol cans belong to this market, for the reasons discussed below.

1. Alternative packaging does not belong to the same market as metal aerosol cans

- (12) As regards alternative packaging, some of the aerosol can customers (the fillers) interviewed during the Commission's investigation stated that the controversy over the use of CFCs had led to attempts to launch alternative products such as 'pump and spray' and PET aerosol containers. However, as alternative environmentally friendly

⁽¹⁾ Figure deleted: confidential information.

⁽²⁾ Figure deleted: confidential information.

⁽³⁾ Figure deleted: confidential information.

⁽⁴⁾ Figure deleted: confidential information.

propellants have replaced freon, these attempts have, in most cases, been abandoned. Some alternative pump-dispensers remain on the market; however, none of them have been successful. Originally they too a very small market share, but even this low share has progressively declined. According to the aerosol can customers, this lack of commercial success is primarily due to technical inadequacies (inability to deliver a fine spray, risk of droplets causing stains, lack of sufficient spray pattern) and to limited acceptance by the end-user customer. In addition, for some end-uses no alternative pump-dispenser can replace aerosol cans (for example, whipped cream). Consequently, none of the customers or competitors stated that pump dispensers compete with aerosol cans.

2. There is a distinct market for tinplate aerosol cans

- (13) The overwhelming majority of aerosol can users who responded to the Commission's inquiry believe that aluminium and tinplate aerosol cans belong to two distinct markets. The Commission shares this view based on its investigation as well as on an analysis of facts and data submitted by the parties that:

— so far, a number of structural factors have led tinplate aerosol can users not to switch or even consider switching to aluminium aerosol cans, regardless of the respective prices of the two products in the past,

— tinplate aerosol can users would not consider switching to aluminium in the foreseeable future, even in the case of a significant increase in the price of tinplate aerosol cans.

- (a) A number of structural factors have led tinplate aerosol can users not to switch to aluminium aerosol cans

- (14) According to information gathered in the investigation, no tinplate aerosol can user has ever switched to aluminium cans in the past. This is due to the various factors analyzed below.

- (15) Tinplate aerosol cans are less expensive than aluminium aerosol cans. Price differences may vary between 5 and 200 %, depending on the type of product, the type of printing, the production run length and the can size. The larger the diameter of the can, the larger the aluminium can price premium will be (except for small diameter (below 45 mm) where only aluminium cans are available

for technical reasons). However, this price premium remains considerable, even for the smaller sizes (45 to 49 mm), where both tinplate and aluminium cans may be used (according to one large customer, the price premium in this segment is approximately 25 %).

These estimates of price differences are in line with statements from the majority of customers (in particular the largest ones) who state that the average price difference between the two types of cans is currently between 20 and 30 %, and has been about 20 % for several years.

- (16) The price differences are only partly due to the difference in the cost of the raw materials.

Aluminium can producers stated that the difference in raw material costs — for cans of a similar size — would be around 30 % (tinplate being 30 % cheaper), with the price of the raw material representing at least 30 % of the total cost of a printed aluminium can.

In addition, the production of aluminium cans is more capital intensive than the production of tinplate cans, it requires longer production runs, and is therefore subject to greater economies of scale. Furthermore, due to their relative specialization in personal care products, aluminium can producers are faced with a different product mix than tinplate can producers. This means that generally aluminium can manufacturers have smaller production runs for a given application, which factor contributes to raising the average price difference between the two products.

Finally, the cost of recycling is higher for aluminium than for tinplate. For example, the fee paid for recycling tinplate in Germany is only about 60 % of the fee paid for the recycling of aluminium. Since recycling costs must increasingly be borne by the fillers, this factor would further increase the price difference between tinplate and aluminium.

- (17) Aluminium cans are a more expensive product than tinplate cans, but they are also seen by customers as more appropriate for the high-end range of products packed in aerosol cans. Aluminium cans are lighter and the metal permits a finer quality of printing on the surface than tinplate; in addition, they are produced as a one-piece monobloc unit. Thus, aluminium cans do not have the side or bottom seams of a three-piece tinplate aerosol can that would allow micro-leakage and eventual corrosion at the seams.

This different price-quality relationship for tinplate and aluminium explains why each product is traditionally preferred for distinct uses. Household and industrial aerosol can applications, for which price is a driving force, have been overwhelmingly dominated by tinplate cans (tinplate accounts for approximately 90 % of all cans used to fill household or industrial products). In contrast, personal care products, for which considerations of appearance play a major role, are predominantly filled in aluminium cans (60 to 70 %). Applications at the high end of the market (e.g. pharmaceuticals and perfumes) are even more totally dominated by aluminium cans (85 and 95 %, respectively).

(18) Aerosol can customers may switch their filling operations from the use of aluminium to tinplate cans using the same filling equipment, with minor adjustments to the filling lines.

(19) However, some customers indicated that shifting from tinplate to aluminium would involve a number of adjustments in addition to direct switching costs (there are indications that these costs would be around 2 to 3 %). Switching would also require reorganization of the filling production process, as well as a change in the handling and conveyor system to be used (tinplate cans use magnetic conveyors, which is a cost-saving device, while aluminium cans require a completely different conveyor system). The shift itself would take one to two years to be implemented. As a result, the decision to shift would be a significant medium-term strategic decision.

(b) There is no substitution from tinplate to aluminium cans

(20) These factors explain why, according to a producer of aluminium cans, past fluctuations in the price of aluminium cans (unlike tinplate, aluminium is subject to frequent large price fluctuations) have not led tinplate can customers to switch to aluminium cans.

This suggests a long-term, low cross-price elasticity between the two products, which is confirmed by the results of the customers' survey by the Commission as well as by an analysis of data provided by the parties and of past market responses.

(21) Virtually all customers stated that they have never switched in the past from tinplate aerosol cans to aluminium aerosol cans (irrespective of the fluctuations in the price of aluminium aerosol cans) and that they would not consider such a switch in the foreseeable future unless the price of tinplate aerosol cans were to increase by a very significant amount (see the discussion below).

In addition, a majority of customers indicated that for the reasons detailed above under (a), they use aluminium only where it is necessary, either because of technical requirements or because of lack of consumer acceptance for tinplate in a particular application. However, a number of technical improvements in tinplate quality have recently led to a movement of one-way substitution from aluminium to tinplate (recent improvements in the quality of tinplate offering a product with better resistance to rust and less visible seals).

(22) Customers currently using tinplate usually indicated that they would only consider switching to aluminium if the price difference between aerosol aluminium cans and aerosol tinplate cans were reduced to zero or nearly zero. Customers also indicated that if the price of an aluminium can were to be equal to the price of a tinplate can, the tinplate can cost would still be cheaper in real terms as the recycling costs are lower. For this reason, some customers indicated to the Commission that in order for them to have an incentive to switch (or switch back) to aluminium cans, the price for aluminium cans would have to be lower (one customer indicated a figure of 15 %) than the price for tinplate, because of recycling costs.

As a result, traditional tinplate can customers, as well as customers having recently switched from aluminium to tinplate cans, stated that only a high increase in the price of tinplate cans would lead them to switch (or switch back) to aluminium cans. Depending on the product mix of can sizes used, customers stated that they would only consider switching following a price increase ranging from 15 % (lowest figure quoted in the answers to the survey) to 100 % (highest figure quoted) with the average of the various figures quoted being 43 %.

The results of the customer survey done by the Commission suggest, therefore, a long-term low cross-price elasticity between aluminium aerosol cans and tinplate aerosol cans.

(23) An analysis of data provided by the parties also suggests a low cross price elasticity.

The parties provided aluminium and tinplate aerosol can annual consumption volumes for the period since 1986, as well as annual price evolutions since 1987 for the two types of products in Italy. These figures do not show parallel price evolutions of the two products, nor do they show any substantial increase (or decrease) in the demand of one of the two products as a result of price increase (or decrease) of the other one. Although such data only related to Italy, the parties gave no reason why elasticities in Italy should be different from elasticities in the rest of Europe, since the parties and the Commission agree that the market is European.

- (24) An analysis of past market reactions also suggest a low cross price elasticity.

Relying only on market reactions in Italy, the parties submitted however, that the product market should encompass both tinsplate and aluminium products. They stated that in Italy, an increase in the aluminium aerosol can price by 35 % in 88 resulted in a drop in the volume of aluminium aerosol cans consumed from 144,5 to 62,3 million tonnes (i.e. a decrease of 82,2 million tonnes), between 1987 and 1989. In the meantime, the increase of tinsplate volume was only 5,5 million tonnes (from 58,4 to 63,9 million tonnes). This example is not regarded as relevant by the Commission since it focuses on whether, and upon which conditions, aluminium can users would have substituted aluminium by tinsplate cans. However, the merger only involves two tinsplate can producers. Only the evolution of aluminium aerosol can demand following an increase of tinsplate aerosol can prices would have constituted a valid indicator for the purpose of market definition in this case. However, even assuming that the test suggested by the parties had some relevance, it would also lead to the conclusion that the cross price elasticity between tinsplate and aluminium is low. In fact, the parties' figures show that only a very small proportion of aluminium can users who ceased to use this product (around 6 %) would have turned to tinsplate cans (i.e. a very low cross-price elasticity of 0,16).

(c) Conclusion

- (25) As a result of all the above, it can be concluded that no substitution from tinsplate to aluminium aerosol cans took place in the past, or can be expected to take place in the future in case of a small but significant price increase of tinsplate aerosol cans. Both the analysis of past market data and the results of the Commission's market survey show that only a much higher increase of the price of tinsplate aerosol cans (see above) might lead customers to switch to aluminium.
- (26) In view of the above, the Commission cannot accept the parties' submission that there is only one aerosol can market encompassing both tinsplate and aluminium aerosol cans. Both demand-side and supply-side factors indicate that no head-on competition takes place between tinsplate and aluminium. The Commission therefore concludes that the market for tinsplate aerosol cans is a distinct relevant product market.

B. Food cans

- (27) The Commission agrees with the market definition submitted by the parties of a relevant product market for metal food cans.
- (28) As regards substitution of food cans by plastic and glass containers, neither the parties nor the third parties expect a major switch from food cans to other packaging materials. This is not contradicted by the fact that there are different national preferences, as regards the final consumer, leading to certain products being packed almost exclusively in one material in certain Member States.
- (29) Food cans may be either three-piece or two-piece cans. The majority are made from tinsplate, while aluminium cans represent only a niche in the food can market. The three-piece (open top) food can is made out of tinsplate by welding the side-wall and attaching a separate bottom. Two-piece cans where the bottom is an integral part of the can are made from either tinsplate or aluminium. For both types of cans, the top is supplied by the manufacturer and attached by the filler. The only overlap between the parties in food cans is in three-piece cans.
- (30) Three-piece and two-piece cans compete with each other in a single market for the following reasons:
- there is a significant demand-side substitutability between three-piece and two-piece cans, as they are interchangeable for most end uses. A filler would have to make only minor one-time adjustments to its filling lines if he wanted to switch between the can types. The exceptions are certain fruits which cannot be packed in two-piece cans, and some fish products which are only packed in two-piece cans. Furthermore, two-piece cans can only be produced up to a size of 500 ml,
 - the cross-price elasticity appears to be high. Nearly all the food can producers as well as most of the customers stated that it would take only small price increases in one product to induce customers to change from three-piece cans to two-piece cans or vice versa.

C. Beverage can ends

- (31) Beverage can ends are the top piece of a beverage can. Although the can itself may be made of tinsplate or aluminium, the end is generally made of aluminium. The vast majority (over 90 %) are produced and sold by can manufacturers together with the can body and not as a separate item.

According to both the parties and third parties, there are no demand-side substitutes and the manufacturing equipment used in the production of can ends has no other use. Consequently, can ends may be considered to be in a separate product market.

D. Beverage bottle closures

- (32) Both parties are active in the production of the following three types of beverage bottle closures: 1. metal crowns; 2. threaded plastic closures; and 3. aluminium bottle closures. On the demand side, the type of bottle closure used is dictated by the bottle design. A change in the choice of closure would require changes in the bottle design as well as modifications in the filling line, thus resulting in low short-term cross-price elasticity. On the supply side, different manufacturing technologies and equipment are required for producing the various types of closures. Consequently, it is not possible to quickly switch production from one product to another without further investments.

1. Metal crowns

- (33) Metal crown are the traditional crimped 'bottle caps', generally made of tin-free steel (although tinplate is used in some applications) with a plastic or cork liner. They are used predominantly for sealing beer (accounting for approximately 90 % of applications) and also for carbonated beverage bottles. Crowns are used only on glass bottles that have a specialized unthreaded neck design.

For a significant portion of the market, these glass bottles are returnable and fillers must maintain a substantial stock of bottles for their production cycle. As a result, any change in closure product would require not only an investment in a new bottle design but also incurring the sunk costs involved in the obsolete bottle stock. For carbonated drinks that are contained in glass bottles with unthreaded necks, there are virtually no substitutes for metal crowns. These factors lead to low cross-price elasticity. Accordingly, metal crowns are a separate relevant product market.

2. Aluminium and threaded plastic beverage closures

- (34) Plastic beverage closures are used for both carbonated and non-carbonated drinks for sealing both glass and plastic (PET) bottles. There are a number of different variations on these closures — inclu-

ding single-piece and two-piece closures — depending on the type of bottle used and its contents. The selection of the cap is largely driven by the customer's bottle choice and then the cap is customized to fit this type of bottle.

The equipment used to manufacture plastic closures can be used to make various types of threaded plastic closures, but cannot be used to make other types of closures, such as aluminium caps.

- (35) Aluminium bottle closures are threaded caps used to seal glass and plastic bottles containing alcoholic spirits as well as soft drinks. While various sizes and styles in aluminium caps require some small differences in production equipment, the basic equipment for making all aluminium closures is the same. The process begins with the coating and printing of aluminium sheet metal which then passes through a slitter to form sheets which can be pressed to form the cap.
- (36) While aluminium caps and plastic threaded closures can satisfy the same closure requirements, there are a number of factors indicating that the products are in separate relevant product markets: (a) the production equipment and technology are different; (b) despite the price advantage that aluminium enjoys over plastic (the cost of aluminum is approximately 10 % lower), customers (the fillers) prefer plastic and are willing to pay the premium in order to avoid consumer complaints of cut fingers on sharp aluminium edges; and (c) for historical and marketing reasons, at least one beverage segment — i.e. alcoholic spirits — are packaged predominantly with aluminium caps.

However, since even on the basis of two distinct markets for plastic and aluminium bottle closures, the operation will not lead to the creation or the strengthening of a dominant position, it can be left open whether the two types of closures belong to one and the same market or not.

Relevant geographic market

A. Tinplate aerosol cans

- (37) The parties submit in their notification that the relevant geographic market for assessing this concentration would be 'at least the Community as a whole'. The Commission's view is that the relevant geographic market should be considered as embracing the whole of the EEA for the reasons detailed below.

- (38) Neither the parties nor the competitors or customers interviewed reported any substantial imports into the EEA. Only one customer reported very small imports from the Czech Republic. In contrast, one of the larger customers reported unsuccessful attempts to source from eastern Europe where he was faced with problems of logistical complexity, loss of flexibility in placing and receiving orders, lack of quality and difficulties in meeting technical specifications. In addition, virtually no exports of tinplate aerosol cans outside of the EEA was reported by any of the competitors who responded in the Commission's investigation, unlike aluminium aerosol cans, where substantial exports of small-diameter cans are made on a regular basis outside the EEA.

- (39) several customers expressed the view that proximity of supply is an important qualitative competitive advantage in terms of, *inter alia*, transport costs, lead time, technical supervision of printing by customers, frequent and timely deliveries and other logistical considerations. However, despite the importance of these factors, a majority of both competitors and customers, including those cited above, did not consider this factor to be sufficient to define narrow geographic markets. Thus, they consider the market to be pan-European. In addition, an analysis of actual deliveries made by both the parties and competitors shows that all firms ship to several Member States (in some cases serving up to 10 Member States from one plant). According to the parties, a price increase of 5 % would expand the average range to 1 000 km.

- (40) In light of the analysis above, the Commission concludes that the relevant geographic market for purposes of assessing the impact of this concentration on the tinplate aerosol can market is the EEA as a whole.

B. Food cans

- (41) The parties have submitted in their notification that the relevant geographic market for food cans is the Community as a whole. This assessment is not in line with the opinion expressed by a majority of the competitors, who stated that food can markets are national. Responses from customers were less consistent: although a number of the customers felt the food can market was European, a substantial number of them stated that food can markets are national or that competition took place at local

level. Moreover, a finding of national and trans-border regional markets is more in line with actual purchasing and shipping data and facts submitted by most customers, as indicated below.

Based on the results of its investigation, the view of the Commission is that the relevant geographic market is not a European market. This assessment is based on an analysis of all information provided, including considerations of high transport costs for food cans, significant price differences among various Member States, different can norms, and the need for proximity to customers. These factors, taken together, indicate the existence of national markets or, in certain cases, transborder regional markets, as discussed below.

1. Transport costs

- (42) Food cans are bulkier than aerosol cans and the transport costs represent a higher percentage of overall value. Therefore these cans have a shorter transportation range than aerosol cans. The parties indicated the current economically feasible shipping distance to be less than 500 km. Most of the competitors considered such a distance to be around 300 km. Some southern European food-can producers, based in countries whose currency has been devalued, ship further — up to 800 km. In the event of a hypothetical 5 % increase in market price, the maximum shipping range — based on transport costs alone — would increase to 700 km (for the vast majority of can sizes) up to 1 000 km (applying only to small cans).

2. Needs for proximity to the customer

- (43) There is a strong need for proximity to the customer. The goods packed in food cans are perishable and must often be packed immediately after harvest. The customers therefore require timely delivery and absolute reliability.

This requirement is reinforced by the introduction of just-in-time production in the food industry, requiring food cans to be delivered several times a day at specified intervals for logistical reasons. As a result, some customers stated that they could not regard a supplier as reliable, if it were not situated close to their filling operations (figures quoted ranged from 50 km for the larger cans to 300 km for the smaller cans).

In addition, customers require quick and timely technical service from their can suppliers. In peak season, even a few hours of production down time

are very costly, due to the risk of losing perishable crops. A can supplier must therefore be able to meet service needs within hours.

The enormous volume of cans utilized on a daily basis would create a need for additional warehouses and service facilities for suppliers who are not located close to the customer, the costs of which must be added to the transport costs that would be incurred. It would thus only be economical for a can producer to supply an area at a distance from its plants, if it received a substantial and long-term customer commitment that would enable it to set up these necessary service facilities.

This need for closeness is reflected in the current plant locations which are spread out all over the EEA. There are more than 40 food can-making factories in the EEA, with most Member States having more than one plant.

3. *Different can norms*

- (44) A further impediment to the Europeanization of the market is the inconsistency among various countries in the standardized norms for food can sizes, inhibiting cross-border sales. These restrictions could however be overcome, as large customers could induce manufacturers in an adjacent country to modify a line to make cans fitting the customer's norms.

4. *Significant price differences among Member States*

- (45) A further indicator, arguing against a European market, are the significant and lasting price differences existing among the various Member States. Food cans are cheapest in Spain and Italy, while the price for a comparable can is up to 30 % higher in Germany and Austria.

5. *Conclusion*

- (46) Taking into account the abovementioned factors, the Commission cannot accept the parties' submission that the relevant geographic market for food cans for the purpose of assessing this transaction is European. There are strong indications that the markets are generally national or transborder regional markets. Based on an analysis of actual transport distances, as well as the responses provided to the Commission, one could identify the following transborder regional markets which go beyond the boundaries of individual Member States: Spain and

Portugal; the United Kingdom and Ireland; and Belgium, the Netherlands, and Luxembourg.

- (47) In Spain and Portugal there are more than 15 food-can plants, all within competitive reach of each other. Shipping distances and plant locations indicate that Spanish producers can serve the Portuguese market, and Portuguese producers, the Spanish market. Imports into this market are negligible.
- (48) Within the United Kingdom and Ireland, Crown owns the only food can plant in Ireland and CMB has six plants in the United Kingdom. There are however frequent exports to Ireland from the United Kingdom and the major British competitors have stated that they consider the two Member States to form one market. More than 90 % of the food cans consumed in this market are produced there. According to the Commission's investigation, this situation is not likely to change in case of a small but significant price increase.
- (49) Belgium, the Netherlands and Luxembourg also constitute one geographic market with frequent transborder shipments amongst these areas. The parties have submitted that a regional geographic market focusing on the Benelux would have to take into account competitors in Germany and France.

The results of the Commission's investigation indicate that in fact companies with plants located in northern France and western Germany are currently shipping on a regular basis to the Benelux region. To a much lesser extent, Benelux producers ship to adjacent parts of Germany, while shipments to France are rare (93 % of the food cans consumed in France are produced in France). However, since even on the basis of the narrowest geographical market (i.e. Benelux) the operation will not lead to the creation or the strengthening of a dominant position, it can be left open whether the relevant geographic market should encompass part of northern France and western Germany.

C. *Beverage can ends and bottle closures.*

- (50) Due to their high packaging density, beverage can ends, metal crowns, threaded plastic closures and aluminium bottle closures all have a low freight cost-to-value ratio and can therefore be shipped economically throughout the Community. In beverage can ends, for example, Crown serves the Community from a single location in Ireland. Competitors also ship beverage can ends throughout the European Union, as well as to

eastern Europe, Turkey, and northern Africa. In the market for metal crowns, product is shipped throughout the European Union; and Crown ships from Spain to Holland and from its plants in the Community to the Middle East. Similarly, threaded plastic closures and aluminium bottle closures are shipped throughout the Community.

Both the parties and competitors have stated that they regard the relevant geographic market for each of these products as Europe. Accordingly, in light of shipment patterns as described above and the industry members' assessments, the above market appears to be the EEA.

Competitive assessment

A. Tinsplate aerosol cans

(51) A majority of the customers who responded in the Commission's inquiry have expressed concerns that the concentration and the resulting high market shares of the new entity would impede competition in the tinsplate aerosol can market.

(52) Most tinsplate aerosol can producers have also expressed concerns about the potentially anticompetitive effects that the proposed transaction will have on the market. They note, in particular, that the merger would allow the new entity to exploit a number of competitive advantages of a qualitative nature which, when combined with its large market share, could give to the new entity the power, as expressed by one competitor, to 'lock out competition'.

(53) The Commission came to the conclusion that the operation would create a dominant position in the market for tinsplate aerosol cans, for the reasons detailed below:

1. Substantial structural changes in the tinsplate aerosol can market will result from the concentration

(a) Market shares

(54) According to the European aerosol manufacturer's trade association (FEA), the overall Community market for all aerosol cans — both tinsplate and aluminium — amounted to approximately 3,3 billion units in 1994. This total is in line with estimates provided by the parties (3,45 billion units in the EEA).

According to estimates of the two main producers of aluminium aerosol cans, Boxal and Cebal, aluminium

cans represent 1,2 to 1,3 billion units. This market estimate is in line with the actual sales data submitted by these two firms, who together account for around 1,1 billion units in the EEA.

Based on the above data, the EEA market for tinsplate aerosol cans represents an overall volume of 2,1 to 2,25 billion units.

(55) On the basis of the highest of these figures, in 1994, market shares for CMB and Crown, respectively, accounted for [35 to 45 %]⁽¹⁾ and [20 to 30 %]⁽²⁾ of EEA sales of tinsplate aerosol cans. In that year, CMB and Crown sold, respectively, [...] ⁽³⁾ million units in the EEA. In addition, Crown delivered to [...] ⁽⁴⁾ million units in the framework of a [long-term] ⁽⁵⁾ supply agreement. (Crown constructed a 'wall-to-wall' tinsplate aerosol manufacturing plant specifically for [...] ⁽⁶⁾ production plant.) Thus, the parties' total sales of approximately [...] ⁽⁷⁾ million units would give the post-merger firm a total combined share of [60 to 70 %] ⁽⁸⁾ of the EEA tinsplate aerosol can market.

(56) The closest competitor is Schmalbach, a subsidiary of the Viag group, with sales in the range of 400 million units representing a market share of 18 %. The remaining 20 % (approximately) of the market is dispersed among small local competitors, each with a market share below 5 %. This includes Staehle, the third largest producer in the EEA, with a market share of approximately 4 to 5 %. All the remaining competitors would have market shares below 3 % (including, *inter alia*, May Verpackung in Germany, Linpac in the United Kingdom, Colep in Portugal, and Grumetal in Spain).

(57) As shown below, an examination of pre- and post-acquisition market shares in tinsplate aerosol cans shows that there would be a dramatic change in the merged firm's market position and indeed in the market structure as a whole.

(58) Whereas prior to the acquisition, CMB is by far the largest firm (and is already twice as large as each of its next two competitors) in their market, there are nonetheless two players — Crown and Schmalbach — who are approximately equal in size.

⁽¹⁾ Precise figure not disclosed: business secret.

⁽²⁾ Precise figure not disclosed: business secret.

⁽³⁾ Figures deleted: confidential information.

⁽⁴⁾ Name and figure deleted: confidential information.

⁽⁵⁾ Precise time period not disclosed: business secret.

⁽⁶⁾ Deleted: confidential information.

⁽⁷⁾ Figure deleted: business secret.

⁽⁸⁾ Precise figure not disclosed: business secret.

<i>Company</i>	<i>Market Share</i>
CMB	[35 to 45 %] ⁽¹⁾
Crown	[20 to 30 %] ⁽²⁾
Schmalbach	[15 to 25 %] ⁽³⁾
Staeble	[2 to 7 %] ⁽⁴⁾
All other firms	10 to 15 %

- (59) However, after the acquisition the market share of the combined Crown/CMB would be more than three times larger than its next closest competitor, who would itself be more than three times larger than the third largest remaining competitor in the EEA market for tinplate aerosol cans. As shown in the chart below, this operation would not only remove one of only two firms that has a significant market presence. In addition, it eliminates the only other firm that has been viewed by customers as providing a significant competitive stimulus to the market leader (see below).

The post-acquisition market shares would be as follows:

<i>Company</i>	<i>Market share</i>
Crown/CMB	[60 to 70 %] ⁽⁵⁾
Schmalbach	[15 to 25 %] ⁽⁶⁾
Staeble	[2 to 7 %] ⁽⁷⁾
All other firms	10 to 15 %.

(b) Excess capacity

- (60) The parties estimate that a great deal of excess capacity exists in the market. (Their estimate of the average rate of use of production capacity in the market is [60 to 70 %]⁽⁸⁾). However, the major portion of this excess capacity would be held by the merged entity itself. The parties together have a 'realistic capacity' (as defined by Crown, 'realistic capacity' is calculated as three shifts, using the current product mix and line configurations, and applying a factor of 75 % to that total to account for changeovers among products) sufficient to serve the total requirements of the market.

In contrast, the only competitor having a market share exceeding 5 % (Schmalbach) would hold maximum realistic excess capacity (calculated on

the same basis as for the parties) that would allow it to serve [far less than 5 %]⁽⁹⁾ of the market.

(c) Concentration of know-how, R&D and technology of the two market leaders

- (61) In addition to the huge increment in market share and capacity, as well as the overwhelming market share of the new entity, the operation would result in the concentration of the two market leaders with respect to know-how, R&D and technology. Although such concentration might, in principle, have a positive impact on competition in terms of rationalization, in view of the existing barriers to entry, in this case it will have a negative impact for reasons detailed below.

Unlike food cans, aerosol cans are not a commodity product, and know-how has been reported by the vast majority of suppliers and competitors as playing an important role in the ability to compete in this market. This is particularly true in certain aspects of the production process, such as the formulation of internal lacquers (that ensure chemical compatibility with a particular filling) and development of efficient delivery systems (that protect the chemical integrity of the filling). This know-how capability is a key element in meeting customers' needs, both with respect to new fillings with particular chemical compositions that customers may want to launch, as well as competition on existing fillings.

Know-how and technological developments were also cited by a number of customers including the largest ones as a reason why larger customers feel that they must source from large international companies with strong technical resources. CMB is seen by the largest customers as a high-quality innovative supplier, while CCS is making efforts to achieve the same level of quality. These two firms are seen as the innovative forces in the market. Customers also noted that the market is currently experiencing a fast-moving and costly evolution in technology and know-how, and that possessing and updating state-of-the-art know-how is a primary factor driving competition in the market. This has been confirmed by the parties in a memorandum submitted to the Commission on 18 July 1995. Along the same line, one customer noted the following:

'CMB — technology-wise — is the most advanced firm in the industry... Because of this, other competitors are always forced to follow and develop in the same way as CMB.

⁽¹⁾ Precise figure not disclosed: business secret.
⁽²⁾ Precise figure not disclosed: business secret.
⁽³⁾ Precise figure not disclosed: business secret.
⁽⁴⁾ Precise figure not disclosed: business secret.
⁽⁵⁾ Precise figure not disclosed: business secret.
⁽⁶⁾ Precise figure not disclosed: business secret.
⁽⁷⁾ Precise figure not disclosed: business secret.
⁽⁸⁾ Precise figure not disclosed: business secret.

⁽⁹⁾ Precise figure not disclosed, confidential information of Schmalbach.

Crown was always the first to put into effect new developments which led to healthy competition between these two equal suppliers. If these two firms merge, it will lead to significant price increases because the existing competition (especially in the area of new developments) will cease to exist and in the end the new firm would have unlimited freedom to raise prices. In this company's view, there is actually no supplier financially strong enough to develop new technology aside from Crown and CMB, so as a result the end-user/final consumer will be the victim.'

- (d) Elimination of one of the only two aerosol can competitors with European-wide plant coverage

- (62) The operation will remove one of the only two suppliers able to offer full geographic coverage. Such capability is important to customers choosing a supplier in terms of lead time, after-sales service, day-to-day small deliveries (as compared to large, bulky deliveries that require extensive and costly warehousing) and reliability of deliveries.

- (63) As already mentioned, both large and small customers have expressed the view that proximity of supplier to customer constitutes a competitive advantage, even where supplies are negotiated at the European level. For smaller customers, this is especially important for providing deliveries in small quantities. As regards larger customers, they are heavily dependent on large suppliers as regards technical flexibility, quality requirement, technological innovation and know-how (see below under 'countervailing power of customers'). They also prefer suppliers located close-by, particularly for providing technical assistance, reliability of deliveries, supervision of printing, reduced lead time, and the industry move toward day-specific deliveries in small quantities.

Prior to the operation, the merging parties are already the only ones in the market enjoying such flexibility: Crown operates plants in the United Kingdom, Spain, Italy, Belgium and the Netherlands; and CMB operates plants located in the United Kingdom, Spain, Germany and France. As noted above, this must be compared with the remaining competitors in the industry: Schmalbach, the only other multi-plant producer, operates only two plants (located in Germany and the Netherlands) and no other competitor has more than one production plant.

(e) Production flexibility

- (64) The operation will also remove one of the two leading suppliers in terms of flexibility of production. In this respect, it will further widen the gap which, according to customers, already existed *vis-à-vis* the closest competitor.
- (65) In terms of production flexibility, the new entity will also be the only one to be operating a total of more than [...] ⁽¹⁾ tinplate aerosol can production lines [...] ⁽²⁾ from Crown and [...] ⁽³⁾ from Carnaud) with at least [...] ⁽⁴⁾ production lines in each major area of Europe [...] ⁽⁵⁾.

Due to their large number of production lines, both Crown and CMB are able to keep production lines open for special large customers in the framework of dedicated supply agreements involving commitments for weekly deliveries. According to the Commission's investigation, the large number of lines that the merged firm will acquire would give them even greater flexibility in this respect and none of their competitors are able to provide this kind of service. Clearly, the ability to provide this customized service constitutes an important competitive hurdle for the other competitors to overcome, as it appears to have been one of the factors (together with innovative capability) that led [...] ⁽⁶⁾ to choose CMB and Crown as its only suppliers when it decided to switch certain products from aluminium aerosol to tinplate aerosol cans. Another very large customer stated that CMB and Crown are both 'able to supply throughout Europe with good lead time, they can take advantage of currency moves as they produce in a number of European countries and they offer flexibility (day-to-day offers)... No other tinplate can producer in Europe is currently able to offer this service'.

2. The remaining competitors will be unable to constrain the new firm's exercise of market power in the tinplate aerosol can market

- (66) A number of large customers expressed the view that smaller competitors do not and would not constitute a viable alternative to meet their requirements, since they usually purchase a number of

⁽¹⁾ Figure deleted: confidential information.

⁽²⁾ Figure deleted: confidential information.

⁽³⁾ Figure deleted: confidential information.

⁽⁴⁾ Figure deleted: confidential information.

⁽⁵⁾ Deleted: confidential information.

⁽⁶⁾ Name deleted: confidential information.

different sizes of aerosol cans in large quantities that are manufactured in long production runs. This would not be economically possible for smaller competitors operating a limited number of lines in one location. This is all the more true as a number of the largest customers already negotiate their purchases at the European level with large suppliers that operate a number of lines throughout Europe. All major customers expressed the concern that they would not have any alternative in the choice of their 'primary' suppliers after the operation. In particular, one of the largest customers complained that the merger would lead to a situation of quasi-monopoly that would be competitively harmful to customers generally, including large customers such as itself.

- (67) The only remaining major multi-plant competitor, Schmalbach (Viag), does not have adequate excess capacity nor the geographical flexibility to compete effectively against the parties throughout the marketplace. With its only two plants located in northern Europe, it is virtually absent from Spain and Italy with its sales mainly focused on the Benelux, Germany, the Nordic countries and, to a lesser extent, the United Kingdom. In addition, in view of its fairly localized plant locations, the number of lines it operates and its limited free capacity, Schmalbach would not enjoy the same technical flexibility either.

Finally, unlike the parties, Schmalbach was not cited as a 'technology leader' in the market.

- (68) Thus, Schmalbach will be hindered in its ability to constrain any possible anti-competitive behaviour of the new company. This is further confirmed by statements made by several customers who rank among the largest aerosol can customers. In particular one customer stated that '... Schmalbach in particular cannot offer this flexibility, its plants are all located in the same area, and it is not an innovative company. For all these reasons, Schmalbach would not be considered by (our company) as qualifying as a primary supplier under current conditions. In order to constitute a credible alternative as a primary supplier they would have to invest a lot of money, while the message from Viag's management is that the Viag group's priority is not in packaging'. Another large customer stated that 'Schmalbach does not constitute an alternative as a primary supplier, nor the remaining competitors, which are family-managed companies with less than 5 % of the European market'.

- (69) With respect to the remaining small competitors, although collectively they account for considerable excess capacity, this capacity is dispersed amongst them and, consequently, they would not be regarded as a viable alternative in meeting the requirements of the larger customers. These small firms would suffer from even greater disadvantages than Schmalbach as far as qualitative competitive factors are concerned. These smaller competitors will therefore not be able to constrain the behaviour of the merged entity to a significant extent, as reflected in the following statement made by a large customer:

'Actually, small competitors are on a "different planet" with respect to quality, flexibility, insufficient capacity, innovation, speed and quality of printing. These small companies mainly compete to obtain orders from third party fillers.'

3. *The countervailing power of customers would be inadequate to constrain the potential anti-competitive behaviour of the parties*

- (70) The parties stated in their notification that larger customers would enjoy countervailing power as they could easily turn to other suppliers, or conclude long-term supply agreements, or even integrate vertically upstream.

- (71) The largest customers state that they do not feel they could shift to smaller competitors. As already detailed above, these customers depend heavily upon technological innovation and know-how where the parties would hold the strongest position (and virtually the only credible position) in the market. In this respect the parties stressed that innovation is often developed through partnerships with customers and/or suppliers. Shifting a substantial part of their requirements to smaller suppliers would thus be likely to adversely affect such partnerships.

In addition, these customers would have to conclude several purchase agreements for relatively small quantities with a number of small players, as compared to the types large-volume contracts they conclude with Crown and/or CMB. This would adversely affect the reliability of supplies and would be difficult and uneconomical to manage.

Finally, large customers also state that only large international suppliers provide the option of European-wide negotiations and can meet their quality and technical requirements (see above).

As a result, the largest customers in the market have stated that they do not feel that they would have any alternatives to the new group if the merger is allowed.

- (72) The same competition concerns apply to circumstances surrounding long-term agreements with customers and/or dedicated plants or production lines. One competitor has stated that the level of excess held by the new entity, together with its technical flexibility, would give the firm a clear advantage for these kinds of projects. It was also stated that the merged firm's dominating position in terms of know-how, R&D and technology, together with the financial investment possibilities available to the new group, would make the new entity a preferred partner for any such new project of a large customer. This is reflected in the following statement of a large aerosol can customer.

'As regards long term agreements with small suppliers, this would not be sensible from (our company's) point of view. (Our company's) policy would rather be to sign a long term agreement with the new group in order to benefit from the innovation and other advantages mentioned above and to secure evolution of can prices. In addition, smaller producers such as Colep in Portugal that (our company) visited recently would not constitute a credible alternative either for a large buyer such as (our company).'

- (73) Finally, as to the possibility of vertical integration upstream by large customers, none of them stated that they would consider such integration. In contrast, all customers, including some who stated that they previously considered this possibility seriously at one time or another, stressed that a number of barriers to entry (detailed below under 'potential entry') would prevent them from doing so, particularly the requirements for know-how. In addition, some customers noted that the number of different permutations involved in aerosol can production — in terms of can size, multi-colour printing, and ensuring the compatibility of can contents with the appropriate internal lacquer — would require an uneconomical number of production lines which would, moreover, end up being under-utilized (one customer noted that his company's requirements account for more than 700 permutations).

- (74) For all the reasons discussed above, even the largest customers will not be in a position to constrain the behaviour of the new entity.

4. *There is not adequate potential competition to constrain possible anti-competitive behaviour by the merged firm*

- (a) Potentially entry into three-piece tinplate aerosol cans

- (75) The parties state that the cost of market entry in terms of acquisition of the necessary production equipment is not extremely high, since tinplate aerosol cans are produced with the same technology as three-piece food cans.

In certain cases, converting a three-piece food can assembly line into an aerosol can line would not be costly or extremely difficult. It would however involve substantial retooling as well as special tooling for the domed ends utilized on aerosol cans (but not on food cans). In addition, not all food can lines can be economically converted; rather, only high-performance lines producing small-diameter cans qualify. The parties state that the conversion costs of an existing high-performance food can line would be in the range of ECU 1 to 2 million for conversion (without moving the assembly line) into a one-size aerosol line. However, this figure is not necessarily useful in assessing realistic conversion costs, because the line would likely have to be moved from the food can production area to the aerosol production area.

The parties estimate that installing new production facilities would cost around ECU 10,7 million for a two-line production plant including printing facilities. Competitors consider that significant entry would require at least three lines (as compared to the [...] lines held by the parties) involving a cost of some ECU 12,5 million (including bottoms and domed end production, but excluding printing, which is highly technical and costly to set up).

- (76) None of the customers or competitors confirm this view. Indeed, the overwhelming majority state that new market entry is unlikely in the foreseeable future, except through the acquisition of an existing competitor.

Moreover, the Commission's investigation shows that — beyond the installation of the manufacturing equipment — know-how is an important feature of the market and is seen as an important

(¹) Figure deleted: confidential information.

barrier to entry by customers who have considered integrating upstream (see above under 'countervailing power of customers'). This requirement for know-how would also apply to food can producers seeking to enter the aerosol market, although presenting less of a barrier than for aerosol can customers considering *de novo* entry through vertical integration,

- (77) The parties argue that from a technical and commercial point of view, entry could be done with only two lines. However, this claim is contradicted by statements of the larger customers who have declared that reliability of supply, flexibility of production, advanced technology, R&D and know-how constitute important factors in their decision to purchase from a particular supplier. These elements constitute therefore an important barrier to a significant entry that would be sufficient to constrain the behaviour of the market leader.

- (78) The parties also argue that the market is growing rapidly (27 % between 1985 and 1994) which should in principle facilitate market entry. However, the parties do not show any evidence related to tinplate cans but only aggregated estimates relating to the overall aerosol sector. The only detailed figures available to the Commission for tinplate aerosol cans concern the Italian consumption. These figures show a market growth of 7 % between 1986 and 1994 in Italy.

- (79) However, even if the European tinplate aerosol can market is not a stagnant market, it is unlikely that any entry on a significant scale would take place. Virtually all competitors ruled out the possibility that significant entry would take place through installing new capacity in the foreseeable future. There is already significant excess capacity in the market, with the market leader itself holding a substantial part of this free capacity. In fact, as noted earlier, the new entity would hold enough capacity to supply the entire market. In this respect, the parties indicated in their written answer to the objections of the Commission, that Crown's realistic capacity did not take into account bottle necks which would exist at the level of printing facility. However, the parties indicated in their notification that considerable capacity for printing was readily available on the market, since printing would be frequently contracted out. It results that an eventual limitation of the in-house printing capacity of the parties would not affect this analysis.

The overall elasticity of demand appears to be relatively low (there is no close substitute for tinplate aerosol cans and past price fluctuations of the closest substitute (aluminium cans) did not lead to any substantial change in the balance between the two products). The market leader would thus be in a position to lower prices quickly and steeply by putting additional quantities on the market. This ability to 'price limit' would discourage any attempt for large-scale market entry even in a market where the cost of entry is relatively low, as the new entrant could be very quickly forced to exit the market and would hesitate to enter anew when prices rise again.

As a result, the majority of the competitors estimate that if market entry were to take place in three-piece tinplate aerosol cans, it would have to be accomplished through the acquisition of an existing competitor.

(b) Future competition from aluminium can makers

- (80) As noted above, according to the major customers, the price of aluminium cans would have to decrease steeply in order for aluminium to become a competitive alternative for a customer using tinplate. The average of the figures quoted by customers amounts to a decrease of approximately 43 % in the price of aluminium, the figures quoted by the larger customers ranged between 20 and 25 %. According to most market players (suppliers, competitors and customers of the parties), it is extremely unlikely that aluminium can prices will decrease by more than 10 % at most in the medium term. Aluminium can makers therefore cannot be considered as being likely to be a significant competitive constraint for tinplate can manufacturers in the foreseeable future.

- (81) However, the parties have submitted in a memorandum addressed to the Commission that one of the major players in aluminium ([...] (')) is in the process of developing a two-piece tinplate aerosol can technology (as opposed to the existing three-piece technology).

- (82) However, a number of technical problems remain to be solved (such as resistance to pressure and reduction of the diameter of the top part of the can) and some degree of uncertainty still exists as to whether these problems can effectively be

(¹) Name deleted: confidential information.

resolved. Such developments would in any case involve very heavy investment and take time to be implemented. Finally, the strategy of [...] ⁽¹⁾ would primarily be to attempt to keep its existing business volume, while its customers are rapidly moving to tinsplate cans. It is therefore likely that [...] ⁽²⁾ will focus on securing its existing customer base in the foreseeable future and will not be an aggressive competitor *vis-à-vis* customers currently using tinsplate.

In addition, customers have stated that 'even though production was technically feasible using this new technology, it remains to be assessed whether it would be economically sensible in terms of production costs for production runs adapted to customer requirements. This will only be certain by no earlier than 1998.'

5. Conclusion on tinsplate aerosol cans

- (83) Based on the above analysis, it appears that after the operation, the merged entity would be able to behave to an appreciable extent independently of its competitors and its customers in the market for tinsplate aerosol cans. The operation would thus lead to the creation of a dominant position in the market for tinsplate aerosol cans.

B. Food cans

1. Assessment on single dominance

(a) Horizontal effect of the merger

- (84) The parties have provided information on market volumes and market shares including self-manufacture by customers. Production by self-manufacture, however, does not affect either supply or demand in the market. Supply-side, self-manufacturers (with the exception of one company) are currently not selling their production to outside customers. As regards demand, self-manufacturers will always use their own production first and will only turn to the market for their residual demand. Only this residual demand is therefore competed for by food-can producers. The market volume should therefore exclude self-manufacture (except the quantities sold to outside customers). On this basis, 26 billion units are sold in Europe per year. Out of this number, CMB sells [35 to 40 %] ⁽³⁾ and Crown [less than 5 %] ⁽⁴⁾. The next largest competitors are

Pechiney with [10 to 15 %] ⁽⁵⁾ and Schmalbach-Lubeca with [5 to 10 %] ⁽⁶⁾. Other competitors are Ferembal [around 5 %] ⁽⁷⁾. Lawson Mardon and Massilly [less than 3 % each] ⁽⁸⁾.

- (85) Within national markets, CMB is the market leader in a number of Member States. In fact, CMB is the only food can producer having an important position in almost every Member State of the EEA. The information provided by CMB regarding its actual sales and its estimate of the market volume would give CMB a market share of [55 to 65 %] ⁽⁹⁾ in the United Kingdom. This estimate is in line with competitors' estimates of CMB's market share in the United Kingdom, with the average being 61 %. CMB's actual sales data in the Italian market show that the company has a market share of [50 to 60 %] ⁽¹⁰⁾ in that market. CMB has also market shares above 40 % in France.

- (86) An overlap between the parties exists only in France, Benelux, Germany, Spain/Portugal and in the United Kingdom/Ireland. However, in all of these markets — except the Benelux — the increment would be small. According to the parties' estimates, Crown has the following market shares: in the United Kingdom and Spain/Portugal around [$< 2\%$] ⁽¹¹⁾; in France [$< 1\%$] ⁽¹²⁾; in Germany [$< 1\%$] ⁽¹³⁾.

In addition to these small market share increments, there would be no loss of potential competition. Although present in Europe for several years, Crown has never tried to increase its food-can business to an appreciable extent. Crown even reduced its existing capacity by closing its French food can operation as well as existing food can lines in its United Kingdom aerosol plant. It results that Crown was neither a likely entrant into any geographic markets where it is currently not present, nor did it possess the potential to significantly increase sales in the markets where it is established. Therefore, the concentration will have no significant horizontal effect in France, Germany, Spain/Portugal and in the United Kingdom/Ireland.

⁽⁵⁾ Precise figure not disclosed: confidential information of Pechiney.

⁽⁶⁾ Precise figure not disclosed: confidential information of Schmalbach.

⁽⁷⁾ Precise figure not disclosed: confidential information of Ferembal.

⁽⁸⁾ Precise figures not disclosed: confidential information of Lawson Mardon and Massilly.

⁽⁹⁾ Precise figure not disclosed: business secret.

⁽¹⁰⁾ Precise figure not disclosed: business secret.

⁽¹¹⁾ Precise figure not disclosed: business secret.

⁽¹²⁾ Precise figure not disclosed: business secret.

⁽¹³⁾ Precise figure not disclosed: business secret.

⁽¹⁾ Name deleted: confidential information.

⁽²⁾ Name deleted: confidential information.

⁽³⁾ Precise figure not disclosed: business secret.

⁽⁴⁾ Precise figure not disclosed: business secret.

(87) In the Benelux, there will be an horizontal effect as Crown has a significant market share of [15 to 25 %]⁽¹⁾. However, the competitive situation in this market indicates that the concentration will not create single dominance. After the merger the new entity will have a market share of less than 40 % and will face a strong competitor, Schmalbach, with a market share of 30 to 35 %. In addition, a number of competitors, including Pechiney, export into this market from other geographic markets. The new entity will therefore not be in a position to dominate the Benelux market alone.

(b) Impact of the merger on the upstream market of tinplate for metal packaging

(88) Almost all the European tinplate suppliers and competitors of the parties, as well as many of the parties' customers, have expressed concerns regarding the possible creation of buying power that the merged firm would acquire for purchases of tinplate and tinfree steel (hereinafter referred to as 'tin-mill products') through the concentration.

(89) The large volume of purchases of the new packaging group on both sides of the Atlantic would combine the requirements of CMB, the largest European customer, with Crown, the largest United States customer. The respective percentage of the market volume consumed by each of the parties is shown below:

	European Union	United States
Crown	[< 5 %] ⁽²⁾	[15 to 20 %] ⁽³⁾
CMB	[25 to 35 %] ⁽⁴⁾	[< 5 %] ⁽⁵⁾
Total	[30 to 40 %] ⁽⁶⁾	[20 to 30 %] ⁽⁷⁾

The next largest customer in Europe (Schmalbach) purchases less than the half of the current purchases of CMB.

(90) Following its in-depth investigation, the Commission concluded that the operation would be likely to lead to an increased bargaining power of the new entity. This conclusion is in line with the declaration made by Crown's chairman who stated that costs savings in the range of US \$ 100 million should result from the merger in particular with respect to the purchase of tin-mill products. However, the Commission did not come to the

conclusion that the merger would lead to the creation of buying power in the various tin-mill product markets in Europe.

(91) Prior to the operation, CMB enjoyed the lowest tin-mill product prices in Europe. However, CMB has not been able to enjoy a significant cost advantage in the purchase of tin-mill products as compared to its closest competitors in each Member State. The market prices went down in Europe since 1992 by some 15 %, and average prices and large customer prices (including CMB) have moved downward in parallel.

(92) This situation has been due to the fact that CMB was unable to credibly threaten to remove large quantities from one supplier, as it could not rely on securing a sufficiently large portion of its requirements from alternative reliable suppliers at an acceptable price, if it were to cancel the order for that portion from one of its original suppliers. The current European rate of capacity utilization in tinplate production (on average around 75 %) and the highly seasonal nature of production of food cans, beverage cans and metal crowns (representing more than 65 % of tinplate sales) do not allow the packaging manufacturers to easily switch large volumes from one tinplate supplier to another.

(93) The merger will bring about a certain change in the tinplate supply situation in Europe, as described above; however, the information collected by the Commission shows that the situation will not result in a radical change after the proposed merger for a number of reasons. First, although the prices of the American tin-mill products are on average cheaper than average prices in Europe, an economic survey ordered by the Commission showed that the new group would have no economic incentive to ship substantial amounts of tin-mill products across the Atlantic⁽⁸⁾.

⁽⁸⁾ Due to the both the decline in prices in Europe and currency moves, the average market price difference between the USA and western Europe has declined markedly during the last years. In 1992, USA average prices stood some 13 % below those in the European Union (EU). In 1994 they stood at less than 1 %. When comparing the prices obtained by the largest customers in both areas (including Crown in the USA and CMB in Europe), the price difference is somewhat larger (in the range of [< 5 %] cheaper in the USA). Since the import costs from the USA into the European Union are equivalent to some 15 % of the United States' average large customer price, the United States tin mill would have to suffer an 11 % margin reduction (when compared with the large customer price), in order to export to the European Union at a price comparable to the European Union average large buyer price. In other words, importing tin-mill products from the United States in large quantity would result in a significant raw material cost increase for the new group.

⁽¹⁾ Precise figure not disclosed: business secret.

⁽²⁾ Precise figure not disclosed: business secret.

⁽³⁾ Precise figure not disclosed: business secret.

⁽⁴⁾ Precise figure not disclosed: business secret.

⁽⁵⁾ Precise figure not disclosed: business secret.

⁽⁶⁾ Precise figure not disclosed: business secret.

⁽⁷⁾ Precise figure not disclosed: business secret.

- (94) Secondly, the current pattern of supply and demand for tin mill products in the USA shows that the United States tin mills have even less reserve capacity than the European mills and they are faced with the same constraints as the European in terms of 'peak season'.

In contrast, the Commission's study showed that imports of small quantities of United States' tin-mill products at attractive prices could take place since the United States' mills are interested in small orders that can easily fit into their production programmes, outside — or even sometimes within — the peak seasons. This possibility would be, however, available to the new group's competitors as well as to the parties, and the quantity involved would not be sufficient to destabilize the market.

- (95) It results from the above that the merger will probably bring about efficiencies which should allow, according to the parties' press statement, raw material cost savings representing at least 1 % of the combined turnover of the new group. However, the current market situation, both in terms of prices and capacity in the USA will not allow the parties to use the lower United States' prices as an additional leverage *vis-à-vis* its European suppliers, with a view to obtaining purchasing conditions significantly different from those of its main competitors. The merger will thus not lead to any significant vertical effect.

(c) Conglomerate effect of the merger

- (96) There is no significant difference in the overall product range produced by both parties. In addition, food can customers are mainly food processors which do not require any other product produced by the parties (i.e. aerosol cans, bottle closures). Thus, the concentration would not have a conglomerate effect.

(d) Conclusion on single dominance

- (97) For the reasons mentioned above, the merger will not have a horizontal, vertical or conglomerate effect in the market for food cans that could create or strengthen a dominant position in any geographic market.

2. Assessment on oligopolistic dominance

- (98) The only geographic market where the concentration could create a problem of oligopolistic dominance is the Benelux market. The food-can market is a mature market, characterized by low growth. The level of innovation is low, making food cans a

commodity product and leading to the absence of non-price competition. In this context, after the concentration, there will be only two major suppliers with operations in Benelux, Crown/CMB and Schmalbach, each having a market share of more than [...] ⁽¹⁾, and together holding around 70 % of the market. This changes the competitive situation in the market and may thus create an incentive to coordinate pricing to gain supra-competitive profits. Some customers stated that before the concentration, they could always assure competitive prices by asking the third major supplier for a price quote.

- (99) The food-can market is sufficiently price transparent to allow anti-competitive parallel behaviour, even in the absence of price lists, since in a concentrated market it is possible to deduce the pricing behaviour of a competitor by analysing the contracts it gains. These transactions are not extremely complex; as they involve only a limited number of products, and non-price factors are not a decisive criterion for a customer, when choosing amongst the major suppliers.

- (100) In addition, Crown has a capacity utilization in its Antwerp plant of [...] ⁽²⁾ and estimates CMB's capacity utilization to be [...] ⁽³⁾. Schmalbach has a lower capacity utilization in its Benelux plants, with a total capacity utilization of around [...] ⁽⁴⁾. However, these numbers, indicating a low capacity utilization, depend on the assumption of a three-shift production, which is not common in the industry. Moreover, it is not costly to hold this excess capacity. At current prices, Crown covers its fixed costs in its Antwerp plant with a capacity utilization of [$< 40\%$] ⁽⁵⁾. This shows that there is not a strong incentive to fully load capacities at a low price, in order to depart from parallel behaviour.

- (101) There are significant imports from France and Germany into Benelux, in the order of more than 30 % of internal consumption. Although CMB is the market leader in France (market share: [40 to 50 %] ⁽⁶⁾) and Schmalbach and CMB are the two biggest firms in Germany (combined market share 70 to 80 %), competitors like Ferembal, located outside Benelux but at a distance from the borders that allows economic shipments into its territory,

⁽¹⁾ Figure not disclosed: confidential information.

⁽²⁾ Figure not disclosed: confidential information.

⁽³⁾ Figure not disclosed: confidential information.

⁽⁴⁾ Figure not disclosed: confidential information.

⁽⁵⁾ Precise figure not disclosed: business secret.

⁽⁶⁾ Precise figure not disclosed: business secret.

could react promptly and efficiently to any increase of prices that the leading firms might try to implement.

For this reason it can be excluded that the merger will bring about the creation of an oligopolistic dominant position in the Benelux market for food cans.

C. Beverage can ends

- (102) On a Community-wide basis, the parties estimate their shares of the beverage can ends market to be approximately [15 to 25 %]⁽¹⁾ and [< 5 %]⁽²⁾, respectively, for CMB and Crown. These market share estimates are generally in line with data provided from third-party sources.
- (103) There are at least two other major producers for this product in Europe: Nacanco, which belongs to the Pechiney Group, and Schmalbach's Continental Can (Europe) subsidiary. Each of these competitors has a market share that is roughly equivalent to that of the parties' combined share.
- (104) The vast majority of beverage-can manufacturers, including CMB, also make beverage can ends and sell both parts to their customers as a single unit. Most can manufacturers satisfy their requirements for beverage can ends through their own production. However, some also purchase a portion of their requirements from outside manufacturers, such as Crown. In this regard, Crown is in an exceptional position, in that it only produces and sells beverage can ends in Europe, but not can bodies. Thus Crown functions as a third party supplier offering European beverage can manufacturers an outside source for can ends to round out their production needs. Among Crown's largest customers are Nacanco, CMB and Continental Can (Europe).
- (105) It does not appear that a vertical competitive concern arises in regard to Crown's sales of beverage can ends, however, because of the leverage that its customers can apply in this market. Actually, Crown's customers are powerful can manufacturers which only use outside supply as a means to finely tune their own production of beverage cans (both body and end). These companies could expand their capacities in can ends at any time if they felt it to be appropriate. Thus, the acquisition is unlikely to create any appreciable potential for vertical foreclosure. Similarly, this increment in

market share (approximately [< 5 %]⁽³⁾), when added to CMB's EEA-wide share of [15 to 25 %]⁽⁴⁾, would not in itself appear to threaten to create a dominant position in the market for beverage can ends.

D. Metal crowns

- (106) For 1994, the parties estimate that the combined firm would have a market share of approximately [35 to 45 %]⁽⁵⁾ in metal crowns (Crown [35 to 45 %]⁽⁶⁾, CMB [< 5 %]⁽⁷⁾). However, since CMB recently sold its metal crown manufacturing operations in Spain and only retains metal crown operations in Finland, the current product overlap between the parties would be lower than in 1994. The parties' estimates of market shares for other firms in the market include Tapon ([10 to 20 %]⁽⁸⁾), Pelliconi ([10 to 20 %]⁽⁹⁾) and Brüninghaus ([5 to 15 %]⁽¹⁰⁾).
- (107) Industry members generally confirms these estimates (although Crown's market share is generally estimated to be somewhat higher than the parties' assessment). In addition, they concur with the parties' statement that there is excess capacity in the market, although other estimates of capacity utilization are again higher than that of the parties (who estimate it to be about 50 %). Finally, they confirm that there is a structural decline in demand that is expected to continue, due to the use of alternative packaging (cans and returnable plastic (PET) bottles) which do not use crowns. This factor has exerted a downward pressure on prices, while costs have been increasing due to a rise in tinplate prices.
- (108) In addition to the fact that CMB's market share is small, Crown itself has lost approximately [5 to 15 %]⁽¹¹⁾ of its market share in the past five years, with its share declining to its current level of [35 to 45 %]⁽¹²⁾ from [45 to 55 %]⁽¹³⁾ five years ago. In light of the market features discussed and the combined firm's position, this operation is not likely to lead to the creation of a dominant position in the market for metal crowns.

⁽³⁾ Precise figure not disclosed: business secret.

⁽⁴⁾ Precise figure not disclosed: business secret.

⁽⁵⁾ Precise figure not disclosed: business secret.

⁽⁶⁾ Precise figure not disclosed: business secret.

⁽⁷⁾ Precise figure not disclosed: business secret.

⁽⁸⁾ Precise figure not disclosed: business secret.

⁽⁹⁾ Precise figure not disclosed: business secret.

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⁽¹³⁾ Precise figure not disclosed: business secret.

⁽¹⁾ Precise figure not disclosed: business secret.

⁽²⁾ Precise figure not disclosed: business secret.

E. Threaded plastic beverage closures

- (109) According to the parties' estimates, that the market shares of the other main competitors in the industry are: Crown with [25 to 35 %]⁽¹⁾, CMB with [5 to 10 %]⁽²⁾, Novembal with [10 to 20 %]⁽³⁾, Berg with [10 to 20 %]⁽⁴⁾, and MCG Closures with [5 to 15 %]⁽⁵⁾. These numbers are roughly in line with other estimates received, as well as with the results of the Commission's investigation.

Crown's acquisition of CMB, by increasing Crown's share from [25 to 35 %]⁽⁶⁾ to [30 to 40 %]⁽⁷⁾, is not likely to change its position appreciably relative to its next three competitors (Novembal, Berg and MCG). The plastic beverage closure market is a relatively new market and has been characterized by growth (the market volume has doubled in the past four years), as have the sales volume and market shares of these three firms. In contrast, Crown's growth in this market has been below the industry's level, with a consequent loss of share from [30 to 40 %]⁽⁸⁾ to [25 to 35 %]⁽⁹⁾ of sales during this same four-year period.

- (110) While most types of plastic beverage closures are patented today — and the parties hold some of the major patents, in particular in the two-piece closure area — it does not appear that patents have significantly impeded entry into the market. Licences are readily available and licensing fees typically are not very high (generally, 2 to 4 % of sales, including Crown's fees).

Crown holds patents under the Obrist and Poly-Vent trade names and it both produces under these patents and licenses to competitors (including CMB). CMB is a licensee of Owens-Illinois (OI), another major patent-holder in plastic beverage closures, although it does not produce closures under this licence for technical reasons.

Many new entrants into the closure market have begun by obtaining a licence to one of the available technologies in order to immediately begin pro-

ducing closures. Subsequently, some have proceeded to develop new patented products. This has been the route taken by at least four competitors (Berg, Betts, Borimioli, and OI). Berg originally licensed Crown's PolyVent patents, Betts was an Obrist licensee, Borimioli licensed VEM's Plastivit closures, and OI was (and still is) an Alcoa licensee. Each of these firms subsequently developed their own closures. There are a number of other competitors who both sell their own closures and license to other firms.

Furthermore, producers of plastic beverage closures face a relatively concentrated demand-side market structure and highly sophisticated price-conscious customers. These large, powerful beverage customers (including the ranks of Coca-Cola, Pepsico, Perrier and Pernod-Ricard) tend to follow a multi-sourcing purchasing strategy in order to better control their sourcing choices and options. Such multi-sourcing policies would tend to preserve the existence of competitors as alternative sources.

In view of the market structure, and the resulting size of the combined entity within this market, it does not appear that the transaction would create or strengthen a dominant position in the market for threaded plastic beverage closures.

F. Aluminium bottle closures

- (111) For 1994, the parties estimate the market volume at 26 billion units, giving them a combined share of the market at the EEA-wide level of approximately [30 to 40 %]⁽¹⁰⁾ (Crown: [25 to 35 %]⁽¹¹⁾, CMB: [< 5 %]⁽¹²⁾).

- (112) However, data submitted in the Commission investigation show that the parties overestimated some of their competitors' sales volumes. After examining the actual sales volumes submitted by the competitors identified by the parties, the Commission concludes that the market universe is in the range of 18 billion units. This estimate is identical to the estimate of two major competitors (with a third placing the market total far lower at 14 billion units). The market size of about 18 billion units is consistent with the actual sales reported by the various players in the market.

⁽¹⁾ Precise figure not disclosed: business secret.

⁽²⁾ Precise figure not disclosed: business secret.

⁽³⁾ Precise figure not disclosed: business secret.

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⁽⁹⁾ Precise figure not disclosed: business secret.

⁽¹⁰⁾ Precise figure not disclosed: business secret.

⁽¹¹⁾ Precise figure not disclosed: business secret.

⁽¹²⁾ Precise figure not disclosed: business secret.

Based on a total market of 18 billion units, the parties would have a combined market share of [45 to 55 %]⁽¹⁾. The market shares of the major competitors are, accordingly: Alcoa [25 to 30 %]⁽²⁾; Cebal, part of the Pechiney group [$< 10\%$]⁽³⁾; and MCG Closures [$< 10\%$]⁽⁴⁾.

- (113) Based on information submitted by both the parties and other industry participants, it appears that the aluminium bottle closure industry is suffering from declining demand, as well as substantial overcapacity, due to moves by fillers from glass to plastic bottles and therefore to plastic caps. Returnable PET bottles have taken substantial market share from glass bottles in the past two years; and one-way PET bottles, in the market since the 1970s, started with aluminium closures, but switched to Obrist when those closures became available.
- (114) These latter structural features, together with the presence of a strong competitor also active in plastic closures (Alcoa) appear to be sufficient to constrain a threat of dominance by the combined entity.

VI. COMMITMENTS PROPOSED BY CROWN CORK & SEAL

- (115) Crown Cork & Seal has offered to modify the original concentration plan as notified, by entering into the following commitments:

(...)

'Crown hereby declares that it is prepared to modify the effect of the operation notified to the Commission on 23 June 1995 on the basis of the following undertakings.

3. In order to meet the requirements of the Commission to facilitate the entry of a credible competitor with adequate resources into the EEA aerosol market and/or the increase in the capacity of an existing competitor so that in either case such competitor could effectively compete on the EEA aerosol market with Crown, Crown undertakes that after the successful completion of its exchange offer, it will irrevocably make available for sale, as a going concern, the aerosol business (i.e. the shares of one or more legal entities containing the following elements: plant facilities

— except as set forth in paragraph 5 below
 — equipment, machinery and fixtures, raw materials, finished products, inventories and goods in process, employees, commercial agreements and all rights to contracts entered into in the regular course of business with customers and all other assets related to aerosol can production, distribution and sales, rights to any aerosol can trade-marks, patents, inventions, trade secrets, technology, know-how and design of Crown and CarnaudMetalbox SA ("CMB"), as described in the information provided to the Commission on "Aerosol Plants") in the following locations (the "divestiture package"):

Aerosol business of Crown at Southall and Tredegar, United Kingdom

Aerosol business of Crown at Voghera, Italy

Aerosol business of CMB at Reus, Spain

Aerosol business of CMB at Laon, France

Aerosol business of CMB at Schwedt, Germany.

4. With regard to the present operations of Crown in Southall, immediately after the successful completion of its exchange offer and, if time allows, prior to the sale of the divestiture package to the purchaser of the divestiture package (the "purchaser"), Crown will remove from such operations the elements of Crown's metal-crown business at such location so that such operations become a stand alone and ongoing aerosol business. Such removal shall be conducted so as not to impair the aerosol business as presently conducted.
5. With regard to the present operations of Crown in Voghera, Crown will, if desired by the purchaser, establish Crown's aerosol business in another facility as an ongoing aerosol business, whether it be stand alone or incorporated with other operations of the purchaser. In moving its aerosol business to such other facility, Crown shall take the necessary steps to cause as little production disruption as practically possible, for instance by moving production lines one at a time. [...]⁽⁵⁾.
6. Crown also agrees to provide the purchaser with any licences, know-how and technical assistance relating to production of compartmented cans (i.e., the bag in can

⁽¹⁾ Precise figure not disclosed: business secret.

⁽²⁾ Precise figure not disclosed: confidential information of Alcoa.

⁽³⁾ Precise figure not disclosed: confidential information of Pechiney.

⁽⁴⁾ Precise figure not disclosed: confidential information of MCG.

⁽⁵⁾ Deleted: confidential information.

technology under the "bi-can" trademark and piston cans), to the extent it is permitted by existing contractual arrangements in relation to the piston cans binding Crown. Crown may charge the purchaser a market-based fee for any such licence, know-how or technical assistance. The market-based fee shall be that normally obtainable on the market at the time that any licence, know-how or technical assistance is provided. The obligation to provide technical assistance will continue for a period of one year following the acquisition of the divestiture package and Crown will provide, at a market-based fee, technical assistance for a further period of up to one year at the request of the purchaser, provided that such request is made not later than one month before the expiry of the first one-year period.

7. Crown will undertake, for a period of [...] ⁽¹⁾ after the closing of the sale of the divestiture package, not to compete with the purchaser for the sales of aerosol cans to customers at the specific customer locations which were served by businesses in the divestiture package, except to the extent that such customers at those specific customer locations already purchase aerosol cans from retained CMB or Crown operations, and except, with Commission approval, in situations where the prospective customer declines in good faith to deal with the purchaser of the divestiture package.

8. Crown recognizes the Commission's two-fold objectives to maintain the viability, marketability and competitiveness of the businesses in the divestiture package and to provide sufficient management services and functions for this purpose. In order to accomplish these objectives, Crown undertakes to do the following:

(a) to ensure that the businesses in the divestiture package are legally held separate and are maintained as distinct and saleable businesses and to ensure that production capacity and selling activities are maintained, pursuant to good business practices, at their current level, and that all contracts necessary to preserve the businesses are entered into or continue in accordance with their

terms, consistent with past practice and the ordinary course of business. This will include in particular all contracts and arrangements related to all aspects of the aerosol business as specified under paragraph 3;

(b) to maintain all administrative and management functions relating to the divestiture package which have been carried out at all appropriate headquarters levels in Crown and/or CMB in order to maintain the viability, marketability and competitiveness of the divestiture package, until the divestiture is completed or until such time as the trustee advises Crown that such functions are no longer necessary, whichever occurs earlier;

(c) As soon as is practical after the Commission has notified a favourable decision to Crown under Regulation (EEC) No 4064/89 and in any event no later than 10 days after Crown acquires control of CMB, to appoint a trustee (the "trustee"), such as an investment bank, subject to approval by the Commission (such approval shall not be withheld without good cause). Subject to approval by the Commission (such approval shall not be withheld without good cause): (a) should Crown determine at any time after the appointment of the trustee that the trustee does not perform its duties properly, Crown will terminate the trustee agreement and (b) Crown will replace the trustee by another trustee; and

(d) to establish and facilitate the management structure selected by the trustee as set out under subparagraph 9 (a).

9. The trustee will:

(a) in consultation with appropriate personnel at Crown and CMB, the trustee will determine the best management structure to ensure the viability, marketability and competitiveness of the divestiture package and of each legal entity comprising this package [...] ⁽²⁾. In particular the trustee shall ensure that any restructuration of any of the plants to be divested shall be carried

⁽¹⁾ Period deleted: confidential information.

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- out in such a way as to guarantee the viability, marketability and competitiveness of any such plant;
- (b) monitor the operation and management of the divestiture package to ensure its continued viability, marketability and competitiveness. For the purpose of, and to the extent necessary for such monitoring, the trustee will have access to the personnel and facilities as well as the documents, books and records of Crown and CMB's aerosol business, including those which do not form part of the divestiture package. The trustee will also have access to such other personnel, facilities, books and record which may have an impact on the conduct of the aerosol operations (in particular central purchasing and ongoing R&D related to aerosol businesses);
- (c) act as Crown's investment banker in conducting good-faith negotiations with interested third parties with a view to selling the divestiture package "en bloc" by the later of [...] ⁽¹⁾ or [...] ⁽²⁾ after Crown acquires control of CMB (the "target date"). In the event that the trustee at any time prior to the target date determines in conjunction with the Commission that it is not possible to identify an acceptable purchaser for the divestiture package "en bloc", the trustee, Crown and the Commission will discuss appropriate alternatives to the divestiture "en bloc";
- (d) the trustee shall be remunerated by Crown. As an incentive to the trustee to use its best efforts in arranging a prompt value-maximizing sale of the divestiture package, the trustee's remuneration will provide incentives for a prompt divestiture;
- (e) provide a written report either before a binding contract is to be signed and in any event every month on relevant developments in its negotiations with third parties interested in purchasing the divestiture package, and that such reports, together with supporting documentation, shall be furnished to the Commission, with a copy to Crown;
- (f) provide to the Commission, with a copy to Crown, a written report every two months concerning the monitoring of the operation and management of the divestiture package;
- (g) at any other time, provide the Commission, at its request, a written or oral report on the matters referred to in subparagraphs (e) and (f). Crown shall receive a copy of such written reports and shall be informed of the content of oral reports; and
- (h) cease to perform its duties as trustee with regard to the divestiture package after the closing of the sale of the divestiture package. The purchaser may retain after this date the trustee's services at its own expense.
10. Crown undertakes to give all reasonable assistance requested by the trustee to sell the divestiture package by the target date. Crown shall be deemed to have complied with its divestiture undertaking if by such date it has entered into a binding letter of intent or a binding contract for the sale of the divestiture package to a purchaser approved by the Commission, provided that such sale is completed within a reasonable time limit agreed to by the Commission.
11. The Commission may, upon Crown's request and upon showing good cause, extend the period granted to Crown for divestiture by [...] ⁽³⁾ after the target date. In such case, Crown shall give the trustee an irrevocable mandate to sell the divestiture package, on best possible terms and conditions, [...] ⁽⁴⁾.
12. In its reports referred to in subparagraphs 9 (e) and (g), the trustee shall indicate whether it believes that a purchaser with which it is proposed to sign a letter of intent would satisfy the requirements set forth in paragraph 3 and whether it considers that negotiations with such a purchaser should continue. If within 10 working days of the receipt of such indications from the trustee the Commission does not formally express its disagreement

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⁽³⁾ Time period deleted: confidential information.

⁽⁴⁾ Deleted: confidential information.

with the trustee's favourable assessment of a purchaser, negotiations with such person as a valid purchaser may proceed. The Commission may disagree with the assessment of the proposed purchaser by the trustee if the proposed purchaser would not be a credible competitor and would be unlikely to compete effectively with Crown.

13. Up to the target date, and provided that the offers concerned have been received from purchasers recognized as being valid pursuant to the procedure set forth in the preceding paragraph, Crown shall be free to accept any offer or to select the offer it considers best in case of a plurality of offers.
- (116) The Commission is satisfied that, once complied with, Crown's offer to divest a business constituted of five tinplate aerosol plants widely spread from a geographical point of view — and all related assets (including a supporting plant in Tredegar in the United Kingdom), employees and rights — will prevent Crown from acquiring a dominant position in the EEA market for tinplate aerosol cans.
- (117) Post concentration and post-divestment of the divestiture package, Crown/CMB will operate five tinplate aerosol plants in five Member States, representing [...] ⁽¹⁾ assembly lines (including one production line in a food can plant in Greece) and a market share of [35 to 45 %] ⁽²⁾, to be compared to the current market share of CMB of [35 to 45 %] ⁽³⁾ with five plants and 36 production lines. The increase in market share is attributable to the Mijdrecht plant of Crown which is dedicated to one customer through a long-term supply agreement.

The divestiture package comprises stand alone ongoing businesses representing an overall market share of 22 %. The divestiture package will enjoy geographical as well as technical flexibility as it includes five aerosol production units in five different Member States and [...] ⁽⁴⁾ production lines. In addition, the divestiture package includes related state-of-the-art printing, coating and cutting machineries.

The aforescribed divestiture effectively implies that the new group will operate less production lines than CMB formerly did and will have a market share relatively close to the previous market

share of CMB, the increase being related to one long-term supply agreement. The Commission has therefore concluded that the commitments offered by Crown, are sufficient to prevent the creation or the strengthening of a dominant position in the EEA market for tinplate aerosol cans.

- (118) If the sale of the businesses to be divested has not taken place by the end of the period set out in the Crown's commitment or after the [...] ⁽⁵⁾ extension that the Commission may grant upon Crown's request, the Commission reserves its rights pursuant to Article 8 (4) of the Merger Regulation.

Furthermore, if any of the obligations accepted by Crown in its commitment are breached, before the divestiture is completed, the Commission reserves the rights pursuant to Article 8 (5) to revoke its decision.

These actions will be taken without prejudice to the Commission's right to impose fines pursuant to Article 14 (2),

HAS ADOPTED THIS DECISION:

Article 1

Subject to the full compliance with all conditions and obligations contained in Crown Cork & Seal's commitment *vis-à-vis* the Commission as set forth in paragraph 115 above, the concentration notified by Crown Cork & Seal on 23 June 1995 relating to the acquisition of CarnaudMetalbox is declared compatible with the common market and the functioning of the EEA Agreement.

Article 2

This Decision is addressed to:

Crown Cork & Seal
9300 Ashton Road
Philadelphia, PA 19136
USA.

Done at Brussels, 14 November 1995.

For the Commission

Karel VAN MIERT

Member of the Commission

⁽¹⁾ Figure deleted: confidential information.

⁽²⁾ Precise figure not disclosed: business secret.

⁽³⁾ Precise figure not disclosed: business secret.

⁽⁴⁾ Figure deleted: confidential information.

⁽⁵⁾ Time period deleted: confidential information.