

Official Journal

of the European Communities

ISSN 0378-6978

L 78

Volume 39

28 March 1996

English edition

Legislation

Contents

I Acts whose publication is obligatory

- ★ **Council Regulation (EC) No 527/96 of 25 March 1996 temporarily suspending the autonomous Common Customs Tariff duties and progressively introducing the Common Customs Tariff duties on imports of certain industrial products into the Canary Islands** 1
- Commission Regulation (EC) No 528/96 of 27 March 1996 fixing the export refunds on white sugar and raw sugar exported in its unaltered state 8
- Commission Regulation (EC) No 529/96 of 27 March 1996 fixing the maximum export refund for white sugar for the 34th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1813/95 10
- Commission Regulation (EC) No 530/96 of 27 March 1996 fixing the representative prices and the additional import duties for molasses in the sugar sector 11
- ★ **Commission Regulation (EC) No 531/96 of 27 March 1996 amending Regulation (EEC) No 570/88 on the sale of butter at reduced prices and the grant of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs** 13
- ★ **Commission Regulation (EC) No 532/96 of 27 March 1996 amending Regulation (EEC) No 2123/89 establishing the list of representative markets for pigmeat in the Community** 14
- Commission Regulation (EC) No 533/96 of 27 March 1996 fixing the import duties in the rice sector 15
- Commission Regulation (EC) No 534/96 of 27 March 1996 fixing the import duties in the cereals sector 18

Commission Regulation (EC) No 535/96 of 27 March 1996 fixing the maximum export refunds for olive oil for the ninth partial invitation to tender under the standing invitation to tender issued by Regulation (EC) No 2544/95	21
Commission Regulation (EC) No 536/96 of 27 March 1996 fixing the export refunds on olive oil	23
Commission Regulation (EC) No 537/96 of 27 March 1996 establishing the standard import values for determining the entry price of certain fruit and vegetables	25
* Council Directive 96/16/EC of 19 March 1996 on statistical surveys of milk and milk products.....	27
* Council Directive 96/17/EC of 19 March 1996 amending the Annex to Directive 85/73/EEC on the financing of veterinary inspections and controls of animal products covered by Annex A to Directive 89/662/EEC and by Directive 90/675/EEC.....	30

II Acts whose publication is not obligatory

Commission

96/236/ECSC:

- * Commission Decision of 31 October 1995 concerning State aid granted by the Freie und Hansestadt Hamburg, a regional authority of the Federal Republic of Germany, to the ECSC steel undertaking Hamburger Stahlwerke GmbH, Hamburg ⁽¹⁾

31

96/237/EC:

Commission Decision of 19 March 1996 on import licences in respect of beef and veal products originating in Botswana, Kenya, Madagascar, Swaziland and Zimbabwe

44

96/238/EC:

- * Commission Decision of 25 March 1996 amending for the second time Decision 95/296/EC concerning certain protection measures relating to classical swine fever in Germany ⁽¹⁾

46

96/239/EC:

- * Commission Decision of 27 March 1996 on emergency measures to protect against bovine spongiform encephalopathy ⁽¹⁾

47

⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 527/96

of 25 March 1996

temporarily suspending the autonomous Common Customs Tariff duties and progressively introducing the Common Customs Tariff duties on imports of certain industrial products into the Canary Islands

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 28 thereof,

Having regard to the proposal from the Commission,

Whereas Article 6 (1) of Council Regulation (EEC) No 1911/91 of 26 June 1991 on the application of the provisions of Community law to the Canary Islands⁽¹⁾ provides for the Common Customs Tariff (CCT) to be progressively introduced in the course of a transitional period which shall not extend beyond 31 December 2000; whereas, in accordance with Article 7 of that Regulation, the common commercial policy shall apply to the Canary Islands, without prejudice to the specific measures referred to in Article 6 (3) thereof;

Whereas paragraph 7.2 of the Annex to Council Decision 91/314/EEC of 26 June 1991 setting up a programme of options specific to the remote and insular nature of the Canary Islands (Poseican)⁽²⁾ states that specific tariff measures must continue to be considered and that in principle they must be limited to the transitional period provided for under Article 6 of Regulation (EEC) No 1911/91 for the gradual adoption of the CCT to the Canary Islands;

Whereas Council Regulation (EEC) No 1605/92 of 15 June 1992 temporarily suspending the autonomous Common Customs Tariff duties on imports of certain industrial products into the Canary Islands⁽³⁾ suspended in full until 31 December 1995 CCT duties applicable to imports into the Canary Islands of the products listed in the Annex to the Regulation which are intended for the Canary Islands' domestic market;

Whereas, in accordance with Article 3 of Regulation (EEC) No 1605/95, the Commission has examined this year the effect of measures adopted in favour of the economy of the Canary Islands; whereas that examination has shown that the suspension of duties on certain industrial products has not had the effect of increasing the volume of imports originating in non-Community countries;

Whereas the progressive introduction of the suspended CCT duties will not in principle have any adverse effect on the sectors concerned by the duty suspensions or, in general, on the Canary Islands' economy as a whole; whereas an appropriate timetable should be laid down for successive increases in the applicable rates of duty;

Whereas, in order to take advantage of the closing date of the transitional period laid down by Regulation (EEC) No 1911/91 and to take account of the request from the Spanish authorities, the duty suspensions under Regulation (EEC) No 1605/92 may be retained in 1996;

Whereas, in view of the foregoing, the progressive introduction of CCT duties must commence on 1 January 1997 until fully applicable on 31 December 2000; whereas, in the case of certain sensitive sectors of the Canary Islands' economy, in particular those processing imported raw materials into finished products and commerce, duties should be introduced in a flexible manner so as to prevent in the early years any adverse effect on production and employment in those sectors;

Whereas the Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994, approved by the Community by Decision 94/800/EC⁽⁴⁾ provides for bound tariff reductions to be implemented in five equal rate reductions (or 10 rate reductions for certain tariff headings); whereas that progressive reduction, which became operative in 1995, will culminate in a minimum,

⁽¹⁾ OJ No L 171, 29. 6. 1991, p. 1. Regulation as amended by Regulation (EEC) No 284/92 (OJ No L 31, 7. 2. 1992, p. 6).

⁽²⁾ OJ No L 171, 29. 6. 1991, p. 5.

⁽³⁾ OJ No L 173, 15. 6. 1992, p. 31. Regulation as amended by Regulation (EC) No 3012/95 (OJ No L 314, 28. 12. 1995, p. 15).

⁽⁴⁾ OJ No L 336, 23. 12. 1994, p. 1.

or even a zero, rate by the end of the period in question; whereas, consequently, duty suspensions should continue in respect of certain industrial products on which CCT duties resulting from the GATT agreements would reach a zero or minimum rate on 31 December 2000, the date on which the transitional period for the Canary Islands expires;

Whereas imports into the Canary Islands of certain goods originating in non-Community countries were non-existent or nearly so during the period in which CCT duty suspensions applied; whereas, consequently, there are no grounds for retaining those suspensions;

Whereas the measures taken under Regulation (EEC) No 1605/92 should be retained, on the one hand, in order to ensure that products on which the suspension of duty is extended and then progressively dismantled are intended solely for the Canary Islands' domestic market and, on the other hand, in order to permit the Commission to be regularly informed of the volume of the imports in question and, if necessary, to adopt provisions designed to prevent any speculative movement of deflection of trade,

HAS ADOPTED THIS REGULATION:

Article 1

1. The Common Customs Tariff duties applicable to imports into the Canary Islands of the products listed in Annexes I and II shall be suspended in full in accordance with the timetables laid down in those Annexes.
2. From 1 January 1997 to 31 December 2000 the Common Customs Tariff duties applicable to imports into the Canary Islands of the products listed in Annexes

III and IV shall be progressively introduced in accordance with the provisions of those Annexes.

Article 2

1. The measures referred to in Article 1 shall apply solely to products intended for the Canary Islands' domestic market.
2. The Spanish authorities shall adapt the measures necessary to ensure compliance with paragraph 1 pursuant to the relevant Community provisions on end-use and in particular the levying of Common Customs Tariff duties when the products in question are dispatched to other parts of the customs territory of the Community.

Article 3

With regard to the products referred to in Article 1 the Spanish authorities shall inform the Commission, no later than the 15th of each month, of the volume of imports exempted under the tariff measures provided for in that Article during the preceding month.

In the case of threat of injury, certified in particular by information forwarded to the Commission, for certain sensitive or ultrasensitive products, the Commission shall propose to the Council, at the request of the Spanish authorities, any appropriate measure particular regard being paid to the objectives of Decision 91/314/EEC.

Article 4

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 April 1996.

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

Done at Brussels, 25 March 1996.

For the Council

The President

S. AGNELLI

ANNEX I

List of industrial products, duties on which are suspended in full from 1 April to 31 December 1996

CN code ⁽¹⁾			
3901	Chapter 63	8519	8712 00
3904 10 00	Chapter 64	8520	8713
4011	7213	8521	8714
4202	7304	8522	9001
4203	7312	8523	9002
4407	7601	8524	9003
4410	8415	8525	9004
4412	8418	8526	9005
4803 00	8422	8527	9006
4805	8427	8528	9007
4808	8431	8529	9008
4810	8450	8701	9009
Chapter 51	8469	8702	9010
Chapter 52	8470	8703	9011
Chapter 54	8471	8704	9012
Chapter 55	8472	8705	9030
5608	8473	8706	Chapter 91
Chapter 60	8501	8707	9207
Chapter 61	8517	8708	Chapter 95
Chapter 62	8518	8711	

⁽¹⁾ Combined Nomenclature codes applicable on 1 January 1996 adopted by Commission Regulation (EC) No 3009/95 of 22 December 1995 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ No L 319, 30. 12. 1995).

ANNEX II

List of industrial products, duties on which are suspended in full from 1 January 1997 to 31 December 2000

CN code ⁽¹⁾			
4407	8431 31	8473 50 90	8701 90 15
7213	8431 39	8517 11 00	8701 90 21
8418 10 91	8431 41	8517 19 90	8701 90 25
8418 10 99	8431 42	8519 92 00	8701 90 31
8418 21 10	8431 43	8522 90 30	8701 90 35
8418 21 59	8431 49	8522 90 93	8701 90 39
8418 21 99	8471 60 90	8523 20 11	8701 90 50
8422 19	8471 70	8526 91 11	8704 10 11
8422 20	8473 10 90	8526 91 19	8704 10 19
8422 30	8473 21 90	8529 90 10	8704 10 90
8422 40	8473 29 90	8701 30 00	8713
8422 90	8473 30 90	8701 90 11	8714 20 00
8431 10	8473 40 90		

⁽¹⁾ Combined Nomenclature codes applicable on 1 January 1996 adopted by Commission Regulation (EC) No 3009/95 of 22 December 1995 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ No L 319, 30. 12. 1995).

ANNEX III

List of industrial products duties on which will be introduced during the period 1 January 1997 to 31 December 2000 according to the following timetable

Sensitive products

- on 1 January 1997 applicable duty rates will be 5 % of the CCT;
- on 1 January 1998 applicable duty rates will be 15 % of the CCT;
- on 1 January 1999 applicable duty rates will be 30 % of the CCT;
- on 1 January 2000 applicable duty rates will be 60 % of the CCT;
- on 1 January 2001 applicable duty rates will be 100 % of the CCT.

CN code ⁽¹⁾			
3901	8427	8519 31	8524 91 90
3904 10	8431 20	8519 39	8524 99 00
4011	8450	8519 40	8529 10
4202	8469	8519 93	8529 90 51
4203	8470	8519 99	8529 90 59
4410	8471 10	8520 10	8529 90 70
4412	8471 30	8520 20	8529 90 81
4803 00	8471 41	8520 32 19	8529 90 89
4805	8471 49	8520 32 50	8701 10
4808	8471 50	8520 32 91	8701 20
4810	8471 60 10	8520 32 99	8701 90 90
5203	8471 60 40	8520 33	8702
5205	8471 60 50	8520 39	8706
5208	8471 80	8520 90	8711
5209	8471 90	8521	8712 00
5210	8472	8522 90 91	8714 11
5212	8473 10 10	8522 90 98	8714 19
Chapter 55	8473 21 10	8523 11	8714 91
5608	8473 29 10	8523 12	8714 92
7312	8473 30 10	8523 13	8714 93
7601	8473 40 10	8523 20 19	8714 94
8415	8473 50 10	8523 20 90	8714 95
8418 21 51	8501	8523 30	8714 96
8418 21 91	8517 19 10	8523 90	8714 99
8418 22	8517 21	8524 10	9002
8418 29	8517 22	8524 31	9004
8418 30	8517 30	8524 32	9005
8418 40	8517 50	8524 39	9007
8418 50	8517 80	8524 40 91	9009
8418 61	8517 90	8524 40 99	9010
8418 69	8518	8524 51	9207
8418 91	8519 10	8524 52	
8418 99	8519 21	8524 53	
8422 11	8519 29	8524 60	

⁽¹⁾ Combined Nomenclature codes applicable on 1 January 1996 adopted by Commission Regulation (EC) No 3009/95 of 22 December 1995 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ No L 319, 30. 12. 1995).

Ultrasensitive products

- on 1 January 1997 applicable duty rates will be 0 % of the CCT;
- on 1 January 1998 applicable duty rates will be 5 % of the CCT;
- on 1 January 1999 applicable duty rates will be 15 % of the CCT;
- on 1 January 2000 applicable duty rates will be 35 % of the CCT;
- on 1 January 2001 applicable duty rates will be 100 % of the CCT.

CN code ⁽¹⁾	
4804	8704 22
Chapter 61	8704 23
Chapter 62	8704 31
Chapter 63	8704 32
Chapter 64	8704 90
8525	8708
8527	9006
8528	Chapter 91
8703	Chapter 95
8704 21	

⁽¹⁾ Combined Nomenclature codes applicable on 1 January 1996 adopted by Commission Regulation (EC) No 3009/95 of 22 December 1995 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ No L 319, 30. 12. 1995).

ANNEX IV

List of industrial products on which duties will be introduced during the period 1 January 1997 to 31 December 2000 according to the following timetable

- on 1 January 1997 applicable duty rates will be 20 % of the CCT;
- on 1 January 1998 applicable duty rates will be 40 % of the CCT;
- on 1 January 1999 applicable duty rates will be 60 % of the CCT;
- on 1 January 2000 applicable duty rates will be 80 % of the CCT;
- on 1 January 2001 applicable duty rates will be 100 % of the CCT.

CN code ⁽¹⁾	
5103	8522 10
5104	8522 90 10
5108	8526 10
5110	8526 91 90
5111	8526 92
5112	8705
5401	8707
5402	9001
5403	9003
5404	9008
5407	9011
5408	9012
Chapter 60	9030

⁽¹⁾ Combined Nomenclature codes applicable on 1 January 1996 adopted by Commission Regulation (EC) No 3009/95 of 22 December 1995 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ No L 319, 30. 12. 1995).

COMMISSION REGULATION (EC) No 528/96

of 27 March 1996

fixing the export refunds on white sugar and raw sugar exported in its unaltered state

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector⁽¹⁾, as last amended by Regulation (EC) No 1101/95⁽²⁾, and in particular point (a) of the first subparagraph of Article 19 (4) thereof,

Whereas Article 19 of Regulation (EEC) No 1785/81 provides that the difference between quotations or prices on the world market for the products listed in Article 1 (1) (a) of that Regulation and prices for those products within the Community may be covered by an export refund;

Whereas Regulation (EEC) No 1785/81 provides that when refunds on white and raw sugar, undenatured and exported in its unaltered state, are being fixed account must be taken of the situation on the Community and world markets in sugar and in particular of the price and cost factors set out in Article 17a of that Regulation; whereas the same Article provides that the economic aspect of the proposed exports should also be taken into account;

Whereas the refund on raw sugar must be fixed in respect of the standard quality; whereas the latter is defined in Article 1 of Council Regulation (EEC) No 431/68 of 9 April 1968 determining the standard quality for raw sugar and fixing the Community frontier crossing point for calculating cif prices for sugar⁽³⁾, as amended by Regulation (EC) No 3290/94⁽⁴⁾; whereas, furthermore, this refund should be fixed in accordance with Article 17a (4) of Regulation (EEC) No 1785/81; whereas candy sugar is defined in Commission Regulation (EC) No 2135/95 of 7 September 1995 laying down detailed rules of application for the grant of export refunds in the sugar sector⁽⁵⁾; whereas the refund thus calculated for sugar containing added flavouring or colouring matter must apply to their sucrose content and, accordingly, be fixed per 1 % of the said content;

Whereas the world market situation or the specific requirements of certain markets may make it necessary to vary the refund for sugar according to destination;

Whereas, in special cases, the amount of the refund may be fixed by other legal instruments;

Whereas Council Regulation (EEC) No 990/93⁽⁶⁾, as amended by Regulation (EC) No 1380/95⁽⁷⁾, prohibits trade between the European Community and the Federal Republic of Yugoslavia (Serbia and Montenegro); whereas this prohibition does not apply in certain situations as comprehensively listed in Articles 2, 4, 5 and 7 thereof and in Council Regulation (EC) No 462/96⁽⁸⁾; whereas account should be taken of this fact when fixing the refunds;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92⁽⁹⁾, as last amended by Regulation (EC) No 150/95⁽¹⁰⁾, are used to convert amounts expressed in third country currencies and are used as the basis for determining the agricultural conversion rates of the Member States' currencies; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93⁽¹¹⁾, as last amended by Regulation (EC) No 2853/95⁽¹²⁾;

Whereas the refund must be fixed every two weeks; whereas it may be altered in the intervening period;

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 28 March 1996.

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 110, 17. 5. 1995, p. 1.

⁽³⁾ OJ No L 89, 10. 4. 1968, p. 3.

⁽⁴⁾ OJ No L 349, 31. 12. 1994, p. 105.

⁽⁵⁾ OJ No L 214, 8. 9. 1995, p. 16.

⁽⁶⁾ OJ No L 102, 28. 4. 1993, p. 14.

⁽⁷⁾ OJ No L 138, 21. 6. 1995, p. 1.

⁽⁸⁾ OJ No L 65, 15. 3. 1996, p. 1.

⁽⁹⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽¹⁰⁾ OJ No L 22, 31. 1. 1995, p. 1.

⁽¹¹⁾ OJ No L 108, 1. 5. 1993, p. 106.

⁽¹²⁾ OJ No L 299, 12. 12. 1995, p. 1.

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

Done at Brussels, 27 March 1996.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

to the Commission Regulation of 27 March 1996 fixing the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Amount of refund ⁽¹⁾
	— ECU/100 kg —
1701 11 90 100	36,20 ⁽¹⁾
1701 11 90 910	36,78 ⁽¹⁾
1701 11 90 950	⁽²⁾
1701 12 90 100	36,20 ⁽¹⁾
1701 12 90 910	36,78 ⁽¹⁾
1701 12 90 950	⁽²⁾
	— ECU/1 % of sucrose × 100 kg —
1701 91 00 000	0,3935
	— ECU/100 kg —
1701 99 10 100	39,35
1701 99 10 910	39,98
1701 99 10 950	39,98
	— ECU/1 % of sucrose × 100 kg —
1701 99 90 100	0,3935

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

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

⁽³⁾ Refunds on exports to the Federal Republic of Yugoslavia (Serbia and Montenegro) may be granted only where the conditions laid down in amended Regulation (EEC) No 990/93 and Regulation (EC) No 462/96 are observed.

**COMMISSION REGULATION (EC) No 529/96
of 27 March 1996**

**fixing the maximum export refund for white sugar for the 34th partial invitation
to tender issued within the framework of the standing invitation to tender
provided for in Regulation (EC) No 1813/95**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector⁽¹⁾, as last amended by Regulation (EC) No 1101/95⁽²⁾, and in particular the second subparagraph of Article 17 (5) (b) thereof,

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

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

Whereas, following an examination of the tenders submitted in response to the 34th partial invitation to tender, the provisions set out in Article 1 should be adopted;

Whereas Council Regulation (EEC) No 990/93⁽⁴⁾, as amended by Regulation (EC) No 1380/95⁽⁵⁾, prohibits trade between the European Community and the Federal

Republic of Yugoslavia (Serbia and Montenegro); whereas this prohibition does not apply in certain situations as comprehensively listed in Articles 2, 4, 5 and 7 thereof and in Council Regulation (EC) No 462/96⁽⁶⁾; whereas account should be taken of this fact when fixing the refunds;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. For the 34th partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1813/95 the maximum amount of the export refund is fixed at ECU 43,018 per 100 kilograms.

2. Refunds on exports to the Federal Republic of Yugoslavia (Serbia and Montenegro) may be granted only where the conditions laid down in amended Regulation (EEC) No 990/93 and Regulation (EC) No 462/96 are observed.

Article 2

This Regulation shall enter into force on 28 March 1996.

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

Done at Brussels, 27 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 175, 27. 7. 1995, p. 12.

⁽⁴⁾ OJ No L 102, 28. 4. 1993, p. 14.

⁽⁵⁾ OJ No L 138, 21. 6. 1995, p. 1.

⁽⁶⁾ OJ No L 65, 15. 3. 1996, p. 1.

COMMISSION REGULATION (EC) No 530/96

of 27 March 1996

fixing the representative prices and the additional import duties for molasses in the sugar sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

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

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

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

Whereas the information must be disregarded if the goods concerned are not of sound and fair marketable quality or if the price quoted in the offer relates only to a small

quantity that is not representative of the market; whereas offer prices which can be regarded as not representative of actual market trends must also be disregarded;

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

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

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 28 March 1996.

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 110, 17. 5. 1995, p. 1.

⁽³⁾ OJ No L 141, 24. 6. 1995, p. 12.

⁽⁴⁾ OJ No L 145, 27. 6. 1968, p. 12.

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

Done at Brussels, 27 March 1996.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

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

CN code	Amount of the representative price in ECU per 100 kg net of the product in question	Amount of the additional duty in ECU per 100 kg net of the product in question	Amount of the duty to be applied to imports in ECU per 100 kg net of the product in question in the event of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 ⁽²⁾
1703 10 00 ⁽¹⁾	9,88	—	0,00
1703 90 00 ⁽¹⁾	11,31	—	0,00

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

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

COMMISSION REGULATION (EC) No 531/96
of 27 March 1996

**amending Regulation (EEC) No 570/88 on the sale of butter at reduced prices
and the grant of aid for cream, butter and concentrated butter for use in the
manufacture of pastry products, ice-cream and other foodstuffs**

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

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products⁽¹⁾, as last amended by Regulation (EC) No 2931/95⁽²⁾, and in particular Articles 6 (7), 7a (3) and 12 (3) thereof,

Whereas the first indent of Article 4 (4) of Commission Regulation (EEC) No 570/88⁽³⁾, as last amended by Regulation (EC) No 2931/95, provides that food preparations falling within subheadings 1902 20 10 to 1902 20 99 of the combined nomenclature are eligible as final products under that Regulation; whereas the reference to subheading 1902 20 99 stems from the adaptations resulting from Regulation (EC) No 2931/95; whereas, in view of the inconsistency between the various language versions of the Regulation, the abovementioned amendment has created uncertainty; whereas, as a result, the subheading concerned should be amended to prevent ruling out

products previously included and to make it applicable from 1 January 1996;

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

HAS ADOPTED THIS REGULATION:

Article 1

In the first indent of Article 4 (4) of Regulation (EEC) No 570/88, '1902 20 10 to 1902 20 99' is replaced by '1902 20 10 to 1902 30 90'.

Article 2

This Regulation shall enter into force on the seventh 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, 27 March 1996.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 307, 20. 12. 1995, p. 10.

⁽³⁾ OJ No L 55, 1. 3. 1988, p. 31.

COMMISSION REGULATION (EC) No 532/96
of 27 March 1996

**amending Regulation (EEC) No 2123/89 establishing the list of representative
markets for pigmeat in the Community**

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

Having regard to Council Regulation (EEC) No 2759/75
of 29 October 1975 on the common organization of the
market in pigmeat ⁽¹⁾, as last amended by Regulation (EC)
No 3290/94 ⁽²⁾, and in particular Article 4 (6) thereof,

Whereas Commission Regulation (EEC) No 2123/89 ⁽³⁾,
as last amended by Regulation (EC) No 426/96 ⁽⁴⁾, esta-
blished the list of representative markets for pigmeat in
the Community;

Whereas in Belgium a change to the representative
markets has taken place; whereas the list of representative
markets for pigmeat in the Community listed in the
Annex to Regulation (EEC) No 2123/89 should conse-
quently be amended;

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

HAS ADOPTED THIS REGULATION:

Article 1

Point 1 of the Annex to Regulation (EEC) No 2123/89 is
replaced by the following:

‘1. The following quotation centre: Brussels.’

Article 2

This Regulation shall enter into force on 1 April 1996.

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

Done at Brussels, 27 March 1996.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 282, 1. 11. 1975, p. 1.

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

⁽³⁾ OJ No L 203, 15. 7. 1989, p. 23.

⁽⁴⁾ OJ No L 60, 9. 3. 1996, p. 3.

COMMISSION REGULATION (EC) No 533/96
of 27 March 1996
fixing the import duties in the rice sector

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

Having regard to Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 3072/95 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1573/95 of 30 June 1995 laying down detailed rules for the application of Council Regulation (EEC) No 1418/76 as regards import duties in the rice sector ⁽³⁾, as last amended by Regulation (EC) No 321/96 ⁽⁴⁾, and in particular Article 4 (1) thereof,

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

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

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

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 28 March 1996.

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

Done at Brussels, 27 March 1996.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽²⁾ OJ No L 329, 30. 12. 1995, p. 18.

⁽³⁾ OJ No L 150, 1. 7. 1995, p. 53.

⁽⁴⁾ OJ No L 45, 23. 2. 1996, p. 3.

ANNEX I

to the Commission Regulation of 27 March 1996 fixing the import duties on rice and broken rice

(ECU/tonne)

CN code	Duties ^(*)				
	Third countries (except ACP and Bangladesh) ⁽²⁾ ⁽³⁾	ACP Bangladesh ⁽¹⁾ ⁽²⁾ ⁽³⁾ ⁽⁴⁾	Basmati India ⁽²⁾ Article 4, Regulation (EC) No 1573/95	Basmati Pakistan ⁽²⁾ Article 4, Regulation (EC) No 1573/95	Arrangement in Regulation (EEC) No 3877/86 ⁽⁵⁾
1006 10 21	⁽³⁾	150,76			
1006 10 23	⁽³⁾	150,76			
1006 10 25	⁽³⁾	150,76			
1006 10 27	⁽³⁾	150,76			—
1006 10 92	⁽³⁾	150,76			
1006 10 94	⁽³⁾	150,76			
1006 10 96	⁽³⁾	150,76			
1006 10 98	⁽³⁾	150,76			—
1006 20 11	271,03	131,18			
1006 20 13	271,03	131,18			
1006 20 15	271,03	131,18			
1006 20 17	353,60	172,46	103,6	303,6	—
1006 20 92	271,03	131,18			
1006 20 94	271,03	131,18			
1006 20 96	271,03	131,18			
1006 20 98	353,60	172,46	103,6	303,6	—
1006 30 21	522,74	246,46			
1006 30 23	522,74	246,46			
1006 30 25	522,74	246,46			
1006 30 27	⁽³⁾	290,59			—
1006 30 42	522,74	246,46			
1006 30 44	522,74	246,46			
1006 30 46	522,74	246,46			
1006 30 48	⁽³⁾	290,59			—
1006 30 61	522,74	246,46			
1006 30 63	522,74	246,46			
1006 30 65	522,74	246,46			
1006 30 67	⁽³⁾	290,59			—
1006 30 92	522,74	246,46			
1006 30 94	522,74	246,46			
1006 30 96	522,74	246,46			
1006 30 98	⁽³⁾	290,59			—
1006 40 00	⁽³⁾	90,38			

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

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

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

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

- (⁵) Only for imports of rice of the long-grain aromatic Basmati variety under the arrangements laid down in amended Council Regulation (EEC) No 3877/86 (OJ No L 361, 20. 12. 1986, p. 1).
- (⁶) No import duty applies to products originating in the OCT pursuant to Article 101 (1) of amended Council Decision 91/482/EEC (OJ No L 263, 19. 9. 1991, p. 1).
- (⁷) For husked rice of the Basmati variety originating in India and not imported under the arrangements in Regulation (EEC) No 3877/86, a reduction of ECU 250 per tonne applies (Article 4, Regulation (EC) No 1573/95).
- (⁸) For husked rice of the Basmati variety originating in Pakistan and not imported under the arrangements in Regulation (EEC) No 3877/86, a reduction of ECU 50 per tonne applies (Article 4, Regulation (EC) No 1573/95).
- (⁹) Duties fixed in the Common Customs Tariff.

ANNEX II

Calculation of import duties for rice

	Paddy	Indica rice		Japonica rice		Broken rice
		Husked	Milled	Husked	Milled	
1. Import duty (ECU/tonne) (¹)	(²)	353,60	611,00	271,03	522,74	(²)
2. Elements of calculation:						
(a) Arag cif price (\$/tonne)		373,43	418,11	480,00	505,00	—
(b) fob price (\$/tonne)	—	—	—	450,00	475,00	—
(c) Sea freight (\$/tonne)	—	—	—	30,00	30,00	—
(d) Source	—	USDA	USDA	Operators	Operators	—

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

(²) Duties fixed in the Common Customs Tariff.

COMMISSION REGULATION (EC) No 534/96
of 27 March 1996
fixing the import duties in the cereals sector

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

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EC) No 1863/95⁽²⁾,

Having regard to Commission Regulation (EC) No 1502/95 of 29 June 1995 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 for the 1995/96 marketing year as regards import duties in the cereals sector⁽³⁾, as last amended by Regulation (EC) No 346/96⁽⁴⁾, and in particular Article 2 (1) thereof,

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

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

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

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

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 28 March 1996.

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

Done at Brussels, 27 March 1996.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ No L 179, 29. 7. 1995, p. 1.

⁽³⁾ OJ No L 147, 30. 6. 1995, p. 13.

⁽⁴⁾ OJ No L 49, 28. 2. 1996, p. 5.

ANNEX I

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

CN code	Description	Import duty by land inland waterway or sea from Mediterranean, the Black Sea or Baltic Sea ports (ECU/tonne)	Import duty by sea from other ports ⁽²⁾ (ECU/tonne)
1001 10 00	Durum wheat ⁽¹⁾	5,05	0,00
1001 90 91	Common wheat seed	9,00	0,00
1001 90 99	Common high quality wheat other than for sowing ⁽³⁾	9,00	0,00
	medium quality	27,65	17,65
	low quality	34,42	24,42
1002 00 00	Rye	42,14	32,14
1003 00 10	Barley, seed	42,14	32,14
1003 00 90	Barley, other ⁽³⁾	42,14	32,14
1005 10 90	Maize seed other than hybrid	59,82	49,82
1005 90 00	Maize other than seed ⁽³⁾	59,82	49,82
1007 00 90	Grain sorghum other than hybrids for sowing	42,14	32,14

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

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

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

⁽³⁾ The importer may benefit from a flat-rate reduction of ECU 14 or 8 per tonne, where the conditions laid down in Article 2 (5) of Regulation (EC) No 1502/95 are met.

ANNEX II

Factors for calculating duties (period from 13. 3. 1996 to 26. 3. 1996):

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

Exchange quotations	Minneapolis	Kansas-City	Chicago	Chicago	Mid-America	Mid-America
Product (% proteins at 12 % humidity)	HRS2. 14 %	HRW2. 11 %	SRW2	YC3	HAD2	US barley 2
Quotation (ECU/tonne)	141,44	142,47	137,94	119,32	189,05 ⁽¹⁾	151,96 ⁽²⁾
Gulf premium (ECU/tonne)	43,67	23,98	21,75	14,97	—	—
Great lake premium (ECU/tonne)	—	—	—	—	—	—

⁽¹⁾ Fob Duluth.

⁽²⁾ Fob Gulf.

2. Freight/cost: Gulf of Mexico — Rotterdam: ECU 10,72 per tonne; Great Lakes/St Lawrence — Rotterdam: ECU 29,42 per tonne.

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

COMMISSION REGULATION (EC) No 535/96

of 27 March 1996

fixing the maximum export refunds for olive oil for the ninth partial invitation to tender under the standing invitation to tender issued by Regulation (EC) No 2544/95

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

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by the Act of Accession of Austria, Finland and Sweden and by Regulation (EC) No 3290/94⁽²⁾, and in particular Article 3 thereof,

Whereas Commission Regulation (EC) No 2544/95⁽³⁾ issued a standing invitation to tender with a view to determining the export refunds on olive oil;

Whereas Council Regulation (EEC) No 990/93⁽⁴⁾, as amended by Regulation (EC) No 1380/95⁽⁵⁾, prohibits trade between the European Community and the Federal Republic of Yugoslavia (Serbia and Montenegro); whereas this prohibition does not apply in certain situations as comprehensively listed in Articles 2, 4, 5 and 7 thereof and in Council Regulation (EC) No 462/96⁽⁶⁾; whereas account should be taken of this fact when fixing the refunds;

Whereas Article 6 of Regulation (EC) No 2544/95 provides that maximum amounts are to be fixed for the export refunds in the light in particular of the current

situation and foreseeable developments on the Community and world olive-oil markets and on the basis of the tenders received; whereas contracts are awarded to any tenderer who submits a tender at the level of the maximum refund or at a lower level;

Whereas, for the purposes of applying the abovementioned provisions, the maximum export refunds should be set at the levels specified in the Annex;

Whereas the Management Committee for Oils and Fats has not delivered an opinion within the time limit set by its Chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refunds for olive oil for the ninth partial invitation to tender under the standing invitation to tender issued by Regulation (EC) No 2544/95 are hereby fixed in the Annex, on the basis of the tenders submitted by 23 March 1996.

Article 2

This Regulation shall enter into force on 28 March 1996.

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

Done at Brussels, 27 March 1996.

For the Commission

Franz FISCHLER

Member of the Commission

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

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

⁽³⁾ OJ No L 260, 31. 10. 1995, p. 38.

⁽⁴⁾ OJ No L 102, 28. 4. 1993, p. 14.

⁽⁵⁾ OJ No L 138, 21. 6. 1995, p. 1.

⁽⁶⁾ OJ No L 65, 15. 3. 1996, p. 1.

ANNEX

to the Commission Regulation of 27 March 1996 fixing the maximum export refunds for olive oil for the ninth partial invitation to tender under the standing invitation to tender issued by Regulation (EC) No 2544/95

(ECU/100 kg)	
Product code	Amount of refund ⁽¹⁾
1509 10 90 100	45,10
1509 10 90 900	—
1509 90 00 100	53,75
1509 90 00 900	—
1510 00 90 100	11,60
1510 00 90 900	—

⁽¹⁾ Refunds on exports to the Federal Republic of Yugoslavia (Serbia and Montenegro) may be granted only where the conditions laid down in amended Regulation (EEC) No 990/93 and Regulation (EC) No 462/96 are observed.

NB: The product codes and the footnotes are defined in amended Commission Regulation (EEC) No 3846/87.

COMMISSION REGULATION (EC) No 536/96

of 27 March 1996

fixing the export refunds on olive oil

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by the Act of Accession of Austria, Finland and Sweden and by Regulation (EC) No 3290/94⁽²⁾, and in particular Article 3 (3) thereof,

Whereas Article 3 of Regulation No 136/66/EEC provides that, where prices within the Community are higher than world market prices, the difference between these prices may be covered by a refund when olive oil is exported to third countries;

Whereas the detailed rules for fixing and granting export refunds on olive oil are contained in Commission Regulation (EEC) No 616/72⁽³⁾, as last amended by Regulation (EEC) No 2962/77⁽⁴⁾;

Whereas Article 3 (3) of Regulation No 136/66/EEC provides that the refund must be the same for the whole Community;

Whereas, in accordance with Article 3 (4) of Regulation No 136/66/EEC, the refund for olive oil must be fixed in the light of the existing situation and outlook in relation to olive oil prices and availability on the Community market and olive oil prices on the world market; whereas, however, where the world market situation is such that the most favourable olive oil prices cannot be determined, account may be taken of the price of the main competing vegetable oils on the world market and the difference recorded between that price and the price of olive oil during a representative period; whereas the amount of the refund may not exceed the difference between the price of olive oil in the Community and that on the world market, adjusted, where appropriate, to take account of export costs for the products on the world market;

Whereas, in accordance with Article 3 (3) third indent, point (b) of Regulation No 136/66/EEC, it may be decided that the refund shall be fixed by tender; whereas

the tendering procedure should cover the amount of the refund and may be limited to certain countries of destination, quantities, qualities and presentations;

Whereas the second indent of Article 3 (3) of Regulation No 136/66/EEC provides that the refund on olive oil may be varied according to destination where the world market situation or the specific requirements of certain markets make this necessary;

Whereas the refund must be fixed at least once every month; whereas it may, if necessary, be altered in the intervening period;

Whereas it follows from applying these detailed rules to the present situation on the market in olive oil and in particular to olive oil prices within the Community and on the markets of third countries that the refund should be as set out in the Annex hereto;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92⁽⁵⁾, as last amended by Regulation (EC) No 150/95⁽⁶⁾, are used to convert amounts expressed in third country currencies and are used as the basis for determining the agricultural conversion rates of the Member States' currencies; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93⁽⁷⁾, as last amended by Regulation (EC) No 2853/95⁽⁸⁾;

Whereas Council Regulation (EEC) No 990/93⁽⁹⁾, as amended by Regulation (EC) No 1380/95⁽¹⁰⁾, prohibits trade between the European Community and the Federal Republic of Yugoslavia (Serbia and Montenegro); whereas this prohibition does not apply in certain situations as comprehensively listed in Articles 2, 4, 5 and 7 thereof and in Council Regulation (EC) No 2815/95⁽¹¹⁾; whereas account should be taken of this fact when fixing the refunds;

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

⁽¹⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽²⁾ OJ No L 22, 31. 1. 1995, p. 1.

⁽³⁾ OJ No L 108, 1. 5. 1993, p. 106.

⁽⁴⁾ OJ No L 299, 12. 12. 1995, p. 1.

⁽⁵⁾ OJ No L 102, 28. 4. 1993, p. 14.

⁽⁶⁾ OJ No L 138, 21. 6. 1995, p. 1.

⁽⁷⁾ OJ No L 297, 9. 12. 1995, p. 1.

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

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

⁽³⁾ OJ No L 78, 31. 3. 1972, p. 1.

⁽⁴⁾ OJ No L 348, 30. 12. 1977, p. 53.

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 (2) (c) of Regulation No 136/66/EEC shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 April 1996.

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

Done at Brussels, 27 March 1996.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

to the Commission Regulation of 27 March 1996 fixing the export refunds on olive oil

(ECU/100 kg)

Product code	Amount of refund ⁽¹⁾ ⁽²⁾
1509 10 90 100	42,00
1509 10 90 900	0,00
1509 90 00 100	50,50
1509 90 00 900	0,00
1510 00 90 100	9,50
1510 00 90 900	0,00

⁽¹⁾ For destinations mentioned in Article 34 of amended Commission Regulation (EEC) No 3665/87 (OJ No L 366, 24. 12. 1987, p 1), as well as for exports to third countries.

⁽²⁾ Refunds on exports to the Federal Republic of Yugoslavia (Serbia and Montenegro) may be granted only where the conditions laid down in amended Regulation (EEC) No 990/93 and Regulation (EC) No 2815/95 are observed.

NB: The product codes and the footnotes are defined in amended Commission Regulation (EEC) No 3846/87.

COMMISSION REGULATION (EC) No 537/96

of 27 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 28 March 1996.

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

Done at Brussels, 27 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 27 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	110,2	0805 30 20	052	90,3
	060	80,2		204	88,8
	064	59,6		220	74,0
	066	41,7		388	90,3
	068	62,3		400	88,5
	204	80,9		512	54,8
	208	44,0		520	66,5
	212	46,9		524	100,8
	624	199,2		528	69,0
	999	80,6		600	79,8
0707 00 15	052	104,3	0808 10 51, 0808 10 53, 0808 10 59	624	87,0
	053	156,2		999	80,9
	060	61,0		052	64,0
	066	53,8		064	78,6
	068	69,1		388	79,3
	204	144,3		400	69,0
	624	87,1		404	67,6
	999	96,5		508	93,7
	220	129,6		512	81,9
	999	129,6		524	114,1
0709 10 10	052	104,3	0808 20 31	528	83,3
	204	77,5		624	86,5
0709 90 73	412	54,2		728	107,3
	624	241,0		800	78,0
	999	119,3		804	21,0
0805 10 01, 0805 10 05, 0805 10 09	052	46,2		999	78,8
	204	45,9		039	90,4
	208	58,0		052	86,2
	212	45,7		064	72,5
	220	53,3		388	70,0
	388	40,5		400	108,5
	400	37,8		512	66,3
	436	41,6		528	65,2
	448	23,4		624	79,0
	600	43,5		728	115,4
	624	49,1		800	55,8
	999	44,1		804	112,9
				999	83,8

⁽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'.

COUNCIL DIRECTIVE 96/16/EC

of 19 March 1996

on statistical surveys of milk and milk products

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 thereof,

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

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

Whereas Council Directive 72/280/EEC of 31 July 1972 on the statistical surveys to be made by the Member States on milk and milk products ⁽³⁾ has been amended on several occasions; whereas, in the light of new amendments, it is in the interest of transparency to reformulate the provisions of the said Directive;

Whereas in order to carry out its duties under the Treaty and under Community provisions on the common organization of the market in milk and milk products the Commission needs reliable information about the production and use of milk and regular, reliable, short-term information about the delivery of milk to enterprises which treat or process milk and about the production of milk products in the Member States;

Whereas surveys on the production and use of milk on the farm should be conducted in accordance with uniform criteria and in greater detail, and monthly surveys should be made in all Member States in enterprises which process milk;

Whereas, in order to obtain comparable results, common criteria should be fixed as regards the scope of the survey, the characteristics to be noted and the survey procedure;

Whereas experience acquired in implementing the previous rules has shown that it would be useful to simplify the provisions, in particular by abolishing the requirement to provide weekly results;

Whereas, in view of the growing importance of the milk-protein content of milk products the appropriate steps must be taken;

Whereas, in order to facilitate implementation of the provisions of this Directive, it is appropriate to continue the close cooperation between the Member States and the

Commission, particularly in the Standing Committee for Agricultural Statistics established by Decision 72/279/EEC ⁽⁴⁾,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Member States:

1. shall survey the survey units specified in Article 2 for the data specified in Article 4, and shall inform the Commission of the monthly, annual and triennial results;
2. shall carry out annual surveys of the production of milk and its use among agricultural holdings as defined in accordance with the procedure laid down in Article 7;
3. subject to the Commission's agreement, may use data from other official sources.

Article 2

The surveys referred to in Article 1 (1) shall cover:

1. undertakings or agricultural holdings which purchase whole milk or, in certain cases, milk products, either directly from agricultural holdings or from the undertakings referred to in point 2, with a view to transforming them into milk products;
2. undertakings which collect milk or cream in order to transfer it in whole or in part, without any processing, to the undertakings referred to in point 1.

Member States shall take all appropriate measures to prevent duplication of results as far as possible.

Article 3

1. For the purpose of this Directive, 'milk' means the milk of cows, ewes, goats and buffaloes. The monthly surveys provided for in Article 4 (1) (a) shall cover only cow's milk and products manufactured exclusively from cow's milk.

⁽¹⁾ OJ No C 321, 1. 12. 1995, p. 6.

⁽²⁾ OJ No C 32, 5. 2. 1996.

⁽³⁾ OJ No L 179, 7. 8. 1972, p. 2. Directive as last amended by the 1994 Act of Accession.

⁽⁴⁾ OJ No L 179, 7. 8. 1972, p. 1.

2. The list of milk products covered by the surveys shall be adopted in accordance with the procedure laid down in Article 7. That list may be amended in accordance with the same procedure.

3. The standard definitions to be used for communicating the results for the various products shall be drawn up in accordance with the procedure laid down in Article 7.

Article 4

1. The surveys referred to in Article 1 (1) must permit at least the information mentioned in points (a), (b) and (c) below to be provided.

Questionnaires must be compiled in such a way as to avoid duplication.

The information shall relate to:

(a) monthly:

- (i) the quantity and fat content of the milk and cream collected and the protein content of the cows' milk collected;
- (ii) the quantity of certain fresh milk products processed and available for delivery and of certain manufactured dairy products;

(b) annually:

- (i) the quantity, fat content and protein content of the available milk and cream;
- (ii) the quantity of fresh milk products which have been processed and which are available for delivery, and of other manufactured dairy products, broken down by type;
- (iii) the use of raw materials in the form of whole milk and skimmed milk and the amount of fats used in the manufacture of dairy products;

(c) triennially (as from 31 December 1997):

the number of the survey units referred to in Article 2, broken down by size class.

2. With a view to analyzing, within three years of the entry into force of this Directive the possibility of extending the annual statistical information referred to in point (b) to include the protein content of the main milk products, Member States shall during that period conduct pilot surveys or studies on achieving that objective. In accordance with the procedure laid down in Article 7, the Commission shall establish a work programme for each of these three years.

Member States shall submit annually to the Commission a report on the implementation of this programme, including the statistical data available and the information necessary for interpreting it.

Article 5

1. Without prejudice to the second subparagraph, the surveys referred to in Article 1 (1) shall be exhaustive in the case of dairies accounting for at least 95 % of the cow's milk collected by the Member State, with the balance being estimated on the basis of representative samples or other sources.

Member States may carry out the monthly surveys mentioned in Article 4(1)(a) in the form of sample surveys. In that case the sampling error must not exceed 1 % of total national collection (with a confidence interval of 68 %).

2. Member States shall take all appropriate measures to obtain comprehensive and sufficiently accurate results. They shall forward to the Commission in the form of a methodological report all information enabling the accuracy of the results transmitted to be assessed, in particular:

- (a) the questionnaires used;
- (b) the precautions taken to avoid double counting;
- (c) the methods used for transposing the data obtained from the questionnaire to Community tables.

The methodological reports, the availability and reliability of data and any other matter related to the implementation of this Directive shall be examined once a year in the relevant working party of the Standing Committee for Agricultural Statistics. The first methodological report shall be forwarded to the Commission at the latest by the end of the year following the entry into force of this Directive.

Article 6

1. Tables for the transmission of data shall be prepared in accordance with the procedure laid down in Article 7.

These tables may be amended in accordance with the same procedure.

2. Member States shall transmit the results referred to in paragraph 3, including data which are deemed confidential under national legislation or rules applied with regard to statistical confidentiality, in accordance with the provisions of Council Regulation (Euratom, EEC) No 1588/90 of 11 June 1990 on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities⁽¹⁾.

⁽¹⁾ OJ No L 151, 15. 6. 1990, p. 1.

3. Member States shall send to the Commission as soon as possible after summarizing the information, and at the latest:

- (a) forty-five days after the end of the return month, the monthly results referred to in Article 4 (1) (a);
- (b) in June of the year following the return year:
 - the annual results referred to in Article 4 (1) (b);
 - the implementation report referred to in Article 4 (2);
- (c) in September of the year following the year of the return date, the results referred to in Article 1 (2) and Article 4 (1) (c).

4. The Commission shall collate the information sent by the Member States and notify them of the overall results.

Article 7

1. Where the procedure laid down in this Article is to be followed, the Chairman of the Standing Committee for Agricultural Statistics (hereinafter called 'the Committee') shall refer the matter to the Committee, either on his own initiative or at the request of a representative of a Member State.

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 the 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.

- 3. (a) The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.
- (b) If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall without delay submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.
- (c) If, on the expiry of a period of three months from the date of referral of the proposal to the Council,

the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 8

No later than 1 July 1999, the Commission shall submit to the Council a report on experience acquired in implementing this Directive. At the same time it shall submit, in particular, the results of the analysis referred to in Article 4 (2) accompanied where appropriate by proposals regarding the definitive period.

Article 9

- 1. Directive 72/280/EEC shall be repealed with effect from 1 January 1997.
- 2. The references to the repealed Directive 72/280/EEC shall be construed as referring to this Directive.

Article 10

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 1997. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of domestic law which they adopt in the field governed by this Directive.

Article 11

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

Article 12

This Directive is addressed to the Member States.

Done at Brussels, 19 March 1996.

For the Council
The President
W. LUCHETTI

COUNCIL DIRECTIVE 96/17/EC**of 19 March 1996****amending the Annex to Directive 85/73/EEC on the financing of veterinary inspections and controls of animal products covered by Annex A to Directive 89/662/EEC and by Directive 90/675/EEC**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 85/73/EEC of 29 January 1985 on the financing of veterinary inspections and controls of animal products covered by Annex A to Directive 89/662/EEC and by Directive 90/675/EEC⁽¹⁾, and in particular Article 6 (2) thereof,

Having regard to the proposal from the Commission⁽²⁾,

Whereas, in the case of poultrymeat covered by Council Directive 71/118/EEC⁽³⁾, the minimum amount to be collected for ante-mortem and post-mortem inspections has been fixed until 31 December 1995; whereas the Commission has proposed that the status quo be maintained;

Whereas the Council has not completed its examination of the proposal; whereas the relevant rules should therefore be extended as a temporary measure, pending a final decision on the matter,

HAS ADOPTED THIS DIRECTIVE:

Article 1

In Chapter I of the Annex to Directive 85/73/EEC, the words 'Until 31 December 1995' in the introductory part of point 1 (e) are hereby replaced by the words 'until 30 June 1996'.

Article 2

1. The Member States shall introduce the laws, regulations and administrative provisions required to comply with this Directive. They shall immediately inform the Commission thereof.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. The Member States shall forward to the Commission the main provisions of national law which they adopt within the scope of this Directive.

Article 3

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

It shall apply as from 1 January 1996.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 19 March 1996.

For the Council

The President

W. LUCHETTI

⁽¹⁾ OJ No L 32, 5. 2. 1985, p. 14. Directive as last amended by Directive 95/24/EC. (OJ No L 243, 11. 10. 1995, p. 14).

⁽²⁾ OJ No C 12, 17. 1. 1996, p. 13.

⁽³⁾ OJ No L 55, 8. 3. 1971, p. 23. Directive as last amended by the 1994 Act of Accession.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 31 October 1995

concerning State aid granted by the Freie und Hansestadt Hamburg, a regional authority of the Federal Republic of Germany, to the ECSC steel undertaking Hamburger Stahlwerke GmbH, Hamburg

(Only the German text is authentic)

(Text with EEA relevance)

(96/236/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 4 (c) thereof,

Having regard to Commission Decision No 3855/91/ECSC of 27 November 1991 establishing Community rules for aid to the steel industry⁽¹⁾,

Having given notice to the other Member States and the parties concerned to submit their comments, in accordance with Article 6 (4) of that Decision,

Having regard to the comments received,

Whereas:

I

On 6 July 1994, the Commission decided to initiate proceedings under Article 6 (4) of Decision No 3855/91/ECSC (the 'Steel Aid Code') with respect to various financial measures taken by the Freie und Hansestadt Hamburg (hereinafter referred to as 'FHH') in favour of the steel undertaking Hamburger Stahlwerke GmbH (hereinafter referred to as 'HSW'). It concluded, on the basis of the information provided by the German Govern-

ment, that a DM 20 million loan by the public Hamburgische Landesbank Girozentrale (hereinafter referred to as 'HLB') to the shareholders of Protei Produktionsbeteiligungen GmbH & Co. KG (hereinafter referred to as 'Protei') and a DM 130 to 184 million credit line, including a DM 10 million swing, for HSW granted by HLB between 1984 and 1994 may have represented State aid incompatible with the Steel Aid Code and the Treaty establishing the European Coal and Steel Community (hereinafter referred to as 'the ECSC Treaty').

The Commission informed the German Government, by letter dated 14 July 1994, of its decision to initiate proceedings, and requested its comments and such additional information as it might consider relevant. The reply of the German authorities dated 8 September 1994 contained some additional information concerning the financial measures in question and various arguments to back the position of the German Government that these measures did not constitute aid (for a full description of the German Government's position as explained in its communications related to this case, see Section III of this Decision).

The letter by which the Commission informed the German authorities of its decision to initiate proceedings was published in the *Official Journal of the European Communities*⁽²⁾, inviting the other Member States and interested third parties to submit their comments.

⁽¹⁾ OJ No L 362, 31. 12. 1991, p. 57.

⁽²⁾ OJ No C 293, 21. 10. 1994, p. 3.

In the course of the proceedings, the Commission received the following comments:

- The Government of one Member State stated that it considered the financial measures described in the publication to represent State aid that distorted competition inside the Community to the detriment of the competitors of HSW. It urged the Commission to scrutinize closely any transaction between HSW, HLB and FHH, in order to establish their compatibility with regard to the Steel Aid Code.
- A major European steel company pointed out that the financial measures described in the publication represented operating aid prohibited under the provisions of the ECSC Treaty and the Steel Aid Code. It doubted whether HSW could ever become viable, even after further injections of capital, because the productivity of the company was reported to be much lower than that of other comparable companies in Germany.
- A national steel producers' association pointed out that the DM 20 million loan to the shareholders of Protei, used to raise the initial equity of HSW in 1984, was illegal, if only because it had not been notified to the Commission in advance. It considered the loans granted by HLB to HSW to represent, at least partly, aid that helped to maintain an important competitor of some member companies of the association in operation for a period of 10 years.

The comments were communicated to the German Government by letter dated 5 January 1995 with the request that it state its position. By letter of the same date the German Government was requested to submit detailed information concerning press publications reporting that HLB had extended the credit line for HSW beyond its expiry at the end of 1994.

By letter dated 11 January 1995, the German Government informed the Commission that the credit line had not been extended and that HSW had been sold. It announced further detailed information concerning this transaction. By letter dated 7 February 1995, the German authorities submitted their remarks on the comments of other Member States and third parties and provided some information concerning the sale of the shares in HSW to the Dutch Venuda Investments BV (hereinafter referred to as 'Ispat'), which is part of the Ispat group, based in Jakarta, Indonesia.

By letter dated 13 March 1995, the Commission requested further information concerning the sale of the shares and the financial measures of HLB and FHH in connection with this sale. The German Government's reply was received on 28 April 1995. By letter dated 10 May 1995, the Commission requested some further information, namely copies of particular documents, which were transmitted by letter dated 15 May 1995, except one document that was considered to be confidential and internal. On 22 May 1995, a meeting between representatives of the

Government of FHH, the Federal German Government and the Commission was held in Brussels. By communication dated 14 June 1995, the German authorities submitted some additional information and arguments as well as a copy of the tender documents preparatory to the sale of HSW.

On 20 June 1995, a meeting between representatives of the Government of FHH, the German Federal Government and the Commission was held in Hamburg to discuss details of the sale of the company and to exchange various arguments concerning the possible assessment of the case. By communications dated 25 July 1995 and 18 August 1995 the German authorities submitted further information concerning the financing of HSW since 1984 and the use of the aid approved by the Commission in 1984 and 1985.

II

On the basis of the information received, the relevant facts appear as follows:

The old Hamburger Stahlwerke GmbH was founded in 1961 and started its steel activities in 1969. In the period between 1969 and 1982 it suffered losses except in the years 1974 and 1979.

Until 1981, total losses of DM 204 million were covered by the shareholders Korf Stahl AG and Ferrocontor Beteiligungsgesellschaft mbH. In 1982 the company suffered losses of DM 172 million that were not covered by its shareholders. On 20 January 1983 the Court having jurisdiction initiated formal composition proceedings under the 'Vergleichsordnung'. The administrator tried to find a purchaser for the company to allow the continuation of its operation. On 9 December 1983, the Court initiated insolvency proceedings after the failure of the attempted composition.

In 1972 HLB started to take over shares of the old Hamburger Stahlwerke GmbH and held from 1974 a constant 49 % of the shares in a fiduciary capacity as security for liquidity and investment loans granted without guarantees or comparable financial coverage of FHH. At the time of the initiation of insolvency proceedings, HLB had claims totalling DM 52 million that were not covered by guarantees of FHH. Claims of DM 129 million were covered by FHH, which acquired a right of recourse on the insolvent party's estate. The total claim of HLB and FHH on the old Hamburger Stahlwerke GmbH was not considered to represent a provable claim in the framework of the insolvency proceedings because a judgment by the Court of Last Instance⁽¹⁾ held that HLB was shareholder of the old Hamburger Stahlwerke GmbH and

⁽¹⁾ Bundesgerichtshof, Judgment of 19 September 1988 — II ZR 255/87, *Der Betrieb* 1988, p. 2141; lower courts: Hanseatisches Oberlandesgericht Hamburg, Judgment of 24 July 1987 — 11 U 182/86, *Der Betrieb* 1987, p. 1778 and Landgericht Hamburg, judgment of 15 August 1986 — 3 O 288/84.

that the public bank HLB was acting a trustee for FHH. This conclusion of the Court led to the legal consequence that any provision of liquidity after 1981, although formally granted in the form of loans, had to be treated as risk capital. The loans were considered to represent capital-relating loans ('kapitalersetzende Darlehen'). HLB and FHH consequently would only have received repayment on their claims if the liquidation of the old Hamburger Stahlwerke GmbH in the framework of the insolvency procedure had yielded a surplus after satisfaction of all privileged and non-privileged creditors.

Since the administrator in composition proceedings ('Vergleichsverwalter'), who was the subsequent receiver in insolvency proceedings ('Konkursverwalter'), had already tried without success to find a purchaser for the works in the course of the composition proceedings, HLB and FHH decided to promote the continuation of the operations through a new company which would take over the assets of the old Hamburger Stahlwerke GmbH at going-concern value, expecting, according to the German Government, a chance to receive at least a partial repayment of the DM 181 million loan.

The receiver and the manager of the company designed a restructuring scheme. They founded Protei Produktionsbeteiligungen GmbH & Co. KG (a limited partnership, the general partner being a private limited company) and took over the business and assets of the old Hamburger Stahlwerke GmbH through the newly founded Neue Hamburger Stahlwerke GmbH, a 100 % subsidiary of Protei, in early 1984. Later in 1984, the company was renamed Hamburger Stahlwerke GmbH (HSW).

The old Hamburger Stahlwerke GmbH was liquidated. The German Government reported that the expedient to continuing the operations of the old Hamburger Stahlwerke GmbH through an absorbing company was leading to a diminution of the losses of HLB due to its financing of the old Hamburger Stahlwerke GmbH down from DM 52 million to less than DM 5 million, i.e. by around 90 %. The loss borne by the State was cut from DM 129 million to DM 52 million, i.e. by DM 77 million — around 60 %.

The initial equity of Protei, DM 20,2 million, was raised through a DM 20 million loan made by HLB to the shareholders of this company, the receiver (hereinafter referred to as 'W') and the manager of HSW (hereinafter referred to as 'G'). FHH had granted an amount of DM 20 million to HLB with the order to use this amount to cover the loan to the shareholders of Protei. Only a small portion of the total initial equity of Protei was raised directly by its shareholders, injecting DM 100 000 each. The initial equity of HSW, also DM 20,2 million, was injected by its sole shareholder Protei, using the capital received via W, G and HLB from FHH.

The contract between HLB, Protei, G and W provided that repayment and interest would only be due in the event of HSW making profits. The interest rate was fixed at Bundesbank discount rate plus 7,5 %, but subject to a minimum of 15 % per annum. The parties agreed that W and G should not be liable for the debts arising from the loan and that any taxes and other costs arising from the participation of Protei in HSW should be reimbursed by HLB. Protei relinquished pro rata its share in HSW's profits, according to the ratio between the loan itself and the total share capital of HSW.

The contract also provided that Protei would have to continue the operations of HSW, that it could not decide to liquidate HSW without the assent of HLB and that decisions regarding the management or the members of the supervisory committee would need the assent of HLB. The contract further provided that Protei would not be allowed to sell shares in HSW if HLB objected. It was agreed that Protei would be obliged to enter into negotiations with possible purchasers if HLB so requested. HLB reserved its right to sit in on negotiations concerning the sale of HSW.

In its communication dated 8 September 1994, the German Government explained that, due to this contractual arrangement, which allows HLB/FHH decisive control over the management of HSW, FHH was exposed to a financial risk fully comparable to the risk a shareholder injecting risk capital has to bear without becoming owner of the company.

Between 1984 and 1994, DM 2,8 million in redemption and DM 2,7 million in interest were paid on the DM 20 million loan of HLB. On 19 June 1986 the capital of HSW was increased by DM 11,5 million, raised through corporate funds.

The restructuring concept was backed by State aid approved by the Commission (DM 46 million for investments, closure aid, research and development and operating losses, and a State guarantee covering DM 40 million). HSW finally only received DM 23,5 million for investments, closure costs and operating results. The remainder of DM 22,5 million was not granted because the Federal Government refused to grant its share for the investment aid because part of the investment to be supported had already been carried out by the old HSW and another part was finally not carried out. The Federal Government further refused to pay its share of DM 15 million because the aid to cover operating losses was connected to losses of the old HSW, which was in winding-up proceedings, and not to expenses the new HSW had to bear. Authorized guarantees covering up to DM 27 million were never used because HSW decided to use other possibilities for financing.

At the outset of HSW's activities in 1984, HLB granted a DM 130 million credit line to the company. The credit line was granted on the basis of regularly renewed yearly

contracts. 60 % of this credit line (DM 78 million) was granted by order of FHH. Under the provisions of German legislation (paragraph 778 of the Bürgerliches Gesetzbuch, or Civil Code, hereinafter referred to as 'BGB'), FHH is obliged to compensate the bank for all expenses incurred in the course of the fulfilment of this order in the same way as if the bank had received a guarantee (paragraphs 765 following — BGB). The credit line was secured by a transfer of ownership by way of security of current assets and the transfer of claims of HSW on third parties. The German Government informed the Commission that the estimated value of the securities in the period between 1984 and 1994 was as follows:

Date	Securities in million DM	Securities in % of credit line
30. 12. 1984	144,0	110,7
30. 12. 1985	157,2	120,9
30. 12. 1986	130,0	100,0
30. 12. 1987	144,1	110,8
30. 12. 1988	172,4	132,6
30. 12. 1989	174,7	134,3
30. 12. 1990	204,3	157,1
30. 12. 1991	167,0	128,4
30. 12. 1992	179,1	137,7
30. 12. 1993	208,4	138,9
30. 12. 1994	204,6	117,5

During the period from 1984 to 1993, HSW suffered losses in all but four years. The following table shows the yearly net operating results in million DM:

1984	+ 13,3
1985	- 2,6
1986	+ 1,3
1987	- 16,5
1988	- 5,7
1989	+ 15,7
1990	+ 8,9
1991	- 8,5
1992	- 19,8
1993	- 24,4

The credit line of HLB was not entirely used until 1992. In 1992, HSW suffered losses of around DM 20 million. It needed the extension of the revolving credit line expiring by the end of the year and an additional credit line of this amount to continue operations. HLB itself acting

as a commercial bank required to apply sound business practices, refused to grant an extension of the credit line. By order of FHH, it finally granted the extension of DM 20 million in December 1992, subject to the condition, imposed by the credit commission of FHH, that the company submitted a proper restructuring scheme.

In 1993, HSW suffered losses of DM 24,4 million. It needed the extension of the enlarged credit line of DM 150 million expiring at the end of the year and again needed an extension of the credit line to continue its operations. The management of HLB refused to prolong the credit line. The bank was not even prepared to continue its previous commitment, which was by an amount of DM 52 million not covered by the order of FHH. FHH ordered HLB to prolong the credit line, to grant an extension of DM 24 million and a swing of DM 10 million as from the beginning of 1994. The entire credit line, including the swing, was therefore covered by the obligation on FHH's part to compensate the related disbursements of the bank. FHH thereby accepted the full economic risk connected with all loans granted to the company.

An expert study of January 1994, prepared at the request of the credit commission of FHH, concluded that in the event of a liquidation of HSW the City of Hamburg would suffer losses of around DM 200 million. A privatization of the company was, according to the experts the best solution because the outgoings from the City's treasury would be lower than if 'aid was continued until restructuring was completed'. It was decided to commence negotiations with possible purchasers to have at least a part of the loans paid back later.

In February 1994, Protei transferred its shares in HSW to G. In return G became liable for the remaining claims of HLB, totalling DM 17.2 million, arising from the DM 20 million equity loan to Protei, and had to pay a purchase price of only DM 275 000. This purchase price was raised through a loan from HLB. Also, G was granted the right to redeem the loans by transferring the shares in HSW to HLB, regardless of whether the value of the shares would be sufficient to satisfy the bank's claim.

In August 1994, shortly after the Commission's decision to initiate the present procedure, an international private investment bank, instructed by FHH to organize and coordinate the sale of HSW, prepared a tender inviting several national and international steel-producing companies to submit their bids for the takeover of HSW. The tender documents informed prospective bidders that G had authorized FHH to dispose of the shares in HSW and that FHH would, assisted by the investment bank, pursue the sale of HSW.

By contract dated 27 December 1994, HSW was taken over by Ispat. The transfer of shares took effect on 1 January 1995. The purchase price for the shares of DM 10 million was paid to G who transferred this amount immediately to HLB. In surrendering the shares to Ispat, G acted on HLB's instructions because the bank had a claim on G for the surrender of the shares in HSW; G thereby satisfied the bank with regard to all claims arising from the DM 20 million loan of 1984 and the DM 275 000 loan for G to cover the purchase price of the shares in HSW.

In the course of 1994 the credit line was used almost to its limit. On 15 September 1994, for example, HSW used DM 173,7 million of the credit line. By 30 December 1994, HSW had availed itself of DM 166,7 million of the credit line. By 31 December 1994, HLB had claims arising from the credit line of DM 154,1 million on HSW, fully covered by the credit instructions of FHH. The German authorities did not explain how or why the drawing of the credit line was reduced between those two days. The German Government did not inform the Commission whether or not the DM 10 million swing was used in the course of 1994.

HLB and Ispat concluded a separate contract on the day on which the contract between G and Ispat covering the transfer of the shares in HSW was signed. The contract, covering the sale of the claims of HLB on HSW arising from the credit line to Ispat, represents the most important part of the contractual arrangements covering the sale of HSW. It was drafted closely following the standard model which the Treuhandanstalt, the public body in charge of the privatization of former State-held companies in East Germany, used for its privatizations. In the preamble to the contract it is explained that FHH is highly interested in the continuation of the operations of HSW and thereby the safeguarding of jobs. The foreword to the contract explains further that the equity of HSW is negative and that a 'further injection or liquidity by Hamburgische Landesbank would not be considered in present circumstances'. The company therefore appeared due for insolvency.

The contract further explains that the HLB loans are capital-replacing loans (*eigenkapitalersetzende Darlehen*) — meaning that, in the event of insolvency, they would not be considered claims in insolvency but treated as if they were direct injections of risk capital by a shareholder in a situation in which the company needed additional risk capital to avoid insolvency. Under the provisions of this contract the full claim on HSW is transferred from HLB to Ispat at a purchase price to be fixed in line with a complex formula. The amount established by this formula may be described as the 'liquidate and escape' value. This

is amount Ispat may receive if it decides not to continue the operations of HSW but to sell assets, stocks and claims immediately. The amount calculated on the basis of this formula would be reduced by the costs of laying off up to 100 workers and members of the management of HSW, the costs of the closure of two subsidiary companies and some of the costs of honouring the contract. In addition, the contract explains that Ispat expects to be released by FHH from all obligations related to the existing environmental damage at the site HSW uses. HLB accepted that, should such release not be achieved, the costs for the repair of environmental damage would be deducted from the purchase price. The German authorities estimate the purchase price, which is not fixed so far, to be between DM 44 million and DM 74 million (28 to 48 % of the used credit line of HLB). Ispat would not have to raise the purchase price immediately itself. It will be raised by an overdraft account (*Kreditkonto*) from HLB, backed by a bank guarantee to be provided by Ispat, terminable on, or after 31 December 1995.

Under the provisions of the contract, the purchaser has to continue the operations of HSW at the level of the average production in 1994, produce mainly quality steel, carry out investments amounting to at least DM 70 million, maintain 630 jobs, keep a majority stake in HSW until the end of 1999, inject DM 30 million into the equity and agree to monitor compliance by HLB with all these obligations. The obligations, limited until the end of 1999, are covered by contractual penalties.

With regard to the procedure initiated by the Commission in July 1994, the Contracting Parties agreed that they would pursue any legal remedy against measures the Commission might request in relation to the HLB loans and the providing of security covering these loans by FHH. They agreed to adjust the contract if necessary to ensure the survival of HSW. HLB noted that Ispat and HSW would not bear any financial burden resulting from a Commission decision.

III

The German Government is of the opinion that the financial measures of FHH and HLB with regard to HSW do not constitute State aid.

As regards the DM 20 million loan of 1984, granted to raise the initial equity of HSW, it admitted that the State took over an economic risk nothing short of the risk borne by a shareholder injecting risk capital. However, it is of the opinion that a private investor in a market economy would at that time have acted in the same way.

After the insolvency of the old Hamburger Stahlwerke GmbH, FHH and HLB had claims totalling DM 181 million, which the responsible courts held to arise from capital-replacing loans, with the result that they would only receive repayment in the course of the bankruptcy proceedings if all other, privileged or non-privileged, creditors had been satisfied. The administrator in composition proceedings, W, had already tried without success to find a purchaser who would be prepared to take over the company. When the court initiated insolvency proceedings, FHH and HLB decided to promote the takeover of the operations of HSW at going-concern value in order to increase the insolvent estate up to a level that would allow at least partial coverage of their outstanding claims. The German authorities are of the opinion that a private investor in the same situation would also have provided the necessary financing for the continuation of the operations.

In addition, the German Government is of the opinion that the DM 20 million loan which was granted on the instructions of FHH would be covered by the Commission decisions of 1984 and 1985 authorizing State guarantees in favour of HSW of up to DM 40 million. Authorized guarantees for loans of up to DM 27 million were never used because the company decided to use other possibilities of financing.

As regards the credit line, the German authorities pointed out that it was always covered by securities that a private bank would have considered sufficient for a comparable credit line. The public bank HLB was only chosen because it offered better conditions than private banks, owing to its particular standing. The fact that 60 % of the credit line was covered on the instructions of FHH even at the outset was explained by the fact that HSW has no premises of its own to offer as security for a mortgage. HLB is, according to the German authorities, known to be a very prudent bank, keen to exclude even the slightest risk connected to its operations. The fact that HLB requested the additional security through the credit order of FHH does not, in the opinion of the German Government, indicate that a private bank would not have granted a similar credit line without this additional security. Therefore, the credit order of FHH should be seen solely as a shifting of risk from HLB to FHH which would only have had internal effects for the budget of FHH but had nothing to do with HSW. Therefore the German Government is of the opinion that the credit line, at least between 1984 and 1992, did not constitute aid.

As to the enlargement of the credit line by DM 20 million in December 1992, granted on the instructions of FHH and at full risk to the public treasury, the German

Government pointed out that HLB had to face the alternative of either granting the enlargement necessary to maintain HSW in operation or of writing-off its entire commitment as irrecoverable. The credit order of FHH, covering the HLB's commitment in the manner of a guarantee, should, according to the German Government, be seen only as an effort by FHH to relieve its subsidiary HLB of the risks connected with the legislation on capital-replacing loans. The order was, according to the German Government, not a causal factor in the decision of the bank to enlarge the credit line in December 1992. A private bank facing the option either of continuing, and enlarging, its commitment or of losing its entire financing would have taken the same decision.

As to the extension of the credit line in December 1993 and its enlargement by DM 24 million plus a DM 10 million swing, and the enlarged credit order of FHH covering the entire financing of HSW, the German Government is of the opinion that the behaviour of the City of Hamburg was justified as being both a managerially and a socially responsible transfer of the company into private risk.

HLB was not prepared to continue its commitment, even to the level of the DM 52 million it had offered before, secured by the current assets of HSW. The German Government claims that the behaviour of HLB in December 1993 may be explained by the fact that a new court decision⁽¹⁾ concerning the question of capital-replacing loans suggested that the entire loan granted by HLB would represent such a capital-replacing loan and would in the event of insolvency be completely lost.

FHH, facing the same risk with regard to its commitment of DM 98 million, decided to provide the necessary financing to allow, at least, a partial recovery of the loans and the continuation of the company after an organized transfer into private risk. The German authorities are of the opinion that this commitment of the Hamburg Treasury should be compared with a high-risk junk bond investment, which they report to be available on the US money market at 15 % per annum interest. If the 100 % financing of HSW after December 1993 constituted State aid, the amount would, in the opinion of the German Government, be limited to this interest, because the company would have had the possibility of covering its financing by such US-junk bonds.

⁽¹⁾ This decision of the Bundesgerichtshof, taken on 13 July 1992, published on 2 October 1992 in *Der Betrieb* 1992, p. 2026, covered a case, not connected to the present case, in which a lender had had a comparable contractual relation with its debtor as HLB had with HSW.

In addition, the German authorities put forward the same arguments as those regarding the DM 20 million enlargement of December 1992, and are of the opinion that any other bank would have behaved in the same way as FHH when it decided to cover the entire credit line in December 1993 plus an extension by DM 24 million and a DM 10 million swing.

IV

Hamburger Stahlwerke GmbH is a company falling under Article 80 of the ECSC Treaty because it produces products listed in Annex I to the ECSC Treaty, so that the provisions of the ECSC Treaty and the Steel Aid Code are applicable.

State aid within the meaning of Article 4 (c) of the ECSC Treaty is, among others, any transfer of State resources to public or private steel firms, in the form of acquisitions of shareholdings or provision of capital or similar financing if the financial transfer is not a genuine provision of risk capital according to usual investment practice in a market economy, allowing for a reasonable prospective future return on investment or other revenue⁽¹⁾.

Hamburger Stahlwerke GmbH was *de facto* a public steel company since its outset in 1984. The State raised its entire equity and injected this risk capital through HLB, W, G and Protei into the company. G and W, controlling Protei, the shareholder of HSW providing its daily management, were bound to strict contractual obligations imposed by the contract with HLB, acting on behalf of FHH, depriving them of the basic rights attaching to a normal shareholding.

The entire contractual situation created in 1984 provided for the control of FHH, through HLB, over HSW. However, according to Article 83, the ECSC Treaty in no way prejudices the system of ownership of the undertakings to which it applies. The Member States are free to run steel companies under public control.

As regards the DM 20 million loan, granted by FHH via HLB to Protei to raise the initial equity of HSW, it is to

be concluded that the provision of this loan was similar to the direct injection of risk capital. The contract between the public bank HLB, acting under the instructions of FHH, and the lenders, provided that the State would only receive repayment and interest if HSW made profits. On the basis of these provisions, only DM 2,8 million in redemption and DM 2,7 million in interest were paid for a period of 10 years. The sale of the shares, accepted in lieu of repayment of the loan, covered an additional amount of DM 10 million, so that FHH's final loss on the equity loan, normal interest excluded, is DM 4,5 million. The provisions concerning repayment and interest to be paid on the equity loan reflect the normal revenue an investor would receive on risk capital injected in a private limited company. The loan should therefore be considered to represent a provision of risk capital.

The argument of the German Government that a private investor would likewise have raised risk capital to be injected into the new HSW to allow the continuation of the operations of the old Hamburger Stahlwerke GmbH is not convincing. The Commission has always focused on the behaviour of private investors when establishing whether a given public provision of capital corresponded to normal market practice. The administrator in composition proceedings tried for one year without success to find a private investor to take over the activities. The behaviour of the possible investors invited at that time to take over the company shows that a private investor without a particular relationship to the old Hamburger Stahlwerke GmbH would not have injected risk capital to finance an absorbing company.

In 1984, when the Commission considered the aid connected to the restructuring plan as it was presented by the German authorities, the company was, given the assumed readiness of the private investor Protei to risk its own private capital, held viable with the aid finally approved, that was at that time considered not to exceed the amount necessary to restructure HSW. The fact that even with the prospect of receiving such substantial aid (the Commission had been notified as early as 1982 of the intention to grant the aid) no private investor was found to take over the activities of the old Hamburger Stahlwerke GmbH underlines the point that a private investor would not have been prepared to inject risk capital.

⁽¹⁾ See Court of Justice, Cases C-40/85, *Belgium v. Commission*, [1986] ECR 2321, 2345; C-303/88, *Italy v. Commission*, [1991] ECR, I-1433, 1476 ('ENI Lanerossi'), Commission Decision No 3855/91/ECSC, OJ No L 362, fifth paragraph under II, and communication of the Commission to Member States concerning public undertakings, OJ No C 307, 13. 11. 1993, p. 3, paragraphs 10 to 21.

The fact that HLB also provided some financing for the new HSW does not indicate the contrary. HLB did not provide the loans in the framework of the credit line under conditions that would allow them to be regarded as comparable to risk capital from the outset. HSW had to

pay interest, even in years in which it made no profits. The bank received securities to cover its loan that were valuable at least as long as the loans did not have to be considered as representing capital-replacing loans.

Therefore, it is concluded that the DM 20 million loan provided by FHH through HLB and Protei to cover the initial equity of HSW constitutes State aid.

The Commission authorized State guarantees in favour of HSW covering up to DM 40 million in 1984 and 1985. Guarantees covering up to DM 27 million were not used. Since German law provides that a credit order (Kreditauftrag) requires the instructing party to bear liability under the provisions on financial securities (paragraphs 778, 765 and following BGB), the credit order of FHH covering the DM 20 million loan may be considered comparable to a State guarantee. The liability arising from that order is the same as that arising from a guarantee. The aid related to the DM 20 million equity loan is therefore covered by the Commission authorization of 1984/85.

As regards the credit line granted by HLB since 1984, largely covered by a credit order of FHH, it seems appropriate first to consider the structure of the precautionary financial arrangements surrounding the creation of the absorbing company, namely the new HSW.

When the winding-up proceedings in respect of the old HSW were initiated, it became clear that the claims of HLB, totalling DM 52 million, and of FHH, totalling DM 129 million, on the old HSW would not be covered. The background is that the loans of both FHH and HLB were considered capital-replacing loans with the result that they would only have been refunded in insolvency proceedings after the satisfaction of all creditors, privileged or non-privileged. The closure of the company would have led to costs for the cleaning-up of the site, to social costs (social plan) and to the sale of the assets at liquidation value, which is much lower than the going-concern value.

In those circumstances HLB was prepared to grant financing in the form of loans for the new HSW to allow at least partial recovery of its outstanding debts, and finally had 90 % of its outstanding DM 52 million repaid. The decision of HLB to grant a loan of exactly the same amount, DM 52 million, at its own risk in order to finance an arrangement that led to this result appears reasonable from an economic point of view.

FHH granted via HLB the DM 20 million equity loan, covered DM 78 million of the credit line to finance the operations of new HSW, offered aid to be financed by FHH itself (the remainder of the aid authorized was to be covered by the Federal Treasury) of approximately DM 23,5 million and guarantees, therefore amounts to approximately DM 121,5 million.

It is therefore evident that HLB and FHH intended only to grant an amount equal to their outstanding claims, so as to allow the continuation of the operations through an absorbing company and thereby promote a solution that avoided the additional costs of closure.

HLB finally received repayment of 90 % of its claims on the old HSW; FHH only received 60 % of its old claim. The main difference, however, was inherent in the structure of the securities which HLB and FHH had obtained to cover the credit line. HLB, as the formal creditor of also the DM 78 million credit line granted by order of FHH, received security by way of a transfer of current assets and the relinquishing of HSW's claims. Since the credit order of Hamburg to HLB entailed an obligation on FHH to make good all of HLB's financial disbursements in connection with the DM 78 million credit line, those securities would only cover that portion of the credit line if the final value of the securities exceeded the loan granted by HLB at its own risk. Since the going-concern value of the securities was estimated at between DM 144 million in 1984 and DM 204 million in 1994, it is reasonable to assume that the liquidation value of the securities always exceeded the DM 52 million. The fact that the purchase price Ispat has to pay under the terms of the contract is currently estimated at between DM 44 million and DM 74 million supports this conclusion. HLB agreed to grant the credit line on the strength of securities that would always allow its preferential status as creditor before FHH would benefit from the securities.

At the time when the revolving credit line was granted and regularly renewed between 1984 and 1992, the new HSW was not in financial difficulties to such an extent as to need an injection of additional risk capital by its shareholders to avoid insolvency. The company had sufficient capital of its own to cover its partial loss-making operations. Accordingly, HLB had no reason to fear losing the securities due to the German legislation on capital-replacing loans, even though the contractual ploy of setting up the new HSW was an obvious attempt to circumvent this law.

The initial calculation of HLB and FHH concerning the possibility of repayment on the outstanding claims on the old HSW turned out to be nearly correct. HLB received repayment on 90 % of its outstanding claim, which in the framework of the insolvency proceedings covering the old HSW was without valid securities, and replaced this claim by a new claim based on a credit line granted at own risk for the same amount but secured by the new HSW. Only if the financial situation of the new HSW had deteriorated to such an extent as to necessitate the additional injection of risk capital, would HLB have had to face such difficulties as would have arisen in the insolvency of the old HSW, because in that case the law on capital-replacing loans would have come into play. When HLB agreed to grant the credit line it would be confident of two things. First, the ploy of setting up the new HSW was at that time not widely known as a means of circumventing the legislation on capital-replacing loans, so that any later administrator in insolvency would have to face the risk of a court case. Secondly, and most important, FHH had shown its readiness to keep the new HSW in operation so as to safeguard jobs. HLB could reasonably assume that FHH would be prepared to assist HSW in the event of its financial situation deteriorating.

These conclusions are underlined by the behaviour of FHH in December 1992 and December 1993, when HSW ran into financial difficulties and needed additional liquidity to continue its operations. In December 1992, after suffering operating losses of DM 8,5 million and DM 19,8 million in 1991 and 1992, HSW needed an enlargement of the credit line by DM 20 million. HLB and FHH had to decide whether to renew the revolving credit line and whether to grant the requested extension. HLB decided to continue the credit line of DM 52 million granted at its own risk, without coverage of the credit order of FHH, but refused to participate in any extension of the provision of liquidity. FHH decided not only to renew the order to grant the credit line of DM 78 million, but also instructed HLB to grant the needed DM 20 million extension. FHH increased its coverage of the risk on the credit line from 60 % to 65,4 %.

On the basis of the considerations concerning the background for the creation of the new HSW, the behaviour of HLB seems reasonable. HLB agreed to cover DM 52 million of the credit line, the same amount which it aimed to have repaid through the takeover solution financed. In December 1992, eight years after the initiation of insolvency proceedings covering the old HSW, it was already clear that HLB succeeded by receiving repayment covering 90 % of its claims on the old HSW. It obviously did not intend to grant any further financing for the new HSW, in particular during a very critical period for the entire European steel market, and consequently it refused to grant an enlargement of the credit line at its own risk.

The argument of the German Government that a private bank would have granted the enlargement of the credit line needed because otherwise the entire loan would have been lost, is not convincing. The commitment of HLB to cover part of the credit line of HSW was never comparable to a loan from a normal private bank financing the operations of a company. The commitment was based on the wish to recover the claims that HLB had on the old HSW.

The conclusion, explained above, that HLB relied on the readiness of FHH to keep the new HSW in operation so as to safeguard this key industrial undertaking in Hamburg is supported by the behaviour of the bank and the City in December 1992.

The argument of the German Government that HSW did not benefit from the additional DM 20 million credit order is not sustainable. The German authorities explained that the company needed the extension to avoid a cash crisis. Since HLB had already taken all available securities, it would not have found a normal private bank to grant additional loans. The coverage of the additional DM 20 million credit line was not only an internal shift of risks between HLB and FHH to save HLB from financial difficulties. The extension was crucial for the survival of HSW at that time and therefore was to the benefit of the company itself.

HSW again suffered negative operating results of DM 24,4 million in 1993 — the severest since its creation in 1984. The experts instructed by the credit commission of FHH to prepare its decision concluded in December 1993/January 1994 that HSW was close to insolvency and that the privatization of the company would be the best way to limit the losses of FHH and to safeguard jobs.

Again HLB and FHH had to decide whether to extend the revolving credit line and to grant the needed enlargement by DM 24 million. HLB decided not to continue the credit line granted at own risk and not to grant any further financing. FHH decided to take over the full economic risk relating to HSW and instructed HLB to grant a credit line of DM 174 million plus an additional DM 10 million swing by the beginning of 1994.

The German Government claims that the decision of the bank was mainly based on the fact that a recently published Court decision indicated that all HLB loans would have to be considered capital-replacing. This argument is not convincing.

The Court decision which is referred to had already been published in a well-known legal journal on 2 October 1992, i.e. even before HLB decided in December 1992 to extend the credit line of DM 52 million. In addition, it is unlikely that the management of HLB would not have realized that the contractual structure created in 1984 was nothing but an attempt to avoid new problems with the

law on capital-replacing loans, as HLB had already experienced during the insolvency of the old HSW. The experiences after the insolvency of the old HSW had shown that any financing of HSW when in financial difficulties combined with a certain proximity to the shareholders or any kind of indirect shareholding would, in insolvency, lead to the treatment of loans as risk capital. The contractual arrangement at the creation of the new HSW provided for such indirect shareholding of HLB because the actual shareholder of HSW, Protei, was deprived of the basic rights attaching to a normal shareholding, in favour of the bank, which acquired a decisive influence on the fate of the company, as explained above. The difference relative to the shareholder as trustee is negligible, especially in the light of the economic background of German law on capital-replacing loans.

This contractual arrangement was obviously designed to evade the legislation on capital-replacing loans. The legislation, however, provides for efficient safeguards against such evasion and an average receiver in insolvency would readily have been able to reveal the attempted evasion before a civil law-court. It is therefore reasonable to assume that the management of the bank knew from the very beginning that the securities would in the event of insolvency be at least seriously endangered. But they expected not to face the prospect of bankruptcy, because the State was initially prepared to maintain HSW in operation. The expert study of December 1993/January 1994 prepared for the credit commission of FHH, however, strongly recommended the termination of FHH's involvement in HSW so that such expectation was no longer tenable. In this situation the bank could no longer expect that FHH would avert the insolvency in any case. The management of HLB logically decided to terminate its commitment and to leave further financing to FHH.

The German Government further claims that the behaviour of the State was justified as being both a managerially and a socially responsible transfer of the company into private risk.

The Commission considered these factors in particular in the light of the decisions of the Court of Justice of the European Communities in Case C-303/88, quoted above, and Case C-305/89⁽¹⁾. The Court in these decisions pointed out *inter alia* that where the injection of public capital disregarded any prospect of profitability, even in the long term, such injection must be regarded as aid. Considering also the other aspects of possible private investor behaviour, addressed in the decisions of the Court of Justice in Cases C-303/88 and C-305/89, the loans granted by FHH through the HLB on the basis of the credit line are incompatible with normal private

investor behaviour. The circumstances of the present case clearly show that there was never a prospect of profitability such as is expected by normal market investors, be it in the short term or the long term, for financing by the FHH.

In addition, it should be recalled that the Court of Justice, in its decision in Joined Cases C-278/92, C-279/92 and C-280/92⁽²⁾, held that a private investor would not inject additional capital into an ailing company in anticipation of and with a view to the sale of this company. The sale of the company would deprive the investor of even the slightest prospect of future profitability, even in the long term. The FHH, following the recommendations of the expert study, decided in December 1993 to pursue the privatization of HSW. The loans were intended to avoid a cash crisis and consequent insolvency during the period in which privatization was being prepared. It was not expected that privatization would be possible without writing-off an important part of the debts of HSW.

The prospect of losing the entire claim on HSW if the company applied for bankruptcy was not sufficient for HLB to continue its commitment. The bank had 90 % of its claims on the old HSW repaid as a result of the continuation of its operations by the new HSW. FHH had DM 77 million of its old claim on HSW repaid in the course of this solution, 93,7 % of the initial credit line covered by the State. The remaining financial contribution of the FHH to mirror the total amount of outstanding claims on the old HSW at the outset of the new HSW, as explained above, was in any case considered to represent a lost subsidy, authorized as aid. The insolvency of the new HSW would therefore not have caused any additional unexpected loss. Since the State in 1984 shared the opinion of the bank that the aid contributions to allow the continuation of the operations of the old HSW were economically reasonable because it would allow claims on the old HSW to be recovered, it would consequently have been reasonable to terminate the commitment after having achieved repayment of the old debts.

On the basis of the above it cannot, however, be ruled out that the behaviour of FHH as regards the credit line for HSW during the years from 1984 until the end of 1992 was in line with the normal behaviour of investors in a comparable situation. The reasonable expectation of receiving at least partial repayment on an uncollectable claim also prompted HLB, with its management bound to sound business practice, to cover a credit line of an amount similar to the claim on the old HSW. The situation of FHH and HSW after the insolvency of the old HSW was very unusual. It may not be excluded that the differences as regards the securities, as explained above,

⁽¹⁾ *Italy v. Commission*, [1991] ECR I-1603 ('Alfa Romeo').

⁽²⁾ *Spain v. Commission*, [1994] ECR I-4103 ('Hytasa'), see *European Journal of Business Law*, 1994, p. 694.

were sufficiently limited to suggest that, essentially, the behaviour of FHH was comparable to what was considered reasonable by the management of HLB. Focusing only on the respective shares in the credit line, it is to be noted that both HLB and FHH recovered nearly the full amount of their commitment. HLB granted 60 % of the credit line by order of FHH. To that extent, the bank was used by FHH as a tool for granting the credit line; the loans were granted to HSW by FHH through HLB. Therefore, the loans granted on the basis of the credit line should be considered as granted by FHH. Any additional premium, as is expected for guarantees, is consequently not considered necessary by the Commission. The Commission therefore concludes that the credit line of DM 78 million granted by HLB by order of FHH during the period 1984 until the end of 1993 did not constitute State aid.

As regards the enlargement of the credit line by DM 20 million in December 1992, it must be concluded that this extension led to a situation in which FHH risked an amount exceeding its initial old claim on the old HSW, so that the particular economic background of the absorbing solution could not be applied to explain this behaviour. After the severe losses HSW suffered during the years 1991 and 1992, the company was in a deteriorating financial situation. The European steel sector was experiencing its most difficult period since the first half of the 1980s, due to a general slowdown in the economy, a serious imbalance between supply and demand, and structural overcapacities accompanied by a collapse in prices. All of these factors combined to aggravate the financial situation of almost all steel companies in the Community. In this economic environment HLB accordingly refused to increase that part of the credit line granted at its own risk.

As regards the extension and enlargement of the credit line in December 1993 and the fact that FHH agreed to take over the entire risk attaching to the financing of HSW after the refusal of HLB even to continue its previous commitment, it must be concluded that the particular background of the initial financing of the new HSW was not considered by HLB to be sufficient to justify the economic risk of keeping HSW in operation.

The company was close to insolvency. Further heavy losses were expected for 1994. The situation of the steel markets had not improved significantly. The expert study announced only a limitation of losses in the event of privatization. In this situation, the management of HLB decided to terminate its commitment and to accept insolvency if FHH behaved similarly, by terminating its commitment. This overall picture shows clearly that no private investor, in the situation prevailing in December

1993, would have been prepared to inject new risk capital. The only partner of FHH, who was in the same situation, did not consider the previous possible particular justification for the granting of the credit line to be sufficient to justify a continued financing of HSW. It is therefore concluded that the behaviour of FHH could not be deemed comparable to the behaviour of a normal investor in a market economy.

Thus the behaviour of FHH in December 1993, when it instructed HLB to grant a credit line of DM 174 million and a DM 10 million swing to HSW by the beginning of 1994 on full risk of the State, constitutes State aid incompatible with the ECSC Treaty and the Steel Aid Code. The aid element in these loans is visible, not in any preferential interest terms but rather in the actual capital provided.

The loans are to be regarded as being comparable to a direct injection of risk capital because the actual loan capital is, according to the legislation on capital-replacing loans, to be treated as injected risk capital made available by a shareholder of an ailing private limited company.

Any State aid to steel companies is prohibited under Article 4 (c) of the ECSC Treaty. The Steel Aid Code, adopted with the unanimous assent of the Council pursuant to Article 95 of the ECSC Treaty, provides for the possibility of treating certain categories of aid as compatible with the common market, such as aid for research and development (Article 2), environmental protection (Article 3), closures (Article 4) and aid under general regional investment aid schemes in certain territories of the Community (Article 5). The aid granted to HSW does not fall under any of these categories. Rescue and restructuring aid cannot be deemed compatible with the common market under the provisions of the Steel Aid Code.

Any State aid granted unlawfully is, in principle, to be recovered from the recipient firm. Repayment has to be made in accordance with the procedures and provisions of German law with interest, based on the interest rate used as reference rate in the assessment of regional aid schemes, running from the date on which the aid was granted.

As regards the calculation of the amount of aid, the German Government claims that HSW would also have had the possibility of financing its operations by junk bonds available on the US money market. This argument cannot be accepted, because the injection of risk capital into an ailing company in a traditional industrial sector cannot be compared to the private financing of risk investment necessary in an innovative market economy to allow the development of new technologies or the creation and conquest of new markets. Private tools of risk

financing are available for companies which have some chance of winning highly profitable markets. It is widely known that the financial results of steel companies are especially cyclical in nature and an average prudent investor would require an assurance from profit or from cash flow throughout the economic cycle, rather than granting unsecured risk capital without any particular prospect of winning a share in a promising future market.

With regard to the calculation of the amount of aid, it further claims that the amount that HSW could have financed in December 1993 through normal bank loans would have to be deducted from the total amount made available by FHH.

It may be true that the company could have covered part of its financing by loans from private banks, if the securities had been released by HLB and FHH. A private bank, however, would not have granted a loan which would have fallen under the legislation on capital-replacing loans. The German Government explained that the entire amount of the loans granted under the credit line was affected by this legislation. It follows that the behaviour of the State, even as regards an unknown portion of the credit line, was not comparable to a possible loan a private bank might have granted in December 1993.

The conditions of the sale of HSW to Ispat include a *de facto* waiving of claims arising from loans granted in the framework of the credit line. On the other hand, Ispat would pay a certain purchase price for the takeover of the claims. HSW is, after the takeover of all shares by Ispat, intricately bound into the Ispat group so that the payments of Ispat to take over the claims and thereby to release HSW from its debts, may economically be imputed to HSW itself. The Commission therefore, with a view to an economic approach and in order not to request repayment of aid exceeding the undue financial advantage HSW has received, decided to accept the purchase price Ispat would finally pay on the basis of the contractual arrangements with HLB as part of the recovery of aid.

V

By way of summary, the Commission therefore concludes that the loans granted to HSW on the basis of the DM 20 million extension of the credit line of December 1992 and the loans granted on the basis of the credit line of DM 174 million and the DM 10 million swing accorded in December 1993 represent State aid incompatible with the ECSC Treaty and the Steel Aid Code. The aid should be recovered. Repayment must be made in accordance with the procedures and provisions of German law with interest, based on the interest rate used as reference rate in the assessment of regional aid schemes, starting to run

pro rata temporis from the date on which the aid was granted. Interest already paid on the basis of the credit line agreement should be taken into account. The purchase price finally paid by Ispat for the transfer of claims from HLB should be taken as part of the recovery of aid,

HAS ADOPTED THIS DECISION:

Article 1

The contribution to the equity capital of Hamburger Stahlwerke GmbH of DM 20 million, in the form of a loan granted by Freie und Hansestadt Hamburg acting through Hamburgische Landesbank Girozentrale, to the shareholders of Protei Produktionsbeteiligungen GmbH & Co. KG and to that company itself, constitutes State aid. That aid was approved by the Commission in 1984/85.

Article 2

The loans granted to Hamburger Stahlwerke GmbH on the basis of the DM 20 million enlargement of the credit line, accorded by Hamburgische Landesbank Girozentrale on the instructions of Freie und Hansestadt Hamburg in December 1992, and the loans granted on the basis of the credit line of DM 174 million and the DM 10 million swing accorded by Hamburgische Landesbank Girozentrale on the instructions of Freie und Hansestadt Hamburg in December 1993 represent State aid incompatible with the ECSC Treaty and the Steel Aid Code.

Article 3

Germany shall recover the aid referred to in Article 2 from the recipient company. Repayment shall be made in accordance with the procedures and provisions of German law, with interest, based on the interest rate used as reference rate in the assessment of regional aid schemes and starting to run *pro rata temporis* from the date on which the aid was granted. Interest already paid pursuant to the credit line agreement shall be taken into account. The purchase price paid by Venuda Investments BV for the transfer of claims from Hanseatische Landesbank shall be treated as part of the aid recovered.

Article 4

Germany shall inform the Commission, within two months of being notified of this Decision, of the measures taken to comply therewith.

Article 5

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 31 October 1995.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION

of 19 March 1996

on import licences in respect of beef and veal products originating in Botswana,
Kenya, Madagascar, Swaziland and Zimbabwe

(96/237/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 715/90 of 5 March 1990 on the arrangements applicable to agricultural products and certain goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States (ACP) or in the overseas countries and territories (OCT) ⁽¹⁾, as last amended by Regulation (EC) No 2916/95 ⁽²⁾, and in particular Article 27 thereof,

Having regard to Commission Regulation (EC) No 1636/95 of 5 July 1995 temporarily adapting the special import arrangements in the beef sector provided for in Regulation (EEC) No 715/90 with the view to the implementation of the Agreement on Agriculture concluded during the Uruguay Round of multilateral trade negotiations ⁽³⁾, and in particular Article 4 thereof,

Whereas Article 1 of Regulation (EC) No 1636/95 provides for the possibility of issuing import licences for beef and veal products; whereas, however, imports must take place within the limits of the quantities specified for each of these exporting non-member countries;

Whereas the applications for import licences submitted between 1 and 10 March 1996, expressed in terms of boned meat, in accordance with Regulation (EC) No 1636/95, do not exceed, in respect of products originating from Botswana, Kenya, Madagascar, Swaziland and Zimbabwe the quantities available from these States; whereas it is therefore possible to issue import licences in respect of the quantities requested;

Whereas the quantities in respect of which licences may be applied for from 1 April 1996, should be fixed within the scope of the total quantity of 39 100 tonnes;

Whereas it seems expedient to recall that this Decision is without prejudice to Council Directive 72/462/EEC of 12 December 1972 on health and veterinary inspection problems upon importation of bovine, ovine and caprine animals and swine, fresh meat or meat products from third countries ⁽⁴⁾, as last amended by the Act of Accession of Austria, Finland and Sweden,

HAS ADOPTED THIS DECISION:

Article 1

The following Member States shall issue on 21 March 1996 import licences for beef and veal products, expressed as boned meat, originating in certain African, Caribbean and Pacific States, in respect of the following quantities and countries of origin:

Germany:

- 350,000 tonnes originating in Botswana,
- 238,000 tonnes originating in Madagascar;

Greece:

- 36,000 tonnes originating in Zimbabwe;

United Kingdom:

- 350,000 tonnes originating in Botswana,
- 60,000 tonnes originating in Swaziland,
- 705,000 tonnes originating in Zimbabwe.

⁽¹⁾ OJ No L 84, 30. 3. 1990, p. 85.

⁽²⁾ OJ No L 305, 19. 12. 1995, p. 49.

⁽³⁾ OJ No L 155, 6. 7. 1995, p. 25.

⁽⁴⁾ OJ No L 302, 31. 12. 1972, p. 28.

Article 2

Licence applications may be submitted, pursuant to Article 3 (3) of Regulation (EC) No 1636/95 during the first 10 days of April 1996 for the following quantities of boned beef and veal:

— Botswana:	17 271,000 tonnes,
— Kenya:	142,000 tonnes,
— Madagascar:	7 042,187 tonnes,
— Swaziland:	3 263,000 tonnes,
— Zimbabwe:	7 576,180 tonnes.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 19 March 1996.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION DECISION

of 25 March 1996

amending for the second time Decision 95/296/EC concerning certain protection measures relating to classical swine fever in Germany

(Text with EEA relevance)

(96/238/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market⁽¹⁾, as last amended by Directive 92/118/EEC⁽²⁾, and in particular Article 10 (4) thereof,

Whereas as a result of outbreaks of classical swine fever in different parts of Germany, the Commission adopted Decision 95/296/EC of 26 July 1995 concerning certain protection measures relating to classical swine fever in Germany and repealing Decision 94/462/EC⁽³⁾, as amended by Decision 96/141/EC⁽⁴⁾;

Whereas the said Decision lays down conditions for movement controls of domestic pigs originating from certain specified areas of Lower Saxony;

Whereas since 20 November 1995, no outbreak of classical swine fever has been reported in Lower Saxony;

Whereas certain movement control measures established for domestic pigs originating from the said areas in view of the improved health situation can be lifted;

Whereas classical swine fever has been confirmed in wild boar in certain parts of Brandenburg;

Whereas certain movement control measures shall be introduced for the affected areas;

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

HAS ADOPTED THIS DECISION:

Article 1

Annex I to Decision 95/296/EC is replaced by the following:

ANNEX I

- In Mecklenburg-Western Pomerania, the Kreise: Parchim, Mecklenburg-Strelitz, Bad Doberan, Güstrow, Müritz, Demmin, Ostvorpommern, Nordvorpommern, Stadtkreise Greifswald, Stralsund and Rostock.
- In Brandenburg, the Kreise: Ostprignitz-Ruppin and Prignitz.
- Any Kreis where a new outbreak occurs outside the abovementioned areas. The measures referred to in Article 1 (2) and Article 2 shall apply for a period of 60 days following the last outbreak in the Kreis in question. Germany shall inform Member States and the Commission about measures established and repealed.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 25 March 1996.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 224, 18. 8. 1990, p. 29.

⁽²⁾ OJ No L 62, 15. 3. 1993, p. 49.

⁽³⁾ OJ No L 182, 2. 8. 1995, p. 33.

⁽⁴⁾ OJ No L 32, 10. 2. 1996, p. 36.

COMMISSION DECISION

of 27 March 1996

on emergency measures to protect against bovine spongiform encephalopathy

(Text with EEA relevance)

(96/239/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market⁽¹⁾, as last amended by Directive 92/118/EEC⁽²⁾, and in particular Article 10 (4) thereof,

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market⁽³⁾, as last amended by Directive 92/118/EEC, and in particular Article 9 thereof,

Whereas, to protect animal and human health in the Community, the Commission adopted Decision 94/474/EEC of 27 July 1994 concerning certain protection measures relating to bovine spongiform encephalopathy and repealing Decisions 89/469/EEC and 90/200/EEC⁽⁴⁾, as last amended by Decision 95/287/EC⁽⁵⁾, Decision 92/290/EEC of 14 May 1992 concerning certain protection measures relating to bovine embryos in respect of bovine spongiform encephalopathy (BSE) in the United Kingdom⁽⁶⁾, Decision 94/381/EC of 27 June 1994 concerning certain protection measures with regard to bovine spongiform encephalopathy and the feeding of mammalian derived protein⁽⁷⁾, and Decision 94/382/EC of 27 June 1994 on the approval of alternative heat treatment systems for processing animal waste of ruminant origin, with a view to inactivation of spongiform encephalopathy agents⁽⁸⁾;

Whereas the United Kingdom Government informed the Commission on 20 March 1996 that it had taken

additional measures as a result of the publication of new information on the appearance of certain cases of Creutzfeldt-Jakob disease in that Member State; whereas the measures involve:

- boning the carcasses of bovine animals over 30 months of age in approved establishments monitored by the Meat Hygiene Service; trimmings must be classified as specific offal of bovine animals (SOBs),
- banning the use of bone meal derived from mammals in feed for all farm animals;

Whereas as a result of the publication of this information and the announced measures in the United Kingdom, other Member States have decided to ban the entry into their territory of live bovine animals and beef and veal from the United Kingdom;

Whereas on 22 March 1996, the Scientific Veterinary Committee has been consulted;

Whereas, under current circumstances, a definitive stance on the transmissibility of BSE to humans is not possible; whereas a risk of transmission cannot be excluded; whereas the resulting uncertainty has created serious concern among consumers; whereas, under the circumstances and as an emergency measure, the transport of all bovine animals and all beef and veal or derived products from the United Kingdom to the other Member States should be temporarily banned; whereas the same prohibitions should also apply to exports to non-Member countries so as to prevent deflections of trade;

Whereas the Commission will carry out in the coming weeks a Community inspection in the United Kingdom to evaluate the application of the measures taken; whereas the significance of the new information and the measures to be taken must be subjected to detailed scientific study;

Whereas this Decision must therefore be reviewed once all the above elements have been examined;

Whereas this Decision is in accordance with the opinion of the Standing Veterinary Committee,

⁽¹⁾ OJ No L 224, 18. 8. 1990, p. 29.

⁽²⁾ OJ No L 62, 15. 3. 1993, p. 49.

⁽³⁾ OJ No L 395, 30. 12. 1989, p. 13.

⁽⁴⁾ OJ No L 194, 29. 7. 1994, p. 96.

⁽⁵⁾ OJ No L 181, 1. 8. 1995, p. 40.

⁽⁶⁾ OJ No L 152, 4. 6. 1992, p. 37.

⁽⁷⁾ OJ No L 172, 7. 7. 1994, p. 23.

⁽⁸⁾ OJ No L 172, 7. 7. 1994, p. 25.

HAS ADOPTED THIS DECISION:

Article 1

Pending an overall examination of the situation and Community provisions adopted to protect against bovine spongiform encephalopathy notwithstanding, the United Kingdom shall not export from its territory to the other Member States or third countries:

- live bovine animals, their semen and embryos,
- meat of bovine animals slaughtered in the United Kingdom,
- products obtained from bovine animals slaughtered in the United Kingdom which are liable to enter the animal feed or human food chain, and materials destined for use in medicinal products, cosmetics or pharmaceutical products,
- mammalian derived meat and bone-meat.

Article 2

The Member States shall amend the measures they apply so that they conform to this Decision. They shall immediately inform the Commission thereof.

Article 3

The United Kingdom shall send the Commission every two weeks a report on the application of the protective measures taken against bovine spongiform encephalopathy, in accordance with national and Commission provisions.

Article 4

The United Kingdom is invited to present further proposals to control bovine spongiform encephalopathy in the United Kingdom.

Article 5

This Decision is addressed to the Member States.

Done at Brussels, 27 March 1996.

For the Commission

Franz FISCHLER

Member of the Commission