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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 1759/96**of 11 September 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 Commission Regulation (EC) No 1599/96⁽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 1482/96⁽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,

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 206, 16. 8. 1996, p. 43.

⁽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 188, 27. 7. 1996, p. 22.

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 12 September 1996.

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

Done at Brussels, 11 September 1996.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

to the Commission Regulation of 11 September 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	37,27 ⁽¹⁾
1701 11 90 910	36,24 ⁽¹⁾
1701 11 90 950	⁽²⁾
1701 12 90 100	37,27 ⁽¹⁾
1701 12 90 910	36,24 ⁽¹⁾
1701 12 90 950	⁽²⁾
	— ECU/1 % of sucrose × 100 kg —
1701 91 00 000	0,4052
	— ECU/100 kg —
1701 99 10 100	40,52
1701 99 10 910	40,37
1701 99 10 950	40,37
	— ECU/1 % of sucrose × 100 kg —
1701 99 90 100	0,4052

⁽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 1760/96

of 11 September 1996

fixing the maximum export refund for white sugar for the sixth partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1464/96

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 1599/96⁽²⁾, and in particular the second subparagraph of Article 17 (5) (b) thereof,

Whereas Commission Regulation (EC) No 1464/96 of 25 July 1996 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 1464/96 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 sixth 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 sixth partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1464/96 the maximum amount of the export refund is fixed at ECU 43,392 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 12 September 1996.

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

Done at Brussels, 11 September 1996.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ No L 187, 26. 7. 1996, p. 42.

⁽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 1761/96

of 11 September 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 1599/96⁽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 12 September 1996.

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 206, 16. 8. 1996, p. 43.

⁽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, 11 September 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 because of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 ⁽²⁾
1703 10 00 ⁽¹⁾	8,16	—	0,05
1703 90 00 ⁽¹⁾	11,20	—	0,00

⁽¹⁾ For the standard quality as defined in Article 1 of amended 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 1762/96

of 11 September 1996

amending Regulation (EC) No 2939/94 laying down detailed rules for the application of Council Regulation (EEC) No 105/76 on the recognition of producers' organizations in the fishing industry

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3759/92 of 17 December 1992 on the common organization of the market in fishery and aquaculture products⁽¹⁾, as last amended by Regulation (EC) No 3318/94⁽²⁾,

Having regard to Council Regulation (EEC) No 105/76 of 19 January 1976 on the recognition of producers' organizations in the fishing industry⁽³⁾, as amended by Commission Regulation (EEC) No 3940/87⁽⁴⁾, and in particular Article 2 (2) and 3 thereof,

Whereas the criteria for adequate economic activity of producers' organizations specified in Article 2 of Commission Regulation (EC) No 2939/94⁽⁵⁾ laying down detailed rules for the application of Regulation (EEC) No 105/76 cannot be applied to aquaculture; whereas a provision should therefore be added laying down specific criteria for aquaculture products;

Whereas application of Regulation (EC) No 2939/94 has shown that certain provisions relating in particular to the time limit for notifying the Commission of the chosen terms of recognition and the respective obligations of the producers' organization and the Member State need to be made more specific; whereas Article 4 of Regulation (EEC) No 105/76 provides that in certain cases recognition must be withdrawn from a producers' organization;

Whereas a maximum period for adjustment to the terms of recognition set by that Regulation should be stipulated for producers' organizations recognized before its entry into force; whereas, in order to ensure continuity in the application of the relevant rules, this adjustment period must apply from the date when the Regulation entered into force;

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

Article 1

Regulation (EC) No 2939/94 is hereby amended as follows:

1. Article 2 (2) is replaced by the following:

'2. The Member States shall decide which of the criteria laid down in paragraph 1 (a), 1 (b) (i) and 1 (b) (ii) shall apply.

They shall notify their decision to the Commission and to interested parties within two months of publication of this Regulation.'

2. the following paragraph is added after Article 2 (2):

'3. As regards the aquaculture products for which recognition is sought, economic activity shall be considered sufficient if the producers' organization disposes of at least 25 % of total production of the aquaculture species or group of species in question in a production area which is deemed sufficiently large by the Member State concerned on the basis of criteria established by that Member State. The Member State may adjust that percentage within the range 25 % to 50 % in order to take account of the special characteristics of regional production. The Member States shall notify the Commission within two months of the date of publication of this Regulation of the percentage they have decided to apply.'

3. Article 5 (2) is replaced by the following:

'2. If a producers' organization fails to fulfil the obligations incumbent on it under the terms of recognition as set out in Article 2 of Regulation (EEC) No 105/76, the Member State must withdraw recognition; if a producers' organization fails to fulfil other obligations, in particular to provide the information the Member State needs to monitor its activities, the latter may withdraw recognition.'

4. the following paragraph is added to Article 7:

'Producers' organizations recognized before 1 January 1995 under the terms of Regulation (EEC) No 2062/80 must satisfy the requirements of the present Regulation by 31 December 1999 at the latest.'

Article 2

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

⁽¹⁾ OJ No L 388, 31. 12. 1992, p. 1.

⁽²⁾ OJ No L 350, 31. 12. 1994, p. 15.

⁽³⁾ OJ No L 20, 28. 1. 1976, p. 39.

⁽⁴⁾ OJ No L 373, 31. 12. 1987, p. 6.

⁽⁵⁾ OJ No L 310, 3. 12. 1994, p. 12.

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

Done at Brussels, 11 September 1996.

For the Commission

Emma BONINO

Member of the Commission

COMMISSION REGULATION (EC) No 1763/96

of 11 September 1996

laying down transitional measures for the management of base areas in the new German Länder and repealing Regulation (EEC) No 1000/94

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support scheme for producers of certain arable crops⁽¹⁾, as last amended by Regulation (EC) No 1575/96⁽²⁾, and in particular Article 16 thereof,

Whereas Article 2 (6) of Regulation (EEC) No 1765/92 provides for the reduction of the area eligible for compensatory payments and for a special set-aside without compensation where the sum of the areas for which aid is claimed by producers is in excess of the regional base area;

Whereas the change from the planned economy existing in the new Länder before unification to a market economy was carried out practically without a transitional period; whereas, therefore, implementation of the reform has come at a time when agricultural production structures in the new Länder are in the process of change; whereas the loss of traditional markets in the countries of eastern Europe has led to a significant fall in livestock production and in the areas previously used for fodder production unforeseen when Regulation (EEC) No 1765/92 was adopted;

Whereas, given this situation, a solution has been found which, without giving rise to a permanent increase in the base area, which is a key element in the reform of arable farming, ensures that the strict application of the present legislation does not jeopardize the restructuring of the agricultural sector in the new Länder; whereas this solution takes the form of a transitional measure introducing a temporary extension of the base area — to be reduced in four steps — from the 1993/94 marketing year; whereas these transitional measures are provided for in Regulation (EC) No 1000/94⁽³⁾;

Whereas the factors which led to the adoption of Regulation (EC) No 1000/94 still pertain; whereas under these circumstances an extension of the transitional period is justified;

Whereas, for the sake of clarity, Regulation (EC) No 1000/94 should be replaced with effect from the 1996/97 marketing year;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Joint Management Committee for cereals, oils and fats and dried fodder,

HAS ADOPTED THIS REGULATION:

*Article 1*For the purposes of Article 2 (6) of Regulation (EEC) No 1765/92, the base area laid down by Commission Regulation (EC) No 1098/94⁽⁴⁾ shall be temporarily increased for the new German Länder as indicated in the Annex.*Article 2*

1. For the 1998/99, 1999/2000, 2000/01 and 2001/02 marketing years, where the base area laid down by Commission Regulation (EEC) No 1098/94 is exceeded within the limits indicated in the Annex to this Regulation, the area eligible for compensatory payments shall be reduced per producer, for the duration of the marketing year and in proportion to the over-run, by 10 %, 20 %, 30 % and 40 % respectively.

2. The reduction referred to in paragraph 1 shall be additional to any reduction made as a result of the base area provided for in Article 1 being exceeded.

Article 3

Regulation (EEC) No 1000/94 is hereby repealed with effect from 1 July 1996.

*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 the 1996/97 marketing year.

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 12.⁽²⁾ OJ No L 206, 16. 8. 1996, p. 1.⁽³⁾ OJ No L 111, 30. 4. 1994, p. 67.⁽⁴⁾ OJ No L 121, 12. 5. 1994, p. 12.

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

Done at Brussels, 11 September 1996.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

(1 000 hectares)				
Länder	1996/97 to 1998/99	1999/2000	2000/01	2001/02
Brandenburg	+ 6,8	+ 5,1	+ 3,4	+ 1,7
Mecklenburg-Western Pomerania	+ 66,5	+ 49,9	+ 33,3	+ 16,6
Saxony	+ 13,1	+ 9,8	+ 6,5	+ 3,3
Saxony-Anhalt	+ 34,6	+ 25,9	+ 17,3	+ 8,6
Thuringia	+ 29,0	+ 21,8	+ 14,5	+ 7,3
Total	150,0	112,5	75,0	37,5

COMMISSION REGULATION (EC) No 1764/96

of 11 September 1996

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables⁽¹⁾, as last amended by Regulation (EC) No 2933/95⁽²⁾, and in particular Article 4 (1) thereof,Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy⁽³⁾, as last amended by Regulation (EC) No 150/95⁽⁴⁾, and in particular Article 3 (3) thereof,

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 12 September 1996.

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

Done at Brussels, 11 September 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 11 September 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 35	052	33,5	0808 10 92, 0808 10 94, 0808 10 98	624	67,7
	060	80,2		999	111,3
	064	70,8		039	121,0
	066	54,0		052	64,0
	068	80,3		064	67,8
	204	86,8		070	90,2
	208	44,0		284	72,1
	212	97,5		388	68,5
	624	95,8		400	61,6
	999	71,4		404	63,6
	052	62,4		416	72,7
	053	156,2		508	113,5
ex 0707 00 25	060	61,0	0808 20 57	512	125,6
	066	53,8		524	100,3
	068	69,1		528	53,0
	204	144,3		624	86,5
	624	87,1		728	107,3
	999	90,6		800	141,3
	052	54,3		804	92,0
	204	77,5		999	88,3
0709 90 79	412	54,2		039	104,1
	508	42,9		052	56,0
	624	151,9		064	81,1
	999	76,2		388	85,3
	052	131,1		400	70,4
	204	88,8		512	88,7
0805 30 30	220	74,0	0809 30 41, 0809 30 49	528	132,9
	388	70,4		624	79,0
	400	68,2		728	115,4
	512	80,0		800	84,0
	520	66,5		804	73,0
	524	65,6		999	88,2
	528	66,0		052	93,8
	600	96,5		220	121,8
	624	48,9		624	106,8
	999	77,8		999	107,5
0806 10 40	052	62,7	0809 40 30	052	54,8
	064	43,6		064	46,4
	066	49,4		066	49,5
	220	110,8		068	37,1
	400	138,6		400	84,5
	412	58,5		624	107,0
	508	307,2		676	68,6
	512	186,0		999	64,0
	600	88,5			

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 68/96 (OJ No L 14, 19. 1. 1996, p. 6). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 1765/96
of 11 September 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 (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1503/96 of 29 July 1996 laying down detailed rules for the application of Council Regulation (EC) No 3072/95 as regards import duties in the rice sector ⁽²⁾, and in particular Article 4 (1) thereof,

Whereas Article 11 of Regulation (EC) No 3072/95 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 a certain percentage according to whether it is husked or milled rice, minus the cif import price provided that duty does not exceed the rate of the Common Customs Tariff duties;

Whereas, pursuant to Article 12 (3) of Regulation (EC) No 3072/95, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market or on the Community import market for the product;

Whereas Regulation (EC) No 1503/96 lays down detailed rules for the application of Regulation (EC) No 3072/95 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 from the source referred to in Article 5 of Regulation (EC) No 1503/96 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 1503/96 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 11 (1) and (2) of Regulation (EC) No 3072/95 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 12 September 1996.

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

Done at Brussels, 11 September 1996.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 329, 30. 12. 1995, p. 18.

⁽²⁾ OJ No L 189, 30. 7. 1996, p. 71.

ANNEX I

to the Commission Regulation of 11 September 1996 fixing the import duties on rice and broken rice

(ECU/tonne)

CN code	Duties ⁽¹⁾			
	Third countries (except ACP and Bangladesh) ⁽²⁾ ⁽³⁾	ACP Bangladesh ⁽¹⁾ ⁽²⁾ ⁽³⁾ ⁽⁴⁾	Basmati India ⁽⁶⁾ Article 4 of Regulation (EC) No 1573/95	Basmati Pakistan ⁽⁷⁾ Article 4 of Regulation (EC) No 1573/95
1006 10 21	⁽⁸⁾	140,81		
1006 10 23	⁽⁸⁾	140,81		
1006 10 25	⁽⁸⁾	140,81		
1006 10 27	⁽⁸⁾	140,81		
1006 10 92	⁽⁸⁾	140,81		
1006 10 94	⁽⁸⁾	140,81		
1006 10 96	⁽⁸⁾	140,81		
1006 10 98	⁽⁸⁾	140,81		
1006 20 11	301,69	146,51		
1006 20 13	301,69	146,51		
1006 20 15	301,69	146,51		
1006 20 17	303,07	147,20	53,07	253,07
1006 20 92	301,69	146,51		
1006 20 94	301,69	146,51		
1006 20 96	301,69	146,51		
1006 20 98	303,07	147,20	53,07	253,07
1006 30 21	559,30	264,74		
1006 30 23	559,30	264,74		
1006 30 25	559,30	264,74		
1006 30 27	⁽⁸⁾	271,09		
1006 30 42	559,30	264,74		
1006 30 44	559,30	264,74		
1006 30 46	559,30	264,74		
1006 30 48	⁽⁸⁾	271,09		
1006 30 61	559,30	264,74		
1006 30 63	559,30	264,74		
1006 30 65	559,30	264,74		
1006 30 67	⁽⁸⁾	271,09		
1006 30 92	559,30	264,74		
1006 30 94	559,30	264,74		
1006 30 96	559,30	264,74		
1006 30 98	⁽⁸⁾	271,09		
1006 40 00	⁽⁸⁾	84,38		

⁽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 11 (3) of Regulation (EC) No 3072/95.

⁽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 amended Commission Regulation (EEC) No 862/91 (OJ No L 88, 9. 4. 1991, p. 7).

(⁵) 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).

(⁶) For husked rice of the Basmati variety originating in India, a reduction of ECU 250 per tonne applies (Article 4 of Regulation (EC) No 1503/96).

(⁷) For husked rice of the Basmati variety originating in Pakistan, a reduction of ECU 50 per tonne applies (Article 4 of Regulation (EC) No 1503/96).

(⁸) 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)	303,07	572,00	301,69	559,30	(¹)
2. Elements of calculation:						
(a) Arag cif price (\$/tonne)	—	417,57	387,38	455,00	480,00	—
(b) fob price (\$/tonne)	—	—	—	425,00	450,00	—
(c) Sea freight (\$/tonne)	—	—	—	30,00	30,00	—
(d) Source	—	USDA	USDA	Operators	Operators	—

(¹) Duties fixed in the Common Customs Tariff.

COMMISSION REGULATION (EC) No 1766/96
of 11 September 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 Regulation (EC) No 1581/96⁽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 1482/96⁽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 462/96⁽¹¹⁾; whereas account should be taken of this fact when fixing the refunds;

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 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 12 September 1996.

⁽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 188, 27. 7. 1996, p. 22.

⁽⁵⁾ OJ No L 102, 28. 4. 1993, p. 14.

⁽⁶⁾ OJ No L 138, 21. 6. 1995, p. 1.

⁽⁷⁾ OJ No L 65, 15. 3. 1996, p. 1.

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

⁽²⁾ OJ No L 206, 16. 8. 1996, p. 11.

⁽³⁾ OJ No L 78, 31. 3. 1972, p. 1.

⁽⁴⁾ OJ No L 348, 30. 12. 1977, p. 53.

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

Done at Brussels, 11 September 1996.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

to the Commission Regulation of 11 September 1996 fixing the export refunds on olive oil

<i>(ECU/100 kg)</i>	
Product code	Amount of refund ⁽¹⁾ ⁽²⁾
1509 10 90 100	34,00
1509 10 90 900	0,00
1509 90 00 100	41,00
1509 90 00 900	0,00
1510 00 90 100	4,00
1510 00 90 900	0,00

⁽¹⁾ For destinations mentioned in Article 34 of amended Commission Regulation (EEC) No 3665/87 (OJ No L 351, 14. 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 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 1767/96

of 11 September 1996

fixing the maximum export refunds for olive oil for the 19th 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 Regulation (EC) No 1581/96 ⁽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 Commu-

nity 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 19th 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 9 September 1996.

Article 2

This Regulation shall enter into force on 12 September 1996.

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

Done at Brussels, 11 September 1996.

For the Commission

Franz FISCHLER

Member of the Commission

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

⁽²⁾ OJ No L 206, 16. 8. 1996, p. 11.

⁽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 11 September 1996 fixing the maximum export refunds for olive oil for the 19th 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	38,85
1509 10 90 900	—
1509 90 00 100	45,45
1509 90 00 900	—
1510 00 90 100	7,00
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 1768/96

of 11 September 1996

**temporarily suspending the issuing of export licences for certain milk products
and determining what proportion of the amounts covered by pending
applications for export licences may be allocated**

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 Regula-
tion (EC) No 1587/96 ⁽²⁾,

Having regard to Commission Regulation (EC) No
1466/95 of 27 June 1995 laying down special detailed
rules of application for export refunds on milk and milk
products ⁽³⁾, as last amended by Regulation (EC) No
1315/96 ⁽⁴⁾, and in particular Article 8 (3) thereof,

Whereas the market in certain milk products is currently
subject to uncertainty; whereas licence applications of a
speculative nature should be avoided which may lead to
distortions of competition between operators and potenti-
ally disrupt the continuity of exports of these products for
the remainder of the period in question; whereas the issue
of export licenses for the products involved should be

temporarily suspended and certain licences should not be
issued in respect of applications pending,

HAS ADOPTED THIS REGULATION:

Article 1

1. The issue of export licences for milk products falling
within CN codes 0406 90 27 and 0406 90 63 are hereby
suspended for the period from 12 to 13 September 1996.

2. No licences shall be issued for products falling
within CN codes 0406 90 27 and 0406 90 63 for which
applications are still pending and against which licences
would have been issued from 12 September 1996.

Article 2

This Regulation shall enter into force on 12 September
1996.

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

Done at Brussels, 11 September 1996.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 206, 16. 8. 1996, p. 21.

⁽³⁾ OJ No L 144, 28. 6. 1995, p. 22.

⁽⁴⁾ OJ No L 170, 9. 7. 1996, p. 20.

COMMISSION DIRECTIVE 96/55/EC

of 4 September 1996

adapting to technical progress for the 2nd time Annex I to Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (chlorinated solvents)

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 76/769/EEC ⁽¹⁾ of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations, as last amended by Directive 94/60/EC ⁽²⁾, and in particular Article 2a thereof, introduced by Council Directive 89/678/EEC ⁽³⁾,

Whereas some chlorinated solvents present a danger to health/environment and should not be marketed to the general public in substances and preparations;

Whereas Directive 94/60/EC of the European Parliament and Council, amending for the 14th time Directive 76/769/EEC specified that eight chlorinated solvents may not be used in substances and preparations placed on the market for sale to the general public;

Whereas it has since come to light that these chlorinated solvents could also present a danger to health/environment if used in place of currently used solvents in diffusive applications, such as in surface cleaning and cleaning of fabrics;

Whereas use of the eight chlorinated solvents should also be prohibited in substances and preparations placed on the market for such diffusive applications;

Whereas the restrictions on the use of chlorinated solvents laid down by this Directive take into account the current state of knowledge and techniques regarding safer alternatives;

Whereas this Directive is based on a preliminary analysis of the risks posed by the chlorinated solvents and the advantages and drawbacks of restrictions, whereas a

general evaluation of the risks to man and the environment of chloroform is being carried out pursuant to Council Regulation (EEC) No 793/93 ⁽⁴⁾ and Commission Regulation (EC) No 1488/94 ⁽⁵⁾;

Whereas this Directive does not affect Community legislation laying down minimum requirements for the protection of workers contained in Council Directive 89/391/EEC ⁽⁶⁾ and in individual directives based thereon, in particular Council Directive 90/394/EEC ⁽⁷⁾,

Whereas the measures provided for in this Directive are in accordance with the opinion of the Committee for the adaption to technical progress of the Directives on the removal of technical barriers to trade in dangerous substances and preparations,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex I to Directive 76/769/EEC is hereby adapted to technical progress as set out in the Annex hereto.

Article 2

Member States shall adopt and publish the provisions necessary to comply with this Directive by 31 December 1997 and shall forthwith inform the Commission thereof. They shall apply these provisions as from 30 June 1998.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

⁽¹⁾ OJ No L 262, 27. 9. 1976, p. 201.

⁽²⁾ OJ No L 365, 31. 12. 1994, p. 1.

⁽³⁾ OJ No L 398, 30. 12. 1989, p. 24.

⁽⁴⁾ OJ No L 84, 5. 4. 1993, p. 1.

⁽⁵⁾ OJ No L 161, 29. 6. 1994, p. 3.

⁽⁶⁾ OJ No L 183, 29. 6. 1989, p. 1.

⁽⁷⁾ OJ No L 196, 26. 7. 1990, p. 1.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 4 September 1996.

For the Commission

Martin BANGEMANN

Member of the Commission

ANNEX

In Annex I to Directive 76/769/EEC, points 33 to 40 (inclusive) shall be replaced by the following points:

Designation of the substance, of the group of substances or of the preparation	Conditions of restriction
---	----------------------------------

- | | |
|---|--|
| 33. Chloroform No CAS No 67-66-3 | |
| 34. Carbon tetrachloride CAS No 56-23-5 | |
| 35. 1,1,2 Trichloroethane CAS No 79-00-5 | |
| 36. 1,1,2,2 Tetrachloroethane CAS No 79-34-5 | |
| 37. 1,1,1,2 Tetrachloroethane CAS No 630-20-6 | |
| 38. Pentachloroethane CAS No 76-01-7 | |
| 39. 1,1 Dichloroethylene CAS No 75-35-4 | |
| 40. 1,1,1 Trichloroethane CAS No 71-55-6 | |

May not be used in concentrations equal to or greater than 0,1 % by weight in substances and preparations placed on the market for sale to the general public and/or in diffusive applications such as in surface cleaning and cleaning of fabrics.

Without prejudice to the application of other Community provisions on the classification, packaging and labelling of dangerous substances and preparations, the packaging of such substances and preparations containing them in concentrations equal to or greater than 0,1 % shall be legible and indelibly marked as follows:

"For use in industrial installations only".

By way of derogation this provision shall not apply to:

- (a) medicinal or veterinary products as defined by Directive 65/65/EEC⁽¹⁾, as last amended by Directive 93/39/EEC⁽²⁾;
- (b) cosmetic products as defined by Directive 76/768/EEC⁽³⁾, as last amended by Directive 93/35/EEC⁽⁴⁾.

⁽¹⁾ OJ No 22, 9. 2. 1965, p. 369/65.

⁽²⁾ OJ No L 214, 24. 8. 1993, p. 22.

⁽³⁾ OJ No L 262, 27. 9. 1976, p. 169.

⁽⁴⁾ OJ No L 151, 23. 6. 1993, p. 32.

II

(Acts whose publication is not obligatory)

COUNCIL

**DECISION No 1/96 OF THE EC-TURKEY ASSOCIATION COUNCIL
of 2 September 1996**

repealing Decision 5/72 relating to methods of administrative cooperation for implementation of Articles 2 and 3 of the Additional Protocol to the Ankara Agreement

(96/541/EC)

THE EC-TURKEY ASSOCIATION COUNCIL,

Having regard to the agreement establishing an association between the European Economic Community and Turkey, hereinafter referred to as the 'Ankara Agreement', and in particular Article 22 thereof and Article 4 of the Additional Protocol thereto,

Whereas, by application of Article 3 of Decision 1/95 of the Association Council on implementing the final phase of the Customs Union ⁽¹⁾, the Customs Cooperation Committee has determined the methods of administrative cooperation necessary for the free movement of goods;

Whereas Decision 5/72 on methods of administrative cooperation for implementation of Articles 2 and 3 of the Additional Protocol to the Ankara Agreement ⁽²⁾ is rendered nugatory by the decision of the Customs Cooperation Committee; whereas it should therefore be repealed,

HAS DECIDED AS FOLLOWS:

Article 1

Decision 5/72 is hereby repealed.

Article 2

This Decision shall enter into force on 1 July 1996.

Done at Brussels, 2 September 1996.

For the Association Council

The President

T. CILLER

⁽¹⁾ OJ No L 35, 13. 2. 1996, p. 1.

⁽²⁾ OJ No L 59, 5. 3. 1973, p. 73. Decision as last amended by Decision 4/95 (OJ No L 35, 13. 2. 1996, p. 48).

COMMISSION

COMMISSION DECISION

of 30 April 1996

concerning aid granted by Italy to the footwear industry

(Only the Italian text is authentic)

(Text with EEA relevance)

(96/542/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Agreement on the European Economic Area, and in particular the first subparagraph of Article 61 (1) thereof,

Having given notice in accordance with those Articles to interested parties to submit their comments,

Whereas:

I

By letter dated 24 April 1995⁽¹⁾, the Commission informed the Italian Government that it had initiated the procedure provided for in Article 93 (2) of the Treaty in the case of aid granted to the footwear industry. By letter from the Office of the Italian Permanent Representative, received on 11 October 1994, the Italian Government belatedly notified the measures.

Article 6 of Decree-Law No 40 of 18 January 1994, which was converted, after several extensions, into Law No 451 of 19 July 1994 (hereinafter referred to as 'Law 451/94'), establishes measures to promote employment. Under that Article, enterprises in industries experiencing serious employment difficulties which set up job-creation schemes qualify for total or partial exemption from employers' social security contributions in respect of newly recruited workers.

The job-creation schemes must be drawn up by the trade-union and employers' organizations for the industry in question and approved by decree of the Minister for Labour and Social Security in agreement with the Minister for the Treasury. They are not intended for businesses that have dismissed workers in the twelve months preceding any new recruitment. There must accordingly be a net creation of jobs.

The employers' and trade-union organizations in the Italian footwear industry have introduced measures to increase employment in existing businesses and to create new enterprises with a view to curbing the tendency for businesses to relocate abroad and offsetting the effects this has on employment in Italy.

The Ministerial Decree of 31 March 1994 approving the scheme for extraordinary assistance to support production and employment in the footwear industry (hereinafter referred to as 'the MD of 31 March 1994') constitutes the first application to the industry of Article 6 of Law 451/94.

The measure applies to 5 000 jobs that are to be created, of which half will be of indefinite duration. Budgetization of the social security contributions will decrease over time, at least as regards the indefinite contracts.

The Commission decided to initiate the Article 93 (2) procedure in respect of the measure on the ground that the total or partial budgetization of social security contributions paid by the enterprises constituted sectoral aid. The fact that the measure may benefit 'sectors experiencing an employment crisis' also introduces an element of discretion in the Italian Government's selection of the industries qualifying for aid.

⁽¹⁾ OJ No L 271, 17. 10. 1995, p. 7.

The sectoral element is further accentuated by the fact that employer-trade union negotiations on defining aid take place at the level of the sector concerned. It is likely, therefore, that the benefits in each sector will be different since the problems are different.

The Commission's policy in this field has always been to reject any sectoralization of aid especially as, in this case, the large volume of intra-Community trade and the share of that trade accounted for by Italian businesses (almost 50 %) mean that the aid received by them distorts or threatens to distort competition.

The other Member States and interested parties were given notice to submit their comments on this matter.

The Italian Government's comments reached the Commission on 22 June 1995. A meeting with Italian Government representatives was held in Brussels on 20 December 1995. Further information was received on 17 January 1996, together with a 'Multiannual Employment Programme' which had already been sent to the Council on 23 October 1995.

As part of the procedure, the Commission received comments from the German Government, various European or national associations of footwear producers and distributors, and a French enterprise.

The comments were forwarded to the Italian authorities on 18 December 1995 and 19 January 1996. The Italian Government's replies to these comments were received on 17 January and 7 February 1996.

II

The comments of the Italian authorities may be summarized as follows:

- The measure in question was not notified immediately in view of uncertainty as to whether it constituted State aid. It was subsequently decided to notify (October 1994). As the measure had not yet been applied at that date, the Italian authorities consider that they have met their obligations under Article 93 (3).
- Article 6 of Law 451/94 (which grants total or partial exemption from employers' social security contributions to firms in sectors experiencing employment difficulties, provided that both sides of industry in the relevant sector draw up a job-creation scheme) is a general measure applied for the first time to the foot-

wear industry. Other sectors may also put forward job-creation schemes and may also be the subject of implementing decrees. In any sector experiencing an employment crisis, the aim of the Law is to experiment with a new *modus operandi* that does not prejudice general application of the benefits envisaged.

The requirement that sectoral schemes be drawn up is dictated by the need to verify immediately, on a case-by-case basis, whether the experiment is valid and effective, with a view to its possible extension. In addition, the bargaining structure for the two sides of the industry in question was designed to enhance the role of employers' and trade union organizations in the management of employment problems.

The experimental nature of the measure is enhanced by the fact that it relates only to net job creation and is limited over time (five years).

— The provisions of Article 6 are intended to deal with:

- (a) the serious employment situation, especially of women, in Italy;
- (b) the cost to the State of the usual means of providing income support for workers in ailing industries (mobility allowance, wage guarantee fund), and this prompted the idea of recruiting above all these categories of worker by devising lower-cost solutions. There is also a change of approach in the fight against unemployment, the utilization of State resources being aimed at job creation rather than at supporting the jobless;
- (c) the laying-off of less-skilled workers and the lack of solutions, in particular at Community level;
- (d) the fact that the current growth of the economy does not seem sufficient to reduce unemployment.

In view of the seriousness of the situation, the Italian Government considers that the aid in question can be regarded as qualifying for exemption under point (b) of Article 92 (3) of the EC Treaty since it is intended to remedy a serious disturbance in the economy of a Member State.

The Italian authorities emphasize the need for the Commission to take a decision on the aid machinery established by Article 6 of Law 451/94.

- The budgetization of social security contributions does not constitute operating aid, but aid to job creation. It is not therefore intended for industries in financial difficulties since, for obvious reasons, they are unable

to create jobs. Intervention is possible only in industries with a sound competitive base, where business strategies can be directed towards maximizing the utilization of manpower.

In practice, owing to the shortage of available resources, the machinery can be applied only where it is possible to predict significant and lasting results.

- The sectoral measure has neither the object nor the effect of improving the structures of the recipient firms owing to the low level of the resources available (Lit 50 billion or ECU 26,5 million over five years). The budgetization of social security contributions will not lead to any increase in production capacity or in the competitiveness of Italian products in relation to similar products in other Member States since, without the aid, the businesses would maintain their production capacity whilst relocating certain stages of the production process abroad. Thus, the only difference would be that the jobs would be created outside the Community.

It should nevertheless be pointed out that, according to the Italian authorities, the footwear businesses that have applied to benefit from the measure are planning additional investments of some Lit 47 billion. While this figure may seem small, it must be remembered that the firms concerned include medium-sized enterprises but, above all, small enterprises.

- The measure will be limited to small and medium-sized enterprises, as defined in the Community guidelines on State aid for small and medium-sized enterprises⁽¹⁾ (hereinafter referred to as 'the Community SME guidelines').
- One of the aims of the measure is to prevent Italian enterprises from moving to non-member countries those stages of production requiring less-skilled workers (cutting-out and preparation of uppers).

According to a study quoted by the Italian Government⁽²⁾, relocating those stages of production to low-wage countries would produce cost savings of over 30 %.

Labour costs in the manufacture of the intermediate product (the uppers) represent 60 % of the total cost of the product. As social security contributions account for 40-45 % of labour costs, total exemption from them reduces the cost of the product by between 24 % and 27 % per worker. This is fairly close to the cost reduction associated with relocation.

In comparison to the cost price of a pair of shoes, total budgetization of the charges linked to the labour costs of the intermediate product gives a reduction of 7-8 % per worker. The impact of the measure on the price of the finished product is fairly low. The measure does not therefore distort trade, with the result that the key condition for deciding on aid incompatibility is not met.

Furthermore, analysis of footwear production between 1989 and 1993 shows that there is a significant correlation between production and an increase in relocation and an inverse correlation between production and employment. The Italian authorities state that it is possible to deduce from these data that, given the current level of labour costs required to maintain the level of employment, a reduction in domestic production is unavoidable. The only alternative would be relocation, which allows production levels to be maintained owing to lower labour costs. Consequently, the contention that an increase in employment in Italy entails an increase in production and hence adversely affects competition is not justified in the circumstances.

- The budgetization measure was applied in all cases where the aid per enterprise did not exceed the *de minimis* threshold (at the time ECU 50 000 over three years) laid down in the Community SME guidelines⁽³⁾ with 1 240 jobs being created (a maximum of four jobs per craft enterprise and three per industrial firm). Compatibility of the sectoral measure is thus required only for the remaining 2 460 jobs since, at the time they sent in their comments, the Italian authorities announced that 3 700 job-creation requests had been approved.
- Lastly, the Italian Government forwarded to the Commission its Mutliannual Employment Programme, into which the provisions of Article 6 of Law 451/94 had been incorporated.

III

As part of the procedure, the German Government and several interested parties submitted comments.

The German Government generally agreed with the Commission's position. It stressed the importance of labour costs in production costs in the industry and the fact that this further accentuated the distorting effect of the Italian sectoral measure.

⁽¹⁾ OJ No C 213, 19. 8. 1992, p. 2.

⁽²⁾ Prepared by Landell Mills Commodities Studies in 1993.

⁽³⁾ Amended by the notice published in OJ No C 68, 6. 3. 1996.

The European Footwear Producers Association supported the Italian measure, which, in its view, was consistent with the White Paper on Growth, Competitiveness and Employment and with the conclusions reached by the European Council at its meeting in Essen on 9 and 10 December 1994. It stated that the measure was not intended to resolve the problem of unemployment but to relocate the footwear industry in Italy. The Law had no effect on competition in the industry as the aid amounted to only 0,07 % of estimated turnover (over five years). Lastly, it was important for both sides of industry to participate in the drafting of agreements of this type.

The European Footwear Distributors Association adopted a neutral position. It considered, however, that it was not right for the footwear industry in one Member State to enjoy an advantage over its counterparts in the other Member States. The Association's principal contribution was to furnish data which more clearly identified the industry's problems. It claimed that, according to a report carried out on the Commission's behalf ⁽¹⁾, Italy's position was so strong that it had no competitors in western Europe. The devaluation of the lira further strengthened that position.

Again according to that study, although labour costs were rising in the Community, output remained very high; nevertheless, it seemed inevitable that firms would relocate to low-wage countries. Employment in the Community had been affected to the same extent as employment in the new market leaders (e.g. Korea and Taiwan), which in turn are relocating to lower-wage countries. Such relocation occurs even within the Community, for example to Portugal.

The Spanish Footwear Producers Association supports the Italian measure. It highlights the importance of dialogue between the two sides of industry and firmly believes that all the Member States should take similar steps.

Lastly, a French enterprise pointed out that labour costs in the footwear industry were already lower in Italy than elsewhere; it took the opportunity, however, to draw attention to the problem of counterfeiting and to allege that it was the victim thereof at the hands of certain Italian undertakings.

IV

The footwear industry is made up of a very large number of small businesses. In 1992 there were 14 730 firms in the Community employing, on average, 21 persons. In

1993 there were 14 225 and in 1994, 14 132 ⁽²⁾. Over half the firms are located in Italy, with just under 60 % of them employing fewer than 50 persons.

European footwear production totalled ECU 17 472 million in 1991, ECU 17 317 million in 1992, ECU 16 718 million in 1993 and ECU 17 344 million in 1994 ⁽³⁾. In 1993 41,4 % of European production (by volume) was carried out in Italy, with this figure climbing to 42,5 % in 1994. Then came Spain (17,2 %), France (14 %), the United Kingdom and Portugal (between 9 % and 10 %), and Germany (4,42 %). Production is thus concentrated in certain Member States and, within those Member States, in certain regions. In Italy, for example, almost two thirds of production is carried out in Marche, Tuscany and Veneto.

An analysis by Member State shows that the value of production (at constant prices) has fallen in recent years in most Member States, with the exception of Italy and Denmark, where it has risen significantly.

Production is highly diversified and the products are distinguished by the materials used (leather, synthetics, rubber, textiles, etc.).

As regards demand, at the beginning of the 1990s, the three leading consumer countries were France, Germany and the United Kingdom, which together accounted for 65 % of consumption (in 1991), with Italy, Spain and Portugal accounting for only 25 %. Furthermore, between 1983 and 1990 consumption rose by 20 % in the northern Member States (Denmark, France, United Kingdom), against only 8 % in the three southern Member States (Italy, Spain, Portugal).

Employment fell sharply throughout the Community, especially in the north: by 38 % between 1982 and 1992. In the south, over the same period, employment fell by less than 10 % ⁽⁴⁾.

In Italy the footwear industry is very dynamic. In 1993, compared with 1992, production increased by 10,9 % in value terms, to Lit 12 786 billion, and by 4 % in volume terms, with 451 million pairs of shoes being produced. This increase took place despite a fall in domestic demand, with products not sold on the domestic market being exported. In 1994 the rate of increase held steady at 4 %, with output totalling 471 million pairs of shoes (in value terms Lit 13 828 billion, i.e. 8,1 % higher than in

⁽²⁾ All market data are estimates provided by the European Footwear Confederation (EFC), unless otherwise stated.

⁽³⁾ Source: Panorama of EU Industry 1995.

⁽⁴⁾ Prepared by Landell Mills Commodities Studies in 1993.

⁽¹⁾ Prepared by Landell Mills Commodities Studies in 1993.

the preceding year). Italy produces two and a half times more footwear than it consumes (1991 data⁽¹⁾). Its consumption of shoes per inhabitant is one of the lowest in the Community.

Despite a significant reduction in employment (108 000 persons employed in 1994 against 123 000 in 1987) and a fall in the number of businesses (a reduction of 1 412 between 1982 and 1994), Italy is still the fifth largest producer worldwide (by volume), the fourth leading exporter and the main producer worldwide of leather shoes.

The footwear industry is relatively highly labour-intensive, with the result that Community firms are becoming increasingly vulnerable to competition from low-wage countries. This is confirmed by the deterioration in the Community's trade balance with the rest of the world. Since 1991 the Community has been a net importer of footwear.

It should be borne in mind that European producers wishing to take advantage of the low wages paid in certain countries in the developing world are relocating production there, thereby aggravating the trade deficit.

Although the Community is a net importer, Italy is a net exporter. In 1993 it exported 70,2 % in value terms of its production to the rest of the world. Its exports increased sharply in 1993 by 11,7 % in volume terms and by 6,15 % in 1994.

Intra-Community trade is important since it accounts for between a third and a half of Community production. In 1991 37,55 % of Community production was traded between Member States (ECU 6 520 million); in 1992 this decreased to 34,45 % (ECU 6 407 million)⁽²⁾. In 1991 47,9 % by volume of European production was traded between Member States, 50,6 % in 1992, 51,8 % in 1993 and 53,4 % in 1994.

Italy's share of intra-Community trade is shown in the following tables:

(a) Exports

	1992	1993	1994
value	46,04 %	46,28 %	44,45 %
volume	44,21 % (*)	43,82 %	41,49 %

Source: Eurostat, except for (*), which are EFC estimates.

(b) Imports

	1992	1993	1994
value	—	4,08 %	4,52 %
volume	6,46 % (*)	3,65 %	4,93 %

Source: Eurostat, except for (*), which are EFC estimates.

The other Member States have long been the Italian footwear industry's major customers.

V

By way of this Decision, the Commission is required to decide on the compatibility of the budgetization of the employers' social security contributions provided for in the MD of 31 March 1994. Its assessment does not extend to Article 6 of Law 451/94, which is dealt with separately.

It goes without saying that the Commission regards measures to promote employment as an essential priority and that success in this area is conditional on closer integration of the macro-economic and industrial policies of the Member States, which, together with the Commission, need to show imagination and audacity in the search for new solutions to overcome the scourge of unemployment. The success of that task calls for a radical review of the role of employment in today's society and the Commission is prepared to play its part and make a constructive contribution. These are the considerations that result from the White Paper on Growth, Competitiveness and Employment.

Such is the background against which the Italian authorities implemented the measure in question.

The Commission's criticisms are not aimed at the Italian authorities' objectives in the area of job creation (it also examined with great interest the Multiannual Employment Plan communicated by the Italian authorities, into which Law 451/94 had been incorporated), but rather at the arrangements introduced to attain those objectives and their consequences.

The conditions and arrangements relating to the total or partial budgetization of social security contributions were described in the Commission notice initiating the procedure. Briefly, the contributions are budgetized on a decreasing scale for workers on indefinite contracts (100 % budgetization in the first three years and 90 % for the following two years).

In the case of total budgetization (100 %), the benefit is estimated by the Italian authorities at ECU 4 437 per year and per worker recruited by an industrial enterprise and at ECU 3 944 per year and per worker recruited by a craft enterprise.

It should be noted that the Italian authorities have partially implemented this measure in all cases where the

(1) Prepared by Landell Mills Commodities Studies in 1993.

(2) Source: Panorama of EU industry 1994.

benefit to each enterprise does not exceed *de minimis* threshold within the meaning of the Community SME guidelines.

VI

The Commission considers that the Italian Government has not met its obligations under Article 93 (3) as the notification was addressed to the Commission after the enterprises could have benefited from the aid. In its notification, however, the Italian Government undertook not to grant any aid until the Commission had come to a decision. This undertaking was fulfilled as regards aid exceeding the *de minimis* threshold in force at the time, i.e. ECU 50 000 over three years.

The Italian authorities' justification for applying Law 451/94 to individual sectors is threefold: the need for negotiations between the two sides of industry, the experimental nature of the measure and the inadequacy of budgetary resources.

The Commission considers that, in the present case, allowing the conditions for granting the aid to be determined by both sides of industry rather than laying them down in Law 451/94 reinforces the sectoral nature of the measure, when it could have been generally applicable. The same type of agreement between both sides of industry relating to the other parts of the plan (definition of types of employment contract, part-time work, initial wages, etc.) could have existed alongside a general law laying down the conditions for granting aid. Furthermore, a measure is not general in nature simply by dint of being applied to several sectors, as the characteristics of the aid would be likely to differ from one sector to another because of the wide range of problems to be resolved.

As regards the need to proceed by stages, both in order to check the viability of the approach and because of limited financial resources, the Commission has already set out its position in Decision 80/392/EEC⁽¹⁾ concerning the partial taking-over by the State of employers' contributions to sickness insurance schemes in Italy. In that Decision, the Commission considered that insufficient budgetary resources could be an argument for authorizing a situation in which the budgetization system did not yet apply to all sectors of the Italian economy. In that case, the measure covered a large part of the Italian economy, viz., all industrial enterprises and some firms in the service sector. In the present case, however, the situation is very different as only one sector is concerned by the measure even if others may eventually benefit.

By budgetizing social security contributions, a large number of jobs are created (the aim of the measure being to prevent Italian firms from relocating some of their activities to low-wage countries). The measure should therefore be assessed in the light of both the guidelines on aid to employment⁽²⁾ and the case-law of the Court of Justice of the European Communities on the budgetization of social charges. Since the Italian authorities intended to restrict application of the budgetization scheme to small and medium-sized enterprises within the meaning of the Community guidelines on SMEs, those guidelines must apply if appropriate.

There can be no doubt that the system for budgetizing employers' social security contributions provided for in the MD of 31 March 1994 constitutes aid inasmuch as it is aimed at totally or partially exempting enterprises in a specific industrial sector from the financial charges resulting, in respect of a certain number of newly recruited workers, from the normal application of the general social security system.

The Italian authorities consider that the aid does not affect trade and does not distort competition and that, accordingly, Article 92 (1) does not apply. This view is also supported by the comments submitted as part of the procedure by other interested parties, who point out that the aid in relation to turnover in the industry amounts to only 0,07 %, a very small figure in terms of intra-Community trade and competition.

The Commission cannot agree with the conclusion inasmuch as the criterion chosen (turnover) includes elements that do not relate to activity in the industry, e.g. purchase of raw materials. A more accurate assessment of the amount of aid is obtained by comparing the amount of the aid with the value added by the industry, i.e. the increase in value attributable to the processing of the product within the industry.

This comparison serves only as a guide as it is not possible to know in advance the value added by the industry during the duration of the aid. Nevertheless, the relationship between the amount of aid available each year — Lit 10 billion (ECU 5,28 million) — and the value added by the industry in Italy in 1993 (the only statistic available) is 0,33 %. This figure would probably be lower if calculated for subsequent years in view of the likely increase in value added attributable to the healthy performance of the Italian footwear industry.

⁽¹⁾ OJ No L 264, 8. 10. 1980, p. 28.

⁽²⁾ OJ No C 334, 12. 12. 1995, p. 4.

In any event, that figure is an average and will tend to rise as the proportion of workers benefiting from budgetization in relation to the total workforce of an enterprise increases. Furthermore, the impact may also differ according to the type of product (e.g. leather footwear, which costs more to produce in terms of labour). According to the Italian authorities, the impact of the aid on the cost price of a pair of shoes is 7-8 % per worker concerned. As the aid is intended for an unspecified number of businesses, it is very difficult to assess, in advance and in detail, its effects on the footwear market as a whole.

While the impact of the aid may be only slight, it is none the less discernible. In its judgment of 11 November 1987 in Case 259/85⁽¹⁾, the Court of Justice found that 'the Commission did not exceed the limits of its discretion in taking the view that even relatively little aid would adversely affect trading conditions to an extent contrary to the common interest'. It should also be borne in mind that compatibility with the Treaty must be viewed in a Community context and not in the context of a single Member State.

The factors indicating that competition has been distorted and trade affected in the present case are as follows:

- (1) Sectoral nature of the aid: since the arrangements for budgetizing social security contributions were not spelt out in Law 451/94, the scheme does not rank as a generally applicable measure, something which, in the present case, would have enabled it not to be considered as aid within the meaning of Article 92 (1) of the Treaty. If this had been the case, all enterprises, even foreign ones established in Italy, could have benefited from the aid. Although it is possible that even general measures may affect intra-Community trade, the Treaty has provided, in Articles 99 to 102, for the possibility of harmonizing disparities between Member States.

Furthermore, sectoral aid is inherently more distorting than horizontal measures and *ad hoc* aid. Horizontal measures are applicable to all the enterprises concerned, a fact which diminishes or indeed cancels out any adverse effect on intra-Community trade. In a semi-flexible exchange-rate system like the EMS and especially as regards currencies that fluctuate freely such as the Italian lira, the effects of horizontal measures uniformly improve the competitiveness of the economy and hence the trade balance, but are offset by exchange rate fluctuations. This is not the case with measures applicable in a single sector. In the case of *ad hoc* aid, compensatory arrangements can be

sought which limit the impact on competition and intra-Community trade.

- (2) In addition to recruiting 5 000 persons, the Italian firms concerned will be investing Lit 47 billion. This is sufficient to invalidate the claim that the measure will in no way improve the structures of the recipient enterprises. Furthermore, it is difficult to understand how there will be no change in production when both the labour input and the capital input are increased, especially in view of the fact that the enterprises concerned are small enterprises.

According to the report drawn up for the Commission on the situation in the footwear industry⁽²⁾, the tendency to relocate certain stages of the production process to low wage countries is inevitable if European enterprises are to become more competitive. Without going into the question of relocating, it must be acknowledged that if Italian businesses have agreed to create jobs in Italy under conditions very similar to those in certain low-wage countries, this is because they expect to achieve equivalent increases in productivity. This appears to be confirmed by the Italian authorities with their observation that there is a significant correlation between production and a higher rate of relocation. A similar correlation should exist between production and a reduction in wage costs since, in the present case, the budgetization of social security contributions permits a reduction in cost similar to that associated with relocation.

Lastly, it should be stressed that the proposed measure is to be implemented under the MD of 31 March 1994, which also provides for other types of measure (part-time work, reduction in initial wages) aimed at lowering labour costs. It is unlikely that a rule aimed specifically at supporting production will have no effect on production in the industry.

- (3) As stated in section IV, Italy has always been the largest footwear producer in the Community, exporting between 40 % and 50 % of production to other Member States. Its position has been strengthened by the devaluation of the Italian lira. The measure objected to thus assist a sector of the Italian economy which leads the market in the Community.
- (4) Competition on the Community footwear market is very keen. In 1982 the six major Community producers (Italy, Spain, France, Germany, Portugal, United Kingdom) employed 378 468 workers. By 1994 the figure was only 272 253 workers. While the reduction is due partly to pressure on the Community market

⁽¹⁾ French Republic v. Commission [1987] ECR 4393, paragraph 24.

⁽²⁾ Prepared by Landells Mills Commodities Studies in 1993.

from low-wage countries, nevertheless certain segments of the industry such as leather footwear have to contend chiefly with competitors in other Community countries (intra-Community imports exceed imports from outside the Community). The Commission considers in this respect that, in the economic sectors where there is substantial intra-Community trade, enterprises are naturally in competition with each other.

- (5) In its Judgment of 2 July 1974 in Case 173/73 ⁽¹⁾, the Court of Justice held that, as a reduction in social charges has the effect of reducing labour costs and as the industry receiving such aid is in competition with enterprises in the other Member States, the modification of production costs in that industry by the reduction in the charges in question necessarily affects trade between Member States. This position accords with the Commission's opinion in the same case, namely that in a market where the volume of trade is substantial, any aid, irrespective of its amount or intensity, distorts or threatens to distort competition by virtue of the fact that the recipients receive external aid not enjoyed by their competitors.

- (6) The Italian Government has not shown that the enterprises in the sector concerned have to contend with more problems than their competitors in other Member States; on the contrary, it acknowledged that this type of measure is applicable only to enterprises that are capable of competing on the market. Since almost all Community footwear businesses are encountering similar problems, there is a risk that the aid will help to shift the problems from one Member State to another.

VII

In the light of the foregoing, the total or partial budgetization of employers' social security contributions in the footwear industry constitutes aid that is incompatible with the common market under Article 92 (1) of the Treaty in so far as it adversely affects trade between Member States and distorts or threatens to distort competition. It is therefore necessary to consider whether the aid qualifies for one of the derogations in Article 92 (3).

The derogation in point (a) of Article 92 (3) is not applicable since the measure in question applies to Italy as a whole.

⁽¹⁾ *Italy v. Commission*, [1974] ECR 709.

The derogation in point (b) of Article 92 (3) is not applicable because the Italian authorities have not shown that budgetization of employers' social security contributions in the footwear industry is necessary to remedy a serious disturbance in the Italian economy.

The Italian authorities stated that the sole recipients would be small and medium-sized enterprises. The Community SME guidelines state, *inter alia*, that the Commission will normally not object to job-creation schemes involving aid of not more than ECU 3 000 per job created. The guidelines cannot be applied to the present case since the aid is sectoral and the aid per job created ranges from ECU 3 944 to ECU 4 437 for one of the five years in which the scheme will be applied in the event of total budgetization (for indefinite-duration contracts in either a craft or an industrial enterprise). In the case of the least favourable terms of remuneration for a worker, i.e. a one-year non-renewable contract, the aid would be ECU 2 958. It should, though, be noted that, under the agreement between the two sides of industry, recruitment will be on the basis of alternate indefinite and fixed-term contracts.

Point 23 of the Commission guidelines on aid to employment reads as follows: 'Aid to create jobs that is limited to one or more sensitive sectors experiencing overcapacity or in crisis is also generally viewed less favourably than aid to create new jobs that is available to the economy as a whole.'

Such sectoral aid constitutes an advantage for the sector(s) concerned which improves their competitive position in relation to firms from other Member States. Aid that reduces wage costs throughout one or more productive sectors reduces production costs in those sectors, and this enables them to improve their market share to the detriment of their Community competitors both within the Member State concerned and for exports inside and outside the Community, with all the attendant implications in terms of a worsening of the employment situation in those sectors in the other Member States. Consequently, the protective effect of such aid for the sector(s) in question, in particular those in crisis, and its adverse effects on employment in competing sectors in other Member States generally outweigh the common interest involved in active measures to reduce unemployment; the Commission will usually consider such aid to be incompatible with the common market.'

For the reasons stated above, it must be concluded that the effects of the aid on intra-Community trade are greater than those indicated by a straightforward comparison between the amount of the aid and the value added by the industry.

In accordance with point 23 of the guidelines, on aid to employment, the Commission is obliged, even in the case of aid for job creation, to adopt a strict attitude to sectoral aid in order to forestall any escalation of aid in good time and to ensure that the very concept of the internal market is not called into question.

In view of the pressure exerted on all Community producers by imports from third countries, the difficult employment situation in this industry in all the Member States (with the exception of Portugal), the importance of intra-Community trade and hence of competition, and the predominant role played by the Italian footwear industry, this sector must be regarded as a sensitive sector under the guidelines. The sensitivity of a particular sector should not be defined solely in relation to economic difficulties since the guidelines contain a subsequent reference to sectors in crisis. It should, therefore, be the subject of a broader assessment.

Consequently, the aid in question cannot be regarded as promoting development if it is assessed from a Community standpoint rather than from that of a particular Member State. The sectoral measure may lead to a change in the balance between the Member States at a time when all of them are experiencing problems that are of varying intensity but similar in nature.

According to point 23 of the guidelines, 'The Commission will, however, be more favourably disposed towards aid to create new jobs where the jobs are in growth niche markets or sub-sectors that hold up the prospect of considerable job creation'. The aid in question is not for a sub-sector manufacturing a specific product but for a specific stage in the production process where the reduction in costs has repercussions for the entire production process downstream. The above point is not, therefore, applicable to the aid being examined.

Accordingly, for the reasons stated above, the derogation in point (c) of Article 92 (3) of the Treaty cannot apply to the total or partial budgetization of employers' social security contributions provided for in the MD of 31 March 1994 since it adversely affects trading conditions to an extent contrary to the common interest,

HAS ADOPTED THIS DECISION:

Article 1

The total or partial budgetization of employers' social security contributions provided for in the Ministerial Decree of 31 March 1994, which approves the scheme for extraordinary assistance to support production and employment in the footwear industry, constitutes aid that is incompatible with the common market within the meaning of Article 92 (1) of the Treaty and does not qualify for any of the derogations provided for in point (c) of Article 92 (3) of the Treaty.

Article 2

Italy shall take the appropriate steps to delete the provision relating to the budgetization of employers' social security contributions from the Decree referred to in Article 1.

Article 3

Repayment of the aid granted by Italy under the Decree referred to in Article 1 shall not be required inasmuch as it is below the *de minimis* threshold.

Article 4

Italy shall inform the Commission, within two months of the date of notification of this Decision, of the measures taken to comply herewith.

Article 5

This Decision is addressed to the Italian Republic.

Done at Brussels, 30 April 1996.

For the Commission

Karel VAN MIERT

Member of the Commission