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Legislation

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⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2113/96
of 25 October 1996
laying down certain conservation and control measures applicable to fishing
activities in the Antarctic

THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

(1) Whereas pursuant to Article 4 of Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture ⁽³⁾, the Council may determine certain conditions for access by Community fishing vessels to waters and resources;

(2) Whereas Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy ⁽⁴⁾, applies to all fishing activities and to all associated activities carried out within the territory and within the maritime waters subject to sovereignty or jurisdiction of the Member States, and to all activities of Community fishing vessels which operate in the waters of non-member countries and on the high seas, without prejudice to the special provisions contained in fisheries agreements concluded between the Community and third countries, or in international conventions to which the Community is a party;

(3) Whereas the Convention on the Conservation of Antarctic Marine Living Resources, hereinafter called 'the Convention', was approved by Decision 81/691/EEC ⁽⁵⁾ whereas it entered into force for the Community on 21 May 1982;

(4) Whereas the Commission on the Conservation of Antarctic Marine Living Resources, hereinafter

referred to as 'CCAMLR', established by the Convention, adopted on the recommendation of its Scientific Committee, certain conservation measures applicable, in particular, to fish stocks occurring in the waters off South Georgia;

(5) Whereas Council Regulation (EEC) No 2245/85 of 2 August 1985, laying down certain technical measures for the conservation of fish stocks in the Antarctic ⁽⁶⁾ has implemented these conservation measures and has been subject to annual modifications which have affected the clarity of the legislation;

(6) Whereas it is therefore necessary to replace Regulation No 2245/85 with a new regulation reflecting CCAMLR conservation measures currently in force;

(7) Whereas the members of CCAMLR stated that they intended to apply the latest conservation measures, adopted on 4 November 1995, on a provisional basis, without waiting for them to become binding, in view of the fact that some of the conservation measures relate to fishing seasons which commenced on or after 1 July 1995;

(8) Whereas the European Community, as a Contracting Party to CCAMLR, is bound to ensure that the measures adopted by CCAMLR are applied to Community fishermen with effect from relevant dates;

(9) Whereas it is necessary to provide for a mechanism allowing the Commission to implement further conservation measures adopted by CCAMLR on a proposal from the Commission using a simplified procedure;

(10) Recognizing the world importance of the Antarctic as an environmentally sensitive area, largely untouched by human activity,

⁽¹⁾ OJ No C 8, 13. 1. 1996, p. 5 and OJ No C 156, 31. 5. 1996, p. 10.

⁽²⁾ OJ No C 198, 8. 7. 1996, p. 111.

⁽³⁾ OJ No L 389, 31. 12. 1992, p. 1. Regulation as amended by the 1994 Act of Accession.

⁽⁴⁾ OJ No L 261, 20. 10. 1993, p. 1.

⁽⁵⁾ OJ No L 252, 5. 9. 1981, p. 26.

⁽⁶⁾ OJ No L 210, 7. 8. 1985, p. 2. Regulation as last amended by Regulation (EEC) No 1210/96 (OJ No L 123, 19. 5. 1993, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation applies to Community fishing vessels who take and retain on board fish from marine living resources of the area south of 60° South latitude and of the area between that latitude and the Antarctic convergence which forms part of the Antarctic marine ecosystem with the exception of those resources occurring within waters subject to such coastal State jurisdiction as may exist in accordance with international law.

2. This Regulation shall be without prejudice to the provisions of the Convention and shall operate in furtherance of these objectives and principles and the provisions of the Final Act of the Conference at which it was adopted.

3. The Antarctic convergence referred to in paragraph 1 is deemed to be a line joining the following points along parallels of latitude and meridians of longitude: 50° S, 0°-50° S, 30° E-45° S, 30° E-45° S, 80° E-55° S, 80° E-55° S, 150° E-60° S, 150° E-60° S, 50° W-50° S, 50° W-50° S, 0°.

Article 2

1. Only those vessels named in the list mentioned in paragraph 2 shall have the right to carry out fishing activities in the area defined in Article 1.

2. Member States shall notify to the Commission the list of vessels flying their flag and registered within the Community which wish to carry out fishing activities in the area defined in Article 1, 20 days after this Regulation has entered into force, and afterwards at least 30 days in advance of the beginning of these activities.

3. This list, transmitted to the Commission, shall mention the internal number fleet register in accordance with Article 1 of Commission Regulation (EC) No 109/94 of 19 January 1994 concerning the fishing vessel register of the Community⁽¹⁾.

Article 3

A Member State shall notify the Commission of the intention of a fishing vessel to carry on crab fishery in FAO Antarctic sub-area 48.3. This notification shall be given four months in advance of the start date for the fishery. The Commission shall examine the notification, check whether it complies with applicable rules and

inform the Member State of its findings. The Member State may issue the special fishing permit on receipt of the findings of the Commission or 10 working days after notification. The Commission shall notify CCAMLR accordingly, at the latest three months in advance of the start date for the fishery.

Article 4

1. Directed fishing of *Nototothenia rossii* in FAO Antarctic sub-area 48.1 in the Peninsula area, in FAO Antarctic sub-area 48.2 around the South Orkneys and in FAO Antarctic sub-area 48.3 around South Georgia is prohibited.

2. Directed fishing of finfish in FAO Antarctic sub-areas 48.1 and 48.2 except for scientific research purposes, is prohibited.

3. Directed fishing of *Gobionotothen gibberifrons*, *Chaenocephalus aceratus*, *Pseudochaenichthys georgianus*, *Lepidonotothen squamifrons* and *Patagonotothen guntheri*, in FAO Antarctic sub-area 48.3 is prohibited until 2 November 1996.

Article 5

1. The total allowable catch (TAC) of *Euphausia superba* in any fishing season is fixed at:

- (a) 1,5 million tonnes in FAO Antarctic area 48;
- (b) 450 000 tonnes in FAO Antarctic division 58.4.2.

A fishing season is defined as beginning on 1 July and finishing on 30 June of the following year.

2. The TAC of *Dissostichus eleginoides* is fixed at:

- (a) 4 000 tonnes, in FAO Antarctic sub-area 48.3 from 1 March to 31 August 1996;
- (b) 28 tonnes in the FAO Antarctic sub-area 48.4 from 1 March to 31 August 1996 or until the TAC specified in (a) is reached;
- (c) 297 tonnes, in FAO Antarctic division 58.5.2 from 4 November 1995 to 30 June 1996.

3. The TAC of *Champsocephalus gunnari* is fixed at:

- (a) 311 tonnes in FAO Antarctic division 58.5.2 from 4 November 1995 to 30 June 1996;
- (b) 1 000 tonnes in FAO Antarctic sub-area 48.3 from 4 November 1995 to 31 March 1996.

Directed fishery for *Champsocephalus gunnari* in FAO Antarctic sub-area 48.3 and in the Shag Rocks region will be closed, if the by-catch of any species named in paragraph 6 (i) exceeds the fixed limits.

⁽¹⁾ OJ No L 19, 22. 1. 1994, p. 5.

If in the course of the directed fishery for *Champsocephalus gunnari*, the by-catch of any one haul of any of the species named in paragraph 6 (i) below exceeds 5 %, the fishing vessel shall move to another fishing location not closer than five nautical miles distant. This fishing vessel shall not fish within five nautical miles of the location in which the by-catch exceeded 5 % for a period of five days.

4. The TAC of crab, *Paralomis* spp. (order Decapoda, suborder Reptantia), is fixed at:

— 1 600 tonnes in FAO Antarctic sub-area 48.3 from 4 November 1995 to 2 November 1996.

5. The TAC of *Electrona carlsbergi* is fixed at:

— 109 000 tonnes in FAO Antarctic sub-area 48.3 from 4 November 1995 to 2 November 1996, of which a maximum of 14 500 tonnes in the Shag Rocks region, defined as the area bounded by 52° 30' S-40° W, 52° 30' S-44° W, 54° 30' S-40° W and 54° 30' S-44° W.

Directed fishery for *Electrona carlsbergi* in FAO Antarctic sub-area 48.3 and in the Shag Rocks region will be closed, if the by-catch of any species named in paragraph 6 (i) exceeds the fixed limits.

If, in the course of the directed fishery for *Electrona carlsbergi*, the by-catch of any one haul of any of the species named in paragraph 6 (i) below exceeds 5 %, the fishing vessels shall move to another fishing location not closer than 5 nautical miles distant. The fishing vessel shall not fish within five nautical miles of the location in which the by-catch exceeded 5 %, for a period of at least five days.

6. (i) In the course of fishing in FAO Antarctic sub-area 48.3, by-catches of *Gobionotothen gibberifrons* shall be limited to 1 470 tonnes; by-catches of *Chaenocephalus aceratus* shall be limited to 2 200 tonnes; and the by-catch of *Pseudochaenichthys georgianus*, *Nototothenia rossii* and *Lepidonotothen squamifrons* shall be limited to 300 tonnes for each of these three species.

(ii) If in the course of a directed fishing for *Dissostichus eleginoides* or *Champsocephalus gunnari* in FAO Antarctic division 58.5.2, the by-catch in any haul of any of the species *Lepidonotothen squamifrons*, *Nototothenia rossii*, *Channichthys rhinoceratus* or *Bathyraxja* spp. exceeds 5 %, the fishing vessels shall move to another fishing location not closer than five nautical miles distant. The fishing vessel shall not fish within five nautical miles of the location in which the by-catch exceeded 5 %, for a period of at least five days.

7. The TAC of *Lepidonotothen squamifrons* in the two-year period from 5 November 1994 to 2 November 1996 in FAO Antarctic division 58.4.4 (Ob and Lena Banks) is fixed at:

— 715 tonnes on Lena Bank and 435 tonnes on Ob Bank.

8. Catches of any of the above species taken by a Community vessel for scientific fisheries research purposes will be considered as part of the catch limitations in force for each species taken, as described in paragraphs 1 to 7.

Article 6

1. The fishery of *Dissostichus eleginoides* in Antarctic division 58.5.2 is prohibited except if undertaken by trawling.

2. For crab fishing as defined in Article 5 (4), only crab pots (traps) are authorized. This fishery shall be limited to sexually mature male crabs; all female and undersized male crabs shall be released. In the case of *Paralomis spinosissima* and *P. formosa*, males with a minimum carapace width of 102 mm and 90 mm respectively, may be retained on board. Crab processed at sea shall be frozen as crab sections (minimum size of crabs can be determined using crab sections).

3. The fishery of *Dissostichus eleginoides* in FAO Antarctic sub-areas 48.3 and 48.4 is prohibited except if undertaken by longlines.

4. The fishery of *Champsocephalus gunnari* in FAO Antarctic sub-area 48.3 is prohibited if undertaken by bottom trawls.

Article 7

Community vessels shall be subject to three different catch and reporting systems:

1. For the purposes of the monthly Catch and Effort Reporting System, the reporting period is defined as a calendar month.
2. For the purposes of the 10-day Catch and Effort Reporting System, the calendar month is divided into three reporting periods; designated by the letters A, B, C and running from day 1 to day 10, day 11 to day 20, day 21 to the last day of the month respectively.
3. For the purposes of reporting the catches under the five-day Catch and Effort Reporting System, each calendar month is divided into six reporting periods, designated by the letters A, B, C, D, E and F and running from day 1 to day 5, day 6 to day 10, day 11 to day 15, day 16 to day 20, day 21 to day 25 and day 26 to the last day of the respective month.

Article 8

1. The five-day Catch and Effort Reporting System applies to:

- the fisheries of *Dissostichus eleginoides* in FAO Antarctic sub-area 48.3 and 48.4 beginning on 1 March 1996,
- the fishery of *Chamsocephalus gunnari* in FAO Antarctic sub-area 48.3,
- the fishery of *Lepidonotothen squamifrons* in FAO Antarctic division 58.4.4.

2. The 10-day Catch and Effort report system applies to:

- the fishery crab, *Paralomis* spp. (order *Decapoda*, suborder *reptantia*) in FAO Antarctic sub-area 48.3. Data on catches taken between 31 July and 25 August 1996 shall be reported to the Commission by 25 September 1996,
- the fisheries of *Chamsocephalus gunnari* and *Dissostichus eleginoides* and other deep-water species in FAO Antarctic division 58.5.2.

3. The monthly Catch Reporting system applies to:

- the fishery of *Electrona carlsbergi* in FAO Antarctic sub-area 48.3,
- the fishery of *Euphausia superba* in FAO Antarctic area 48 and FAO Antarctic division 58.4.2.

4. The Catch and Effort Reporting Systems shall apply to all species fished for scientific research purposes, whenever the catch within a specific period exceeds 5 tonnes.

Article 9

1. Masters of Community fishing vessels shall submit a catch and effort report to the competent authorities of the flag Member State, at the latest one day after the end of the relevant reporting period.

2. Member States shall notify the Commission, at the latest, within three days of each reporting period, the catch and effort report transmitted by each fishing vessel flying their flag and registered in the Community. Each catch and effort report shall specify the reporting period concerned.

3. The Commission shall notify to CCAMLR, at the latest within five days after the end of each reporting period, the catch and effort reports received in accordance with paragraph 2.

Article 10

The Catch and Effort Reporting System shall contain the following information, pertaining to the preceding period:

- the name and the external identification mark of the vessel in question,

- the total catches of the species concerned,
- the total days and hours fished,
- the retained catch of all species and by-catch species during that reporting period,
- in the case of longline fisheries, the number of hooks.

Article 11

1. Member States shall notify to the Commission the total catches, broken down by vessels, which were made by fishing vessels flying its flag and registered in the Community, in the period between 1 July 1995 and the end of the first month following the month in which the Regulation enters into force. This notification shall be made within 10 days of the end of this period.

2. All vessels fishing for crab (*Paralomis* spp.) in FAO Antarctic sub-area 48.3 and FAO Antarctic Division 58.4.2 shall report the following data to the Commission by 25 August 1996 for crabs caught prior to 31 July 1996:

- the location, date, depth, the number and spacing of pots and soak time, and catch (number and weight) of commercially sized crabs (reported on as fine a scale as possible, but no longer than 0,5° latitude and 1° longitude) for each 10-day period,
- the species, size and sex of a representative sample of crab sampled according to the procedure set out in Annex 1 (between 35 and 50 crabs shall be sampled every day from the line hauled just prior to noon) and by-catch caught in traps; and
- other relevant data, as possible, according to the requirements set out in Annex 1.

Article 12

1. Community vessels fishing *Dissostichus eleginoides* and *Electrona carlsbergi* operating in FAO Antarctic sub-area 48.3 and 48.4 and vessels fishing in 48.3 in the 1995/1996 fishing season shall notify to the competent authority of the Member State whose flag they fly not later than the 15th of each month, following the month of fishing, an Effort and Biological Data Reporting System report.

2. Pursuant to this notification, Member States shall transmit this information to the Commission at the end of each month. The Commission shall immediately transmit these data to CCAMLR.

3. The information contained in the Effort and Biological Data Reporting System report shall include the following:

- the haul-by-haul data required to complete the CCAMLR fine-scale catch and effort data form for longline fisheries (form C2 latest version for *Dissostichus eleginoides* and *Electrona carlsbergi* and form C1 for *Chamsocephalus gunnari*). These data shall include the numbers of seabirds or marine mammals of each species caught and killed,
- a representative sample on length composition measurements from the fishery (form B2, latest version). Length measurements of fish should be of total length to the nearest centimetre below and, representative samples of the length composition should be taken from a single fishing ground. In the event that a vessel moves from a fishing ground to another during the course of a month, then separate length compositions be submitted for each fishing ground.

Article 13

Following notification from CCAMLR to the Commission concerning the exhaustion of the TAC of a stock or a group of stocks fixed in Article 5, or after the expiration of the fishing season set out in Article 5, it shall be prohibited for any Community fishing vessel to fish for that stock or group of stocks, to retain on board, to tranship or to land fish taken after that date.

Article 14

1. No trawl, Danish seine or similar net, any part of which is composed of meshes of a size smaller than those laid down in Annex III, shall be used when engaging in directed fishery for the species or groups of species *Notothernia rossii*, *Dissostichus eleginoides*, *Gobionotthen gibberifrons*, *Notothernia kempfi*, *Lepidonotthen squamifrons* and *Chamsocephalus gunnari*. It is prohibited to use any means or device which would obstruct or diminish the size of the meshes.

2. For the nets referred to in paragraph 1, the minimum mesh size provided for in Annex III shall be determined in accordance with the following rules:

A. Description of gauges

- (a) The gauges to be used for determined mesh size shall be 2 mm thick, flat, of durable material and capable of retaining their shape. They shall have either a series of parallel-edged sides connected by intermediate tapering edges with a taper of one to eight on each side, or only tapering edges with the taper specified above. They shall have a hole at the narrowest extremity.
- (b) Each gauge shall be inscribed on its face with the width in millimetres both of the parallel-sided section, if any, and of the tapering section. In the case of the latter, the width shall be inscribed at

intervals of 1 mm and shall be indicated at regular intervals.

B. Use of the gauge

- (a) The net shall be stretched in the direction of the long diagonal of the meshes.
- (b) A gauge as described in point A shall be inserted by its narrowest extremity into the mesh opening in a direction perpendicular to the plane of the net.
- (c) The gauge shall be inserted into the mesh opening, either manually or using a weight or dynamometer, until it is stopped at the tapering edges by the resistance of the mesh.

C. Selection of meshes to be measured

- (a) Meshes to be measured shall form a series of 20 consecutive meshes running in the direction of the long axis of the net.
- (b) Meshes less than 50 cm from lacings, ropes or codline shall not be measured. This distance shall be measured perpendicular to the lacings, ropes or codline with the net stretched in the direction of that measurement. Nor shall any mesh be measured which has been mended or broken or has attachments to the net fixed at that mesh.
- (c) By way of derogation from (a), the meshes to be measured need not be consecutive if the conditions set out in (b) apply.
- (d) Nets shall be measured only when wet and unfrozen.

D. Measurements of each mesh

The size of each mesh shall be the width of the gauge at the point where the gauge is stopped when it is used in accordance with point B.

E. Determination of the mesh size of the net

The mesh size of the net shall be the arithmetical mean, in millimetres, of the measurements of the total number of meshes selected and measured as provided for in points C and D, the arithmetical mean being rounded off to the nearest millimetre.

The total number of meshes to be measured is specified in point F.

F. Sequence of inspection procedure

- (a) The inspector shall measure one series of 20 meshes, selected in accordance with point C, inserting the gauge manually without using a weight or dynamometer. The mesh size of the net shall then be determined in accordance with point E.

If the calculation of the mesh size shows that the mesh size does not appear to comply with the rules in force, two additional series of 20 meshes selected in accordance with point C shall be measured.

The mesh size shall then be recalculated in accordance with point E, taking into account the 60 meshes already measured. Without prejudice to (b), this shall be the mesh size of the net.

- (b) If the master of the vessel contests the mesh size determined in accordance with (a), such measurement shall not be considered for the determination of the mesh size and the net shall be re-measured. A weight or dynamometer attached to the gauge shall be used for the purposes of re-measurement. The choice of weight or dynamometer shall be left to the discretion of the inspector. The weight shall be fixed (using a hook) to the hole in the narrowest extremity of the gauge. The dynamometer may either be fixed to the hole in the narrowest extremity of the gauge or be applied at the widest extremity of the gauge. The accuracy of the weight or dynamometer shall be certified by the appropriate national authority.

For nets of a mesh size of 35 mm or less as determined in accordance with (a) above, a force of 19,61 newton (equivalent to a mass of two kilograms) shall be applied and a force of 49,03 newton (equivalent to a mass of five kilograms), shall be applied for other nets.

For the purposes of determining the mesh size in accordance with point E above (when a weight or dynamometer is used), only one series of 20 meshes shall be measured, wherever a weight of dynamometer is used.

3. The measures applicable to reduce the incidental mortality of seabirds during longline fisheries are set out in Annex IV.

Article 15

1. For the purposes of this Article a new fishery is a fishery on a species using a particular fishing method in an FAO Antarctic sub-area, except for FAO Antarctic sub-areas 58.6, 58.7 and FAO Antarctic division 58.5.1, for which:

- (a) any information on distribution abundance, demography, potential yield and stock identity from comprehensive research/surveys or exploratory fishing have never been submitted to CCAMLR, or
- (b) any catch and effort data have never been submitted to CCAMLR, or
- (c) any catch and effort data from the two most recent seasons in which fishing occurred have never been submitted to CCAMLR.

2. The exercise of a new fishery in the convention area shall be prohibited unless authorized in accordance with paragraph 6.

3. Any operator of a Community vessel who intends to develop a new fishery in the convention area shall inform the competent authorities of the Member State whose flag the vessel flies of that intention and shall submit to those authorities the information defined in paragraph 4 to the best of his ability.

4. A Member State who has been informed of the intention to develop a new fishery in the convention area shall notify the Commission without delay and not later than four months in advance of the annual meeting of CCAMLR.

The notification shall be accompanied by as much of the following information as the Member State is able to provide:

- (a) the nature of the proposed fishery including target species, methods of fishing, proposed region and any minimum level of catches that would be required to develop a viable fishery;
- (b) biological information from comprehensive research-survey cruises, such as distribution, abundance, demographic data and information on stock identity;
- (c) details of dependent and associated species and the likelihood of them being affected by the proposed fishery;
- (d) information from other fisheries in the region or similar fisheries elsewhere that may assist in the valuation of potential yield.

5. The Commission shall forward to CCAMLR for consideration the information provided in accordance with paragraph 4, together with any other relevant information it has at its disposal.

6. As soon as CCAMLR has taken a decision, the new fishery shall be authorized:

- by the Commission, in case CCAMLR has not adopted any conservation measures with regard to the new fishery, or,
- by the Council, acting by a qualified majority on a proposal from the Commission, in all other cases.

Article 16

An explanatory fishery is defined as a fishery that was previously classified as a new fishery, as defined in Article 15. An explanatory fishery shall continue to be classified as such until sufficient information is available:

- (a) to evaluate the distribution, abundance and demography of the targeted species, leading to an estimate of the fishery's potential yield;
- (b) to review the fishery's potential impacts on dependent and related species; and
- (c) to allow the Scientific Committee set up by the Convention to formulate and provide advice on appropriate harvest catch levels, as well as effort levels and fishing gear where appropriate.

The information to be submitted for an exploratory fishery is set out in Annex V.

Article 17

1. Member States whose vessels intend to conduct scientific fisheries research when the estimated catch is expected to be less than 50 tonnes, shall submit directly to CCAMLR with a copy to the Commission the following data:

- name and external identification mark of vessel,
- division and sub-area in which research is to be carried out,
- estimated dates of entering and leaving the convention area,
- purpose of research,
- fishing equipment likely to be used.

2. Community vessels referred to in paragraph 1 shall be exempted from conservation measures relating to mesh size regulations, prohibition of types of gear, closed areas, fishing seasons and size limits, and reporting system requirements other than those specified in Article 5 (8) and Article 8 (4).

3. Member States whose vessels intend to conduct scientific fisheries research where the estimated total catch is expected to be more than 50 tonnes, shall submit to CCAMLR for review, with copy to the Commission, and at least six months in advance of the planned starting date for research, the research plan using the form provided by CCAMLR. Until the review process is completed by CCAMLR and its decision notified, the planned fishing for research purposes shall not proceed.

4. Member States should report catch and effort data resulting from any scientific fisheries research subject to paragraphs 1, 2 and 3 to CCAMLR, with a copy to the Commission, according to the haul-by-haul reporting format for research vessels (from C4). A summary of the results shall be provided by the Member State to CCAMLR, with a copy to the Commission, within 180 days of the completion of the research. A full report of

the results of the research shall be provided to CCAMLR, with a copy to the Commission within 12 months.

Article 18

Annex II fixes the rules for the experimental harvest regime for the crab fishery in FAO Antarctic sub-area 48.3 for the seasons 1995/1996 to 1997/1998, and the authorized fishing areas.

Article 19

Community fishing vessels shall have at least one CCAMLR designated scientific observer on board when the said vessels are engaged in a fishery for:

- *Lepidonotothen squamifrons*, in FAO Antarctic sub-area 58.4.4 from 5 November 1995 to 2 November 1996,
- *Dissostichus eleginoides* in FAO sub-area 48.3 and 48.4 from 1 March to 31 August 1996,
- *Champsocephalus gunnari* in FAO sub-area 48.3 from 4 November 1995 to 31 March 1996. Any vessel intending to participate in the fishery is required to undertake a scientific survey carried out in accordance with the survey design. The Member State concerned shall transmit a list of proposed trawl survey stations to CCAMLR with a copy to the Commission at least one month before the start of the survey.

Article 20

The use by fishing vessels of plastic packaging bands to secure bait boxes shall be prohibited in the 1996/1997 season.

The use of packaging bands for other purposes on fishing vessels which do not use on-board incinerators shall be prohibited in the 1996/1997 season.

Article 21

The changes to this Regulation necessary to implement the recommendations adopted by CCAMLR shall be made by the Council deciding by qualified majority on a proposal by the Commission.

Article 22

Regulation (EEC) No 2245/85 is hereby repealed.

Article 23

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

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

Done at Luxembourg, 25 October 1996.

For the Council

The President

E. KENNY

ANNEX I

DATA REQUIREMENTS ON THE EXPLORATORY CRAB FISHERY IN FAO ANTARCTIC
SUB-AREA 48.3**Catch and effort data:**

- Cruise descriptions:
 - cruise code, vessel code, permit number, year.
- Pot descriptions:
 - diagrams and other information, including pot shape, dimensions, mesh size, funnel position, aperture and orientation, number of chambers, presence of an escape port.
- Effort descriptions:
 - date, time, latitude and longitude of start of the set, compass bearing of the set, total number of pots set, spacing of pots on the line, number of pots lost, depth, soak time, bait type.
- Catch descriptions:
 - retained catch in numbers and weight, by catch of all species (see Table 1), incremental record number for linking with sample information.

Table 1

Species	Date requirements
<i>Dissostichus eleginoides</i>	Numbers and estimated total weight
<i>Notothenia rossii</i>	Numbers and estimated total weight
Other species	Estimated total weight

Biological data

For these data, crabs are to be sampled from the line hauled just prior to noon, by collecting the entire contents of a number of pots spaced at intervals along the line so that between 35 and 50 specimens are represented in the subsample.

Cruise descriptions

cruise code, vessel code, permit number.

Sample description

date, position at start of the set, compass of the set, line number.

Data

species, sex, length of the least 35 individuals, presence/absence of rhizocephalan parasites, record of the destination of the crab (kept, discarded, destroyed), record of the pot number from which the crab comes.

ANNEX II

EXPERIMENTAL HARVEST REGIME FOR THE CRAB FISHERY IN FAO ANTARTIC SUB-AREA 48.3 FOR THE 1995/1996 SEASON

The following measures apply to all crab fishing within statistical sub-area 48.3 for the 1995/1996 fishing season. Every vessel participating in the crab fishery in sub-area 48.3 shall conduct fishing operations in accordance with an experimental fishing regime as outlined below:

1. The experimental regime shall consist of three phases. Each vessel participating in the fishery shall complete all three phases. Phase 1 shall be conducted during the first season that a vessel participates in the experimental regime. Phases 2 and 3 shall be completed in the next season of fishing.
2. Vessels shall conduct phase 1 of the experimental regime at the start of their first season of participation in the experimental regime. For the purposes of phase 1, the following conditions shall apply:
 - (i) Phase 1 shall be defined as a vessel's first 200 000 pot hours of effort at the start of its first fishing season.
 - (ii) Every vessel conducting phase 1 shall expend its first 200 000 pot hours of effort within a total area delineated by 12 blocks 0,5° latitude by 1° longitude. For each string, pot hours shall be calculated by taking the total number of pots on the string and multiplying by the soak time (in hours) for that string. Soak time shall be defined for each string as the time between start of setting and start of hauling.
 - (iii) Vessels shall not fish outside the area delineated by the 12 blocks 0,5° latitude by 1° longitude prior to completing phase 1.
 - (iv) During phase 1, vessels shall not expend more than 30 000 pot hours in any single 0,5° latitude by 1° longitude block.
 - (v) If a vessel returns to port before it has expended 200 000 pot hours in phase 1, the balance of remaining pot hours shall be expended before the vessel can consider phase 1 to be completed.
 - (vi) After completing 200 000 pot hours of experimental fishing, vessels shall consider phase 1 to be completed and commence fishing in a normal fashion.
3. Normal fishing operations shall be conducted in accordance with the rules set out in Articles 3 and 5 (4), 6 (2) and 8 (2).
4. For the purposes of implementing normal fishing operations after phase 1 of the experimental regime, the 10-day catch and effort reporting system set out in 7 (2) shall apply.
5. Vessels shall conduct phase 2 of the experimental regime at the start of their second season of participation in the experimental regime. For the purposes of phase 2, the following conditions shall apply:
 - (i) Every vessel conducting phase 2 shall fish in three small squares measuring approximately 26 square nautical miles in area (the dimensions of these squares shall be 6° latitude by 7,5° longitude). These squares shall be subdivisions of the blocks delineated in phase 1 of the experimental regime.
 - (ii) The captains of vessels shall determine the location of the three squares that will be fished, but selected squares may not be contiguous and the distance between the boundaries of any two squares must be at least four nautical miles.
 - (iii) Vessels shall fish continuously (except in emergencies or foul weather conditions) within a single square until the average catch per pot has been reduced to 25 % or less of its initial value and then continue fishing for an additional 7 500 pot hours. No more than 50 000 total pot hours shall be expended in each square. For the purposes of phase 2, the initial catch rate for a particular square shall be defined as the average catch per pot calculated from the first five sets made in that square. Soak times for these initial sets shall be at least 24 hours.
 - (iv) Vessels shall finish fishing in one square before starting operations in another square.
 - (v) Vessels shall attempt to distribute effort throughout the entire square and not fish the gear in the same location on every set, the distance between the boundaries of any two squares being at least four nautical miles.
 - (vi) After completing fishing operations in the third square, fishing vessels shall consider phase 2 to be completed and commence fishing in a normal fashion.

6. For the purposes of implementing normal fishing operations after phase 2 of the experimental regime, the 10-day Catch and Effort Reporting System shall apply.
 7. Vessels shall conduct Phase 3 of the experimental regime at the end of their second season of participation in the experimental regime. For the purposes of Phase 3, the following conditions shall apply:
 - (i) A vessel shall begin conducting Phase 3 of the experimental regime approximately one week prior to the conclusion of its second fishing season. A vessel's fishing season shall be conducted if the vessel leaves the fishery voluntarily or if the fishery is closed because the TAC has been attained.
 - (ii) If a master of a Community vessel voluntarily concludes fishing operations, the vessel shall begin implementing Phase 3 approximately one week prior to the conclusion of its fishing operations.
 - (iii) CCAMLR will notify (according to the guidelines set out in 10-day Catch and Effort Report System) all Contracting Parties that are conducting operations in their second experimental fishing season to begin Phase 3 when approximately one week remains before the TAC is attained and the fishery is closed.
 - (iv) To conduct Phase 3, every vessel shall return to the three squares it depleted during Phase 2 of the experimental regime and expend between 10 000 and 15 000 pot hours of effort in each square.
 8. To facilitate analysis of data collected during Phases 2 and 3, vessels shall report the coordinates defining the boundaries of the square where fishing occurred, date, number and spacing of pots and soak time, and catch (numbers and weight) for each haul.
 9. Data collected during the experimental harvest regime up to 30 June in any split-year shall be submitted to CCAMLR by 31 August of the following split-year, a split-year being defined as the period from 1 July to 30 June of the following year.
 10. Vessels that complete all three phases of the experimental regime shall not be required to conduct experimental fishing in future seasons. However, these vessels shall abide by the guidelines set forth in Articles 3, 5 (4), 6 (2) and 8 (2).
 11. Fishing vessels shall participate in the experiment independently (e.g. vessels may not cooperate to complete phases of the experiment).
 12. Crabs captured during the experimental regime shall be considered part of the prevailing TAC for the current fishing season (e.g. for 1995/1996, experimental catches shall be considered part of the 1 600 tonnes TAC outlined in Article 5 (4)).
 13. The experimental regime shall be instituted for a period of three split-years (1995/1996, 1996/1997 and 1997/1998), and the details of the regime may be revised by the Commission during this period of time. Fishing vessels that begin experimental fishing in the 1996/1997 split-year must complete the regime during the 1998/1999 split-year, a split-year being defined as the period from 1 July to 30 June of the following year.
-

ANNEX III

MINIMUM MESH SIZE PROVIDED FOR IN ARTICLE 14

Species	Type of net	Minimum mesh size
<i>Notothernia rossii</i>	Trawls, Danish seines and similar nets	120 mm
<i>Dissostichus eleginoides</i>	Trawls, Danish seines and similar nets	120 mm
<i>Gobionotothen gibberifrons</i>	Trawls, Danish seines and similar nets	80 mm
<i>Notothernia kempfi</i>	Trawls, Danish seines and similar nets	80 mm
<i>Lepidonotothen squamifrons</i>	Trawls, Danish seines and similar nets	80 mm
<i>Champsocephalus gunnari</i>	Trawls, Danish seines and similar nets	90 mm

ANNEX IV

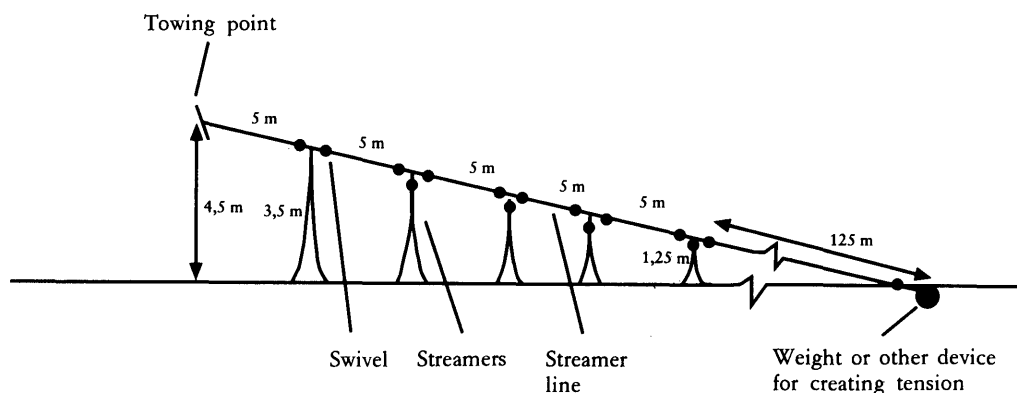
MEASURES TO REDUCE THE INCIDENTAL MORTALITY OF SEABIRDS DURING
LONGLINE FISHING IN THE CONVENTION AREA, EXCEPT FOR FAO ANTARCTIC SUB-
AREAS 58.6, 58.7 AND FAO ANTARCTIC DIVISION 58.5.1

- (a) Fishing operations shall be conducted in such a way that the baited hooks sink as soon as possible after they are put in the water. Only thawed bait shall be used.
- (b) Longlines shall be set at night only (between the times of nautical twilight). During longline fishing at night, only the minimum ship's lights necessary for safety shall be used.
- (c) The dumping of offal should be avoided while longlines are being set or hauled; if discharge of offal is unavoidable, this discharge shall take place as far as possible and/or on the opposite side of the vessel from the area of the vessel where longlines are set or hauled.
- (d) Every effort should be made to ensure that birds captured alive during longlining are released alive and that wherever possible hooks are removed without jeopardizing the life of the bird concerned.
- (e) A streamer line designed to discourage birds from settling on baits during deployment of longlines shall be towed. Specification of the streamer line and its method of deployment is given in the Appendix to this measure. Details of the construction relating to the member and placement of swivels may be varied so long as the effective sea surface covered by the streamer is no less than that covered by the currently specified design. Details of the device dragged in the water in order to create tension in the line may also be varied.
- (f) The use of net monitor cables on harvesting vessels in the convention area is prohibited from the 1994/1995 fishing season.
- (g) Data on the numbers of sea birds of each species killed or injured in incidents involving the net monitor cable in the directed fishery of *Lepidonotothen squamifrons* in FAO Antarctic sub-area 58.4.4 for the 1995/1996 season shall also be reported.
- (h) Other variation in the design of streamer lines may be tested on vessels carrying two observers, at least one appointed in accordance with the CCAMLR scheme of international scientific observation.

Appendix attached.

Appendix

1. The streamer line is to be suspended at the stern from a point approximately 4,5 m above the water and such that the line is directly above the point where the bait hits the water.
2. The streamer line is to be approximately 3 mm in diameter, have a minimum length of 150 m and have a device at the end to create tension so that the main line streams directly behind the ship even in cross winds.
3. At 5 m intervals commencing from the point of attachment to the ship five branch streamers each comprising two strands of approximately 3 mm diameter cord should be attached. The length of the streamer should range between approximately 3,5 m nearest the ship to approximately 1,25 m for the fifth streamer. When the streamer line is deployed the branch streamers should reach the sea surface and periodically dip into it as the ship heaves. Swivels should be placed in the streamer line at the towing point, before and after the point of attachment of each branch streamer and immediately before any weight placed on the end of the streamer line. Each branch streamer should also have a swivel at its attachment to the streamer line.



ANNEX V

INFORMATION TO BE SUBMITTED FOR AN EXPLORATORY FISHERY

1. To ensure that adequate information is made available to the Scientific Committee set up by the Convention for evaluation, during the period when a fishery is classified as exploratory:
 - (i) the Scientific Committee will develop (and update annually as appropriate) a data collection plan, which will identify the data needed and describe the actions necessary to obtain the relevant data from the exploratory fishery;
 - (ii) each Member State active in the fishery shall annually by the (specified date) submit to CCAMLR the data specified by the data collection plan developed by the Scientific Committee;
 - (iii) each Member State active in the fishery or intending to authorize a vessel to enter the fishery shall annually prepare and submit to CCAMLR by a specified date a research and fishery operations plan for review by the Scientific Committee and the Commission;
 - (iv) prior to any Member State authorizing its vessels to enter an exploratory fishery that is already in progress, that Member shall notify the Commission not less than three months in advance of the next regular meeting of the Commission and the Member shall not enter the exploratory fishery until the conclusion of that meeting;
 - (v) if the data specified in the data collection plan have not been submitted to CCAMLR for the most recent season in which fishing occurred, continued exploratory fishing by the Member State which failed to report its data shall be prohibited until the relevant data have been submitted to CCAMLR and the Scientific Committee has been allowed an opportunity to review the data;
 - (vi) fishing capacity and effort shall be limited by a precautionary catch limit at a level not substantially above that necessary to obtain the information specified in the data collection plan and required to make the evaluations outlined in Article 16;
 - (vii) the name, type, size, registration number and radio call sign of each vessel participating in the exploratory fishery shall be registered with the CCAMLR Secretariat at least three months in advance of starting each fishing season; and
 - (viii) each vessel participating in the exploratory fishery shall carry a scientific observer to ensure that the data is collected in accordance with the agreed data collection plan and to assist in collecting biological and other relevant data.
2. The data collection plan to be formulated and updated by the Scientific Committee shall include, where appropriate:
 - (i) a description of the catch effort and related biological, ecological and environmental data required to undertake the evaluations described in Article 16 and the date by which the agreed data is to be annually reported to CCAMLR;
 - (ii) a plan for directing fishing effort during the exploratory phase to permit the acquisition of relevant data to evaluate the fishery potential and the ecological relationships among harvested, dependent, and related populations and the likelihood of adverse impacts; and
 - (iii) an evaluation of the time-scales involved in determining the responses of harvested, dependent and related populations to fishing activities.
3. Research and fisheries operations plans to be prepared by Member States participating or intending to participate in the exploratory fishery shall include as much of the following information as the Member State is able to provide:
 - (i) a description of how the Member States' activities will comply with the data collection plan developed by the Scientific Committee;
 - (ii) the nature of the exploratory fishery, including target species, methods of fishing, proposed region and maximum catch levels proposed for the forthcoming season;
 - (iii) biological information from comprehensive research/survey cruises, such as distribution, abundance, demographic data, and information on stock identity;
 - (iv) details of dependent and related species and the likelihood of them being affected by the proposed fishery; and
 - (v) information from other fisheries in the region or similar fisheries elsewhere that may assist in the evaluation of potential yield.

COMMISSION REGULATION (EC) No 2114/96
of 4 November 1996
on the supply of vegetable oil as food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food security⁽¹⁾, and in particular Article 24 (1) (b) thereof,

Whereas the abovementioned Regulation lays down the list of countries and organizations eligible for food-aid operations and specifies the general criteria on the transport of food aid beyond the fob stage;

Whereas, following the taking of a number of decisions on the allocation of food aid, the Commission has allocated vegetable oil to certain beneficiaries;

Whereas it is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community food aid⁽²⁾, as amended by Regulation (EEC) No 790/91⁽³⁾; whereas it is necessary to specify the time limits and conditions of supply and the procedure to be followed to determine the resultant costs;

Whereas, in order to ensure that the supplies are carried out, provision should be made for tenderers to be able to mobilize either rapeseed oil or sunflower oil; whereas the contract for the supply of such each lot is to be awarded to the tenderer submitting the lowest tender,

HAS ADOPTED THIS REGULATION:

Article 1

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

The supply shall cover the mobilization of vegetable oil produced in the Community. Mobilization may not involve a product manufactured and/or packaged under inward processing arrangements.

Tenders relating to the lots specified in Annex shall cover either rapeseed oil or sunflower oil. Tenders shall be rejected unless they specify the type of oil to which they relate.

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

Article 2

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

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

Done at Brussels, 4 November 1996.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 166, 5. 7. 1996, p. 1.

⁽²⁾ OJ No L 204, 25. 7. 1987, p. 1.

⁽³⁾ OJ No L 81, 28. 3. 1991, p. 108.

ANNEX

LOT A

1. **Operation No** ⁽¹⁾: 1125/95
2. **Programme**: 1995
3. **Recipient** ⁽²⁾: WFP (World Food Programme), via Cristoforo Colombo 426, I-00145 Roma; (tel.: (39-6) 57 971; telex: 626675 WFP I)
4. **Representative of the recipient**: to be designated by the recipient
5. **Place or country of destination** ⁽³⁾: Guatemala
6. **Product to be mobilized**: vegetable oil: refined rapeseed oil or refined sunflower oil
7. **Characteristics and quality of the goods** ⁽³⁾ ⁽⁷⁾ ⁽⁹⁾: see OJ No C 114, 29. 4. 1991, p. 1 (III. A (1) (a) or (b))
8. **Total quantity (tonnes)**: 300
9. **Number of lots**: 1
10. **Packaging and marking** ⁽⁶⁾ ⁽⁸⁾: see OJ No C 114, 29. 4. 1991, p. 1 (III.A. (2). (1), III.A. (2). (3) and III.A. (3))
 - five-litre metal canister, without cardboard cross-pieces
 - language to be used for the marking: Spanish
11. **Method of mobilization**: mobilization of refined vegetable oil produced in the Community. Mobilization may not involve a product manufactured and/or packaged under inward-processing arrangements
12. **Stage of supply**: free at port of landing — landed
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: Santo Tomás de Castilla
16. **Address of the warehouse and, if appropriate, port of landing**: —
17. **Period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage**: 16 — 29. 12. 1996
18. **Deadline for the supply**: 19. 1. 1997
19. **Procedure for determining the costs of supply**: invitation to tender
20. **Date of expiry of the period allowed for submission of tenders**: 12 noon (Brussels time) on 19. 11. 1996
21. **In the case of a second invitation to tender**:
 - (a) deadline for the submission of tenders: 12 noon (Brussels time) on 3. 12. 1996
 - (b) period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage: 30. 12. 1996 — 12. 1. 1997
 - (c) deadline for the supply: 2. 2. 1997
22. **Amount of the tendering security**: ECU 15 per tonne
23. **Amount of the delivery security**: 10 % of the amount of the tender in ecus
24. **Address for submission of tenders and tendering securities** ⁽¹⁾:

Bureau de l'aide alimentaire, Attn. Mr T. Vestergaard
Bâtiment Loi 130, bureau 7/46
Rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel
telex: 25670 AGREC B; fax: (32-2) 296 70 03 / 296 70 04
25. **Refund payable on application by the successful tenderer** ⁽⁴⁾: —

Notes:

- (¹) The operation number should be mentioned in all correspondence.
- (²) The successful tenderer shall contact the recipient as soon as possible to establish which consignment documents are required.
- (³) The successful tenderer shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.
- (⁴) Article 7 (3) (g) of Regulation (EEC) No 2200/87 shall not be applicable to tenders submitted.
- (⁵) Commission delegation to be contacted by the successful tenderer: OJ No C 114, 29. 4. 1991, p. 33.
- (⁶) Notwithstanding OJ No C 114, point IIIA (3)(c) is replaced by the following: 'the words "European Community"'.

- (⁷) The successful tenderer shall supply to the beneficiary or its representative, on delivery, a sanitary certificate.
- (⁸) Placed in 20-foot containers. The free holding period for containers must be at least 15 days.
- (⁹) Tenders shall be rejected unless they specify the type of oil to which they relate.

COMMISSION REGULATION (EC) No 2115/96
of 4 November 1996
on the supply of cereals as food aid

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

Having regard to Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food security ⁽¹⁾, and in particular Article 24 (1) (b) thereof,

Whereas the abovementioned Regulation lays down the list of countries and organizations eligible for food-aid operations and specifies the general criteria on the transport of food aid beyond the fob stage;

Whereas, following the taking of a number of decisions on the allocation of food aid, the Commission has allocated cereals to certain beneficiaries;

Whereas it is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community food aid ⁽²⁾, as amended by Regulation (EEC) No 790/91 ⁽³⁾; whereas it is necessary to specify the time limits and conditions of

supply and the procedure to be followed to determine the resultant costs,

HAS ADOPTED THIS REGULATION:

Article 1

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

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

Article 2

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

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

Done at Brussels, 4 November 1996.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 166, 5. 7. 1996, p. 1.

⁽²⁾ OJ No L 204, 25. 7. 1987, p. 1.

⁽³⁾ OJ No L 81, 28. 3. 1991, p. 108.

ANNEX

LOT A

1. **Operation No** ⁽¹⁾: 28/96
2. **Programme**: 1996
3. **Recipient** ⁽²⁾: Gabinete de Gestão das Ajudas, Caixa Postal No 31, Av Marginal 12 de Julho. Tel: (239 12) 216 72/219 98 (contacto Sr. Diogenes Moniz)
4. **Representative of the recipient**: São Tomé and Príncipe
5. **Place or country of destination** ⁽³⁾: São Tomé and Príncipe
6. **Product to be mobilized**: common wheat flour
7. **Characteristics and quality of the goods** ⁽³⁾ ⁽⁷⁾: see OJ No C 114, 29. 4. 1991, p. 1 (II.B.(1)(a))
8. **Total quantity (tonnes)**: 1500
9. **Number of lots**: 1
10. **Packaging and marking** ⁽⁶⁾ ⁽⁸⁾ ⁽⁹⁾: see OJ No C 114, 29. 4. 1991, p. 1 (II.B.(2)(d) and II.B.(3))
Language to be used for the marking: Portuguese
11. **Method of mobilization**: the Community market
12. **Stage of supply**: free at destination
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: —
16. **Address of the warehouse and, if appropriate, port of landing**: magasins portuaires, São Tomé
17. **Period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage**: 16 to 29. 12. 1996
18. **Deadline for the supply**: 19. 1. 1997
19. **Procedure for determining the costs of supply**: invitation to tender
20. **Date of expiry of the period allowed for submission of tenders**: 12 noon (Brussels time) on 19. 11. 1996
21. **In the case of a second invitation to tender**:
 - (a) deadline for the submission of tenders: 12 noon (Brussels time) on 3. 12. 1996
 - (b) period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage: 30. 12. 1996 to 12. 1. 1997
 - (c) deadline for the supply: 2. 2. 1997
22. **Amount of tendering security**: ECU 5 per tonne
23. **Amount of delivery security**: 10 % of the amount of the tender in ecus
24. **Address for submission of tenders and tendering securities** ⁽¹⁾: Bureau de l'aide alimentaire, à l'attention de Monsieur T. Vestergaard, bâtiment Loi 130, bureau 7/46, rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel (telex: 25670 AGREC B; fax: (32 2) 296 70 03 / 296 70 04)
25. **Refund payable on application by the successful tenderer** ⁽⁴⁾: refund applicable on 15. 11. 1996, fixed by Commission Regulation (EC) No 2055/96 (OJ No L 276, 29. 10. 1996, p. 1)

Notes:

- (¹) The operation number should be mentioned in all correspondence.
- (²) The successful tenderer shall contact the recipient as soon as possible to establish which consignment documents are required.
- (³) The successful tenderer shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.
- (⁴) Commission Regulation (EEC) No 2330/87 (OJ No L 210, 1. 8. 1987, p. 56), as last amended by Regulation (EEC) No 2226/89 (OJ No L 214, 25. 7. 1989, p. 10), is applicable as regards the export refund. The date referred to in Article 2 of the said Regulation is that referred to in point 25 of this Annex.
The amount of the refund shall be converted into national currency by applying the agricultural conversion rate applicable on the day of completion of the customs export formalities. The provisions of Articles 13 to 17 of Commission Regulation (EEC) No 1068/93 (OJ No L 108, 1. 5. 1993, p. 106), as last amended by Regulation (EC) No 1482/96 (OJ No L 188, 27. 7. 1996, p. 22) shall not apply to this amount.
- (⁵) Commission delegation to be contacted by the successful tenderer: OJ No C 114, 29. 4. 1991, p. 33.
- (⁶) Since the goods may be rebagged, the successful tenderer must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.
- (⁷) The successful tenderer shall supply to the beneficiary or its representative, on delivery, the following documents:
 - phytosanitary certificate.
- (⁸) Notwithstanding OJ No C 114, points II.B(3)(c) are replaced by the following: 'the words "European Community"'.

- (⁹) Placed in 20-foot containers. The free holding period for containers must be at least 15 days.

COMMISSION REGULATION (EC) No 2116/96
of 4 November 1996

amending Council Regulation (EC) No 934/95 establishing tariff ceilings and a Community statistical surveillance in the framework of reference quantities for a certain number of products originating in Cyprus, Egypt, Jordan, Israel, Tunisia, Syria, Malta, Morocco and the Occupied Territories

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 934/95 of 10 April 1995 establishing tariff ceilings and a Community statistical surveillance in the framework of reference quantities for a certain number of products originating in Cyprus, Egypt, Jordan, Israel, Tunisia, Syria, Malta, Morocco and the Occupied Territories⁽¹⁾, as amended by Council Regulation (EC) No 585/96⁽²⁾, and in particular Articles 3 and 4 thereof,

Whereas Regulation (EC) No 934/95 established tariff ceilings and Community statistical surveillance within reference quantities for a certain number of products originating in Cyprus, Egypt, Jordan, Israel, Tunisia, Syria, Malta, Morocco and the Occupied Territories;

Whereas the above tariff measures were established on the basis of the agreements between the EC and the various Mediterranean countries concerned, and of Council Regulation (EEC) No 1134/91 on the tariff arrangements applicable to imports into the Community of products originating in the Occupied Territories⁽³⁾, as amended by Regulation (EC) No 539/96⁽⁴⁾, and are multiannual;

Whereas the validity of the measures set out in the annexes to Regulation (EC) No 934/95 lapses at different points within the period running from 1 November 1994 to 31 December 1996;

Whereas pending the entry into force of new preferential agreements, and to take account of the changes in the Combined Nomenclature and Taric codes, the annexes to Regulation (EC) No 934/95 need to be amended with effect from 1 November 1996 to enable the Mediterranean countries to continue exporting the products concerned on preferential terms, as provided for in the existing agreements;

Whereas Article 2 (4) of Annex I to the Agreement establishing an Association between the European Community and Malta⁽⁵⁾ as supplemented by the Additional Protocol⁽⁶⁾, the Supplementary Protocol⁽⁷⁾, and the Protocol extending the first stage of the Agreement⁽⁸⁾, provides that if imports of a product subject to a tariff ceiling are less than 90 % of the specified amount for two consecutive years, the Community will suspend application of that ceiling;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 934/95 is amended as follows:

1. The words 'Occupied Territories' in the title and Article 2 are replaced by 'the West Bank and the Gaza Strip'.
2. The annexes are replaced by the annexes to this Regulation.

Article 2

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

It shall apply from:

- 1 November 1996, in respect of order No 18.0380 of Annex II,
- 1 December 1996, in respect of order Nos 18.0060, 18.0310 and 18.0340 of Annex II,
- 1 January 1997, in respect of Annex I and the remaining order numbers of Annex II.

⁽¹⁾ OJ No L 96, 28. 4. 1995, p. 6.

⁽²⁾ OJ No L 84, 3. 4. 1996, p. 8.

⁽³⁾ OJ No L 112, 4. 5. 1991, p. 1.

⁽⁴⁾ OJ No L 79, 29. 3. 1996, p. 6.

⁽⁵⁾ OJ No L 61, 14. 3. 1971.

⁽⁶⁾ OJ No L 304, 29. 11. 1977.

⁽⁷⁾ OJ No L 81, 23. 3. 1989.

⁽⁸⁾ OJ No L 116, 9. 5. 1991.

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

Done at Brussels, 4 November 1996.

For the Commission

Mario MONTI

Member of the Commission

ANNEX I

List of products originating in Malta of which the importation is subject to tariff ceiling

Order No	CN code (1)	Description	Level of ceiling (tonnes)
11.0010	5204	Cotton sewing thread, whether or not put up for retail sale:	Application of this ceiling is suspended
		– Not put up for retail sale:	
	5204 11 00	– – Containing 85 % or more by weight of cotton	
	5204 19 00	– – Other	
	5205	Cotton yarn (other than sewing thread), containing 85 % or more by weight of cotton, not put up for retail sale	
	5206	Cotton yarn (other than sewing thread), containing less than 85 % by weight of cotton, not put up for retail sale	
	5604	Rubber thread and cord, textile covered; textile yarn, and strip and the like of heading No 5404 or 5405, impregnated, coated, covered or sheathed with rubber or plastics:	
	ex 5604 90 00	– Other:	
		– – Of cotton	
11.0020	5208	Woven fabrics of cotton, containing 85 % or more by weight of cotton, weighing not more than 200 g/m ²	Application of this ceiling is suspended
	5209	Woven fabrics of cotton, containing 85 % or more by weight of cotton, weighing more than 200 g/m ²	
	5210	Woven fabrics of cotton, containing less than 85 % by weight of cotton, mixed mainly or solely with man-made fibres, weighing not more than 200 g/m ²	
	5211	Woven fabrics of cotton, containing less than 85 % by weight of cotton, mixed mainly or solely with man-made fibres, weighing more than 200 g/m ²	
	5212	Other woven fabrics of cotton	
	5801	Woven pile fabrics and chenille fabrics, other than fabrics of heading No 5802 or 5806:	
		– Of cotton:	
	5801 21 00	– – Uncut weft pile fabrics	
	ex 5811 00 00	Quilted textile products in the piece, composed of one or more layers of textile materials assembled with padding by stitching or otherwise, other than embroidery of heading No 5810:	
		– Of cotton	
	ex 6308 00 00	Sets consisting of woven fabric and yarn, whether or not with accessories, for making up into rugs, tapestries, embroidered table cloths or serviettes, or similar textile articles, put up in packings for retail sale:	
		– Of cotton	
11.0030	5506	Synthetic staple fibres, carded, combed or otherwise processed for spinning	Application of this ceiling is suspended
	5507 00 00	Artificial staple fibres, carded, combed or otherwise processed for spinning	

Order No	CN code (*)	Description	Level of ceiling (tonnes)
11.0040	5608	Knotted netting of twine, cordage or rope; made up fishing nets and other made up nets, of textile materials:	Application of this ceiling is suspended
		– Of man-made textile materials:	
	5608 19	– – Other:	
		– – – Made-up nets:	
		– – – – Of nylon or other polyamides:	
	5608 19 19	– – – – – Other	
		– – – – – Other:	
	5608 19 39	– – – – – Other	
	5608 90 00	– Other	
	6101	Men's or boys' overcoats, car-coats, capes, cloaks, anoraks (including ski-jackets), wind-cheaters, wind-jackets and similar articles, knitted or crocheted, other than those of heading No 6103	
	6102	Women's or girls' overcoats, car-coats, capes, cloaks, anoraks (including ski-jackets), wind-cheaters, wind-jackets and similar articles, knitted or crocheted, other than those of heading No 6104	
	6103	Men's or boys' suits, ensembles, jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted	
	6104	Women's or girls' suits, ensembles, jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted	
	6106	Women's or girls' blouses, shirts and shirt-blouses, knitted or crocheted	
	6107	Men's or boys' underpants, briefs, nightshirts, pyjamas, bathrobes, dressing gowns and similar articles, knitted or crocheted:	
		– Other:	
	6107 91	– – Of cotton:	
	6107 91 10	– – – Of terry fabrics	
	6107 91 90	– – – Other	
	6107 92 00	– – Of man-made fibres	
	6107 99 00	– – Of other textile materials	
	6108	Women's or girls' slips, petticoats, briefs, panties, nightdresses, pyjamas, negligés, bathrobes, dressing gowns and similar articles, knitted or crocheted:	
		– Other:	
	6108 91	– – Of cotton:	
	6108 91 10	– – – Of terry fabrics	
	6108 91 90	– – – Others	
	6108 92 00	– – Of man-made fibres	
	6108 99	– – Of other textile materials:	
	6108 99 10	– – – Of wool or fine animal hair	
	6108 99 90	– – – Of other textile materials	
	6110	Jerseys, pullovers, cardigans, waistcoats and similar articles, knitted or crocheted:	
	6110 10	– Of wool or fine animal hair:	
		– – Other:	
		– – – Men's or boys':	
	6110 10 31	– – – – Of wool	
		– – – – Of fine animal hair:	
	6110 10 35	– – – – – Of Kashmir goats	

Order No	CN code (*)	Description	Level of ceiling (tonnes)
11.0040 (cont'd.)	6110 10 38	— — — — — Other	Application of this ceiling is suspended
		— — — — — Women's or girls':	
	6110 10 91	— — — — — Of wool	
		— — — — — Of fine animal hair:	
	6110 10 95	— — — — — Of Kashmir goats	
	6110 10 98	— — — — — Other	
	6110 20	— Of cotton	
		— — Other:	
	6110 20 91	— — — Men's or boys'	
	6110 20 99	— — — Women's or girls'	
	6110 30	— Of man-made fibres:	
		— — Other:	
	6110 30 91	— — — Men's or boys'	
	6110 30 99	— — — Women's or girls'	
	6110 90	— Of other textile materials:	
	6110 90 10	— — Of flax or ramie	
	6110 90 90	— — Other	
	6111	Babies' garments and clothing accessories, knitted or crocheted:	
	6111 10	— Of wool or fine animal hair:	
	6111 10 90	— — Other	
	6111 20	— Of cotton:	
	6111 20 90	— — Other	
	6111 30	— Of synthetic fibres:	
	6111 30 90	— — Other	
	6111 90 00	— Of other textile materials	
	6112	Track suits, ski suits and swimwear, knitted or crocheted:	
		— Track suits:	
	6112 11 00	— — Of cotton	
	6112 12 00	— — Of synthetic fibres	
	6112 19 00	— — Of other textile materials	
	6112 20 00	— Ski suits	
		— Men's or boys' swimwear:	
	6112 31	— — Of synthetic fibres:	
	6112 31 90	— — — Other	
	6112 39	— — Of other textile materials:	
	6112 39 90	— — — Other	
		— Women's or girl's swimwear:	
	6112 41	— — Of synthetic fibres:	
	6112 41 90	— — — Other	
	6112 49	— — Of other textile materials:	
	6112 49 90	— — — Other	
	6113 00	Garments, made up of knitted or crocheted fabrics of heading Nos 5903, 5906 or 5907:	
	6113 00 90	— Other	
	6114	Other garments, knitted or crocheted	

Order No	CN code (1)	Description	Level of ceiling (tonnes)
11.0040 (cont'd.)	6117	Other made-up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories	Application of this ceiling is suspended
	6301	Blankets and travelling rugs:	
	6301 20	– Blankets (other than electric blankets) and travelling rugs, of wool or of fine animal hair:	
	6301 20 10	– – Knitted or crocheted	
	6301 30	– Blankets (other than electric blankets) and travelling rugs, of cotton:	
	6301 30 10	– – Knitted or crocheted	
	6301 40	– Blankets (other than electric blankets) and travelling rugs, of synthetic fibres:	
	6301 40 10	– – Knitted or crocheted	
	6301 90	– Other blankets and travelling rugs:	
	6301 90 10	– – Knitted or crocheted	
	6302	Bed linen, table linen, toilet linen and kitchen linen:	
	6302 10	– Bed linen, knitted or crocheted:	
	6302 10 10	– – Of cotton	
	6302 10 90	– – Of other textile materials	
	6302 40 00	– Table linen, knitted or crocheted	
	6303	Curtains (including drapes) and interior blinds; curtain or bed valances:	
		– Knitted or crocheted:	
	6303 11 00	– – Of cotton	
	6303 12 00	– – Of synthetic fibres	
	6303 19 00	– – Of other textile materials	
	6304	Other furnishing articles, excluding those of heading No 9404:	
		– Bedspreads:	
	6304 11 00	– – Knitted or crocheted	
		– Other:	
	6304 91 00	– – Knitted or crocheted	
	6305	Sacks and bags, of a kind used for the packing of goods:	
	6305 20 00	– Of cotton	
		– Of man-made textile materials:	
	6305 32	– – Flexible intermediate bulk containers:	
		– – – Of polyethylene or polypropylene strip or the like:	
	6305 32 11	– – – – Knitted or crocheted	
		– – – – Other:	
	6305 32 81	– – – – – Of fabric weighing 120 g/m ² or less	
	6305 32 89	– – – – – Of fabric weighing more than 120 g/m ²	
	6305 33	– – Other, of polyethylene or polypropylene strip or the like:	
	6305 33 10	– – – Knitted or crocheted	
		– – – Other:	
	6305 33 91	– – – – Of fabric weighing 120 g/m ² or less	
	6305 33 99	– – – – Of fabric weighing more than 120 g/m ²	
	ex 6305 39 00	– – Other:	
		– – – Knitted or crocheted	
	ex 6305 90 00	– Of other textile materials:	
		– – Knitted or crocheted	
	6307	Other made up articles; including dress patterns:	
	6307 10	– Floor-cloths dish-cloths, dusters and similar cleaning cloths:	
	6307 10 10	– – Knitted or crocheted	
	6307 90	– Other:	
	6307 90 10	– – Knitted or crocheted:	

Order No	CN code (1)	Description	Level of ceiling (tonnes)
11.0050	6201	Men's or boys' overcoats, car-coats, capes, cloaks, anoraks (including ski-jackets), wind-cheaters, wind-jackets and similar articles, other than those of heading No 6203	2 158 (2)
	6203	Men's or boys' suits, ensembles, jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear)	
	6207	Men's or boys' singlets and other vests, underpants, briefs, nightshirts, pyjamas, bathrobes, dressing gowns and similar articles:	
		– Other:	
	6207 91	– – Of cotton:	
	6207 91 10	– – – Bathrobes, dressing gowns and similar articles of terry towelling and similar woven terry fabrics	
	6207 91 90	– – – Other	
	6207 92 00	– – Of man-made fibres	
	6207 99 00	– – Of other textile materials	
	6210	Garments, made up of fabrics of heading Nos 5602, 5603, 5903, 5906 or 5907:	
	6210 10	– Of fabrics of heading Nos 5602 or 5603:	
		– – Of fabrics of heading No 5603:	
	6210 10 91	– – – In sterile packs	
	6210 10 99	– – – Other	
	6210 20 00	– Other garments, of the type described in subheadings 6201 11 to 6201 19	
	6210 40 00	– Other men's or boys' garments	
	6211	Track suits, ski suits and swimwear; other garments:	
		– Swimwear:	
	6211 11 00	– – Men's or boys'	
	6211 20 00	– Ski suits	
		– Other garments, men's or boys':	
	6211 31 00	– – Of wool or fine animal hair	
	6211 32	– – Of cotton:	
	6211 32 10	– – – Industrial and occupational clothing	
		– – – Track suits with lining:	
	6211 32 31	– – – – With an outer shell of a single identical fabric	
		– – – – Other:	
	6211 32 41	– – – – – Upper parts	
	6211 32 42	– – – – – Lower parts	
	6211 32 90	– – – Other	
	6211 33	– – Of man-made fibres:	
	6211 33 10	– – – Industrial and occupational clothing	
		– – – Track suits with lining:	
	6211 33 31	– – – – With an outer shell of a single identical fabric	
		– – – – Other:	
	6211 33 41	– – – – – Upper parts	
	6211 33 42	– – – – – Lower parts	
	6211 33 90	– – – Other	
	6211 39 00	– – Of other textile materials	
	6217	Other made-up clothing accessories; parts of garments or of clothing accessories, other than those of heading No 6212:	
	6217 90 00	– Parts	

(1) The Taric subdivisions are to be found on the last page of this Annex.

(2) The amount of this ceiling is annually increased with 5 %.

Taric subdivision

Order No	CN code	Taric subdivision
11.0010	ex 5604 90 00	50
11.0020	ex 5811 00 00	14 91 92
	ex 6308 00 00	11 19
11.0040	ex 6305 39 00	91
	ex 6305 90 00	10 20

ANNEX II

Order No	CN code	Taric subdivision	Description	Period per year	Origin	Reference quantity per indicated period (in tonnes)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
18.0010	ex 0701 90 51	15	Potatoes, new	from 1.1 to 31.3	Tunisia	2 912
18.0015	0701 90 51 ex 0701 90 59	10	Potatoes, new	from 1.1 to 15.5 from 16.5 to 31.5	Malta	3 360
18.0030	ex 0703 20 00	40	Garlic	from 1.2 to 31.5	Egypt	1 920
18.0040	ex 0707 00 10	11 21 31 41 51 61	Small cucumbers of a length not exceeding 15 cm	from 1.1 to the end of February from 1.1 to the end of February from 1.1 to the end of February	Egypt Jordan Malta	120 120 60
18.0050	ex 0709 10 30 0709 10 40	80	Globe artichokes	from 1.10 to 31.12	Egypt Cyprus	120 120
18.0060	ex 0709 30 00	10 20 30 60	Aubergines (egg-plants)	from 1.12 to 30.4 of the following year	Israel	1 440
18.0070	0709 60 10		Sweet peppers	from 1.1 to 31.12	Morocco	1 200
18.0080	0712 20 00		Dried onions	from 1.1 to 31.12	Syria	840
18.0090	ex 0712 90 90	20	Dried garlic	from 1.1 to 31.12	Egypt	1 200
18.0100	0713 10 10		Peas (<i>Pisum sativum</i>), for sowing	from 1.1 to 31.12	Morocco	500
18.0120	0804 40		Avocados	from 1.1 to 31.12	Israel	37 200
18.0130	ex 0806 10 29	46 50 60 70	Fresh table grapes	from 15.5 to 11.7	Israel	2 280
18.0140	ex 0807 19 00	13 33	Small melons weighing 600 g or less	from 1.1 to 31.3 from 1.1 to 31.3	Egypt Jordan	120 120
18.0150	ex 0810 50 10	10	Kiwifruit (<i>Actinidia chinensis Planch</i>)	from 1.1 to 30.4 from 1.1 to 30.4 from 1.1 to 30.4	Israel Cyprus Morocco	240 240 240
18.0160	ex 0812 90 95	11 20	Other citrus fruit, comminuted, provisionally preserved	from 1.1 to 31.12	Israel	1 320
18.0190	2008 30 51 2008 30 71		Grapefruit and pomelo segments	from 1.1 to 31.12	Israel	16 440
18.0200	2008 50 61 2008 50 69		Apricots	from 1.1 to 31.12	Morocco	7 560

[illegible]

[illegible]

Order No	CN code	Taric subdivision	Description	Period per year	Origin	Reference quantity per indicated period (in tonnes)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
18.0360 (cont'd)	ex 0805 20 19	01				
		03				
		05				
		07				
		09				
		11				
		13				
		15				
		23				
		25				
		33				
		35				
		43				
		45				
		53				
	ex 0805 20 21	55				
		63				
		65				
		13				
		21				
	ex 0805 20 23	31				
		51				
		71				
		13				
	ex 0805 20 25	21				
		31				
		51				
		71				
	ex 0805 20 27	13				
		21				
		31				
		51				
	ex 0805 20 29	71				
		12				
		14				
		21				
		23				
	ex 0805 20 31	31				
		51				
		71				
		91				
		11				
	ex 0805 20 33	21				
		31				
		41				
		51				
		61				

Order No	CN code	Taric subdivision	Description	Period per year	Origin	Reference quantity per indicated period (in tonnes)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
18.0360 (cont'd)	ex 0805 20 35	11				
		21				
		31				
		41				
		51				
		61				
	ex 0805 20 37	11				
		21				
		31				
		41				
		51				
		61				
	ex 0805 20 39	11				
		21				
		31				
		41				
		51				
		61				
18.0370	ex 0805 30 20	11	Lemons (<i>Citrus limon</i> , <i>Citrus limonum</i>), fresh	from 1.1 to 31.12	West bank and the Gaza Strip	800
		15				
		21				
		25				
		31				
		35				
		41				
		45				
		51				
		55				
		61				
		65				
	ex 0805 30 30	12				
		16				
		22				
		26				
		32				
		36				
		42				
		46				
		52				
		56				
	ex 0805 30 40	62				
		66				
		11				
		21				
		31				
		41				
18.0380	ex 0807 19 00	51	Melons, fresh	from 1.11 to 31.5 of the following year	West bank and the Gaza Strip	10 000
		61				
		13				
		14				
		20				
		33				
		34				
		40				
		71				
		79				

**COMMISSION REGULATION (EC) No 2117/96
of 4 November 1996**

**amending Regulation (EC) No 1143/96 opening an invitation to tender for the
refund for the export of common wheat to all third countries except Ceuta,
Melilla and certain ACP States**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Article 1

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 Commission Regulation (EC) No 923/96⁽²⁾,

Regulation (EC) No 1143/96 is amended as follows:

1. The title is replaced by the following:

‘opening an invitation to tender for the refund for the export of common wheat to all third countries’.

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of the Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals⁽³⁾, as last amended by Regulation (EC) No 95/96⁽⁴⁾, and in particular Article 4 thereof,

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

‘2. The invitation to tender shall cover common wheat for export to all third countries’.

Whereas Commission Regulation (EC) No 1383/96⁽⁵⁾, as amended by Regulation (EC) No 1748/96⁽⁶⁾, opens an invitation to tender relating to the export of common wheat to Ceuta, Melilla and certain ACP States to close on 31 October 1996; whereas provision must be made for the possibility of exporting common wheat to Ceuta, Melilla and certain ACP States; whereas the destinations laid down in Commission Regulation (EC) No 1143/96⁽⁷⁾, as last amended by Regulation (EC) No 1796/96⁽⁸⁾, should therefore be amended;

3. The title of Annex I is replaced by the following:

‘Weekly tender for the refund for the export of common wheat to all third countries’.

4. Annex III is deleted.

Article 2

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

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

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

Done at Brussels, 4 November 1996.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ No L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ No L 147, 30. 6. 1995, p. 7.

⁽⁴⁾ OJ No L 18, 24. 1. 1996, p. 10.

⁽⁵⁾ OJ No L 179, 18. 7. 1996, p. 17.

⁽⁶⁾ OJ No L 229, 10. 9. 1996, p. 1.

⁽⁷⁾ OJ No L 151, 26. 6. 1996, p. 14.

⁽⁸⁾ OJ No L 236, 18. 9. 1996, p. 1.

COMMISSION REGULATION (EC) No 2118/96
of 4 November 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 1890/96⁽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 5 November 1996.

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

Done at Brussels, 4 November 1996.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ No L 249, 1. 10. 1996, p. 29.

⁽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 4 November 1996 establishing the standard import values for determining the entry price of certain fruit and vegetables

(ECU/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 45	204	57,1
	999	57,1
0707 00 35	624	94,3
	999	94,3
0709 90 79	052	88,1
	999	88,1
0805 20 31	204	84,4
	999	84,4
0805 20 33, 0805 20 35, 0805 20 37, 0805 20 39	052	51,1
	999	51,1
0805 30 40	052	68,6
	388	66,0
	524	52,7
	528	55,5
	999	60,7
0806 10 50	052	102,3
	400	253,7
	999	178,0
0808 10 92, 0808 10 94, 0808 10 98	052	68,2
	060	53,4
	064	47,4
	400	81,8
	404	70,1
	999	64,2
0808 20 67	052	70,0
	064	76,2
	400	68,3
	999	71,5

⁽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 2119/96
of 4 November 1996
amending 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 Commission Regulation (EC) No 923/96⁽²⁾,

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector⁽³⁾, and in particular Article 2 (1) thereof,

Whereas the import duties in the cereals sector are fixed by Commission Regulation (EC) No 2096/96⁽⁴⁾;

Whereas Article 2 (1) of Regulation (EC) No 1249/96 provides that if during the period of application, the

average import duty calculated differs by ECU 5 per tonne from the duty fixed, a corresponding adjustment is to be made; whereas such a difference has arisen; whereas it is therefore necessary to adjust the import duties fixed in Regulation (EC) No 2096/96,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EC) No 2096/96 are hereby replaced by Annexes I and II to this Regulation.

Article 2

This Regulation shall enter into force on 5 November 1996.

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

Done at Brussels, 4 November 1996.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ No L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ No L 161, 29. 6. 1996, p. 125.

⁽⁴⁾ OJ No L 282, 1. 11. 1996, p. 28.

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⁾	15,88	5,88
1001 90 91	Common wheat seed	50,87	40,87
1001 90 99	Common high quality wheat other than for sowing ⁽³⁾	50,87	40,87
	medium quality	50,52	40,52
	low quality	71,11	61,11
1002 00 00	Rye	77,40	67,40
1003 00 10	Barley, seed	77,40	67,40
1003 00 90	Barley, other ⁽³⁾	77,40	67,40
1005 10 90	Maize seed other than hybrid	90,51	80,51
1005 90 00	Maize other than seed ⁽³⁾	90,51	80,51
1007 00 90	Grain sorghum other than hybrids for sowing	77,40	67,40

⁽¹⁾ In the case of durum wheat not meeting the minimum quality requirements referred to in Annex I to Regulation (EC) No 1249/96, the duty applicable is that fixed for low-quality common wheat.

⁽²⁾ For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal (Article 2 (4) of Regulation (EC) No 1249/96), 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 1249/96 are met.

ANNEX II

Factors for calculating duties

(period from 31 October to 1 November 1996)

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

Exchange quotations	Minneapolis	Kansas City	Chicago	Chicago	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2. 14 %	HRW2. 11,5 %	SRW2	YC3	HAD2	US barley 2
Quotation (ECU/tonne)	111,39	116,37	107,78	81,89	161,66 ⁽¹⁾	100,14 ⁽¹⁾
Gulf premium (ECU/tonne)	—	18,35	6,36	12,85	—	—
Great lake premium (ECU/tonne)	13,94	—	—	—	—	—

⁽¹⁾ Fob Duluth.

2. Freight/cost: Gulf of Mexico — Rotterdam: ECU 11,21 per tonne; Great Lakes — Rotterdam: ECU 20,25 per tonne.

3. Subsidy (third paragraph of Article 4 (2) of Regulation (EC) No 1249/96: ECU 0,00 per tonne).

COMMISSION REGULATION (EC) No 2120/96

of 4 November 1996

providing for the grant of private storage aid fixed in advance for carcasses and half-carcasses of lamb in Finland

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3013/89 of 25 September 1989 on the common organization of the market in sheepmeat and goatmeat⁽¹⁾, as last amended by Regulation (EC) No 1589/96⁽²⁾, and in particular Article 7 (1) thereof,

Whereas Commission Regulation (EEC) No 3446/90 of 27 November 1990 laying down detailed rules for granting private storage aid for sheepmeat and goatmeat⁽³⁾, as last amended by Regulation (EC) No 3533/93⁽⁴⁾, lays down in particular detailed rules where the amount of aid is fixed at a flat rate in advance;

Whereas Commission Regulation (EEC) No 3447/90 of 28 November 1990 on special conditions for the granting of private storage aid for sheepmeat and goatmeat⁽⁵⁾, as last amended by Regulation (EC) No 40/96⁽⁶⁾, lays down in particular the minimum quantities per contract;

Whereas the application of Article 7 (1) of Regulation (EEC) No 3013/89 may result in a decision to grant private storage aid; whereas that Article provides for the application of these measures on the basis of the situation of each quotation zone; whereas, in view of the particularly difficult market situation in Finland it has been judged opportune to initiate such a procedure;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sheep and Goat Meat,

HAS ADOPTED THIS REGULATION:

Article 1

1. Subject to the provisions of Regulation (EEC) No 3447/90, applications may be submitted in Finland between 4 and 22 November 1996 for aid for the private storage of carcasses and half carcasses of lamb within the limits of 150 tonnes. Applications submitted on or after the day following that on which the total quantity applied for exceeds 150 tonnes shall not be accepted. Quantities in respect of which applications are lodged on the day the overall limit is exceeded shall be reduced proportionally.

2. The level of aid for the minimum storage period of three months shall be ECU 1 100 per tonne. However, the actual storage period shall be chosen by the storer. This period may extend from a minimum of three months to a maximum of seven months. If the storage period is greater than three months the aid shall be increased on a daily basis by ECU 1,45 per tonne per day.

Article 2

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

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

Done at Brussels, 4 November 1996.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 289, 7. 10. 1989, p. 1.

⁽²⁾ OJ No L 206, 30. 7. 1996, p. 25.

⁽³⁾ OJ No L 333, 30. 11. 1990, p. 39.

⁽⁴⁾ OJ No L 321, 23. 12. 1993, p. 9.

⁽⁵⁾ OJ No L 333, 30. 11. 1990, p. 46.

⁽⁶⁾ OJ No L 10, 13. 1. 1996, p. 6.

COMMISSION REGULATION (EC) No 2121/96

of 4 November 1996

amending representative prices and additional duties for the import of certain products in the sugar sector

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

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector ⁽¹⁾, as last amended by Regulation (EC) No 1599/96 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1423/95 of 23 June 1995 laying down detailed implementing rules for the import of products in the sugar sector other than molasses ⁽³⁾, as last amended by Regulation (EC) No 1127/96 ⁽⁴⁾, and in particular the second subparagraph of Article 1 (2), and Article 3 (1) thereof,

Whereas the amounts of the representative prices and additional duties applicable to the import of white sugar, raw sugar and certain syrups are fixed by Commission Regulation (EC) No 1195/96 ⁽⁵⁾, as last amended by Regulation (EC) No 2085/96 ⁽⁶⁾;

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 5 November 1996.

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

Done at Brussels, 4 November 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 141, 24. 6. 1995, p. 16.

⁽⁴⁾ OJ No L 150, 25. 6. 1996, p. 12.

⁽⁵⁾ OJ No L 161, 29. 6. 1996, p. 3.

⁽⁶⁾ OJ No L 279, 31. 10. 1996, p. 28.

ANNEX

to the Commission Regulation of 4 November 1996 amending representative prices and the amounts of additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 99

(ECU)

CN code	Amount of representative prices per 100 kg net of product concerned	Amount of additional duty per 100 kg net of product concerned
1701 11 10 ⁽¹⁾	20,21	6,20
1701 11 90 ⁽¹⁾	20,21	11,80
1701 12 10 ⁽¹⁾	20,21	6,01
1701 12 90 ⁽¹⁾	20,21	11,28
1701 91 00 ⁽²⁾	24,85	13,01
1701 99 10 ⁽²⁾	24,85	8,29
1701 99 90 ⁽²⁾	24,85	8,29
1702 90 99 ⁽³⁾	0,25	0,40

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

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

⁽³⁾ By 1 % sucrose content.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 17 July 1996

concerning State aid that the City of Mainz, a local authority of the Federal Republic of Germany, has granted to Grundstücksverwaltungsgesellschaft Fort Malakoff Mainz mbH & Co. KG, a subsidiary of Siemens AG/Siemens Nixdorf Informationssysteme AG

(Only the German text is authentic)

(Text with EEA relevance)

(96/631/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Articles 92 and 93 thereof;

Having given notice, in accordance with Article 93 (2) of the EC Treaty, to the other Member States and third parties concerned to submit their comments,

Whereas:

I

On 21 December 1994 the Commission, after having received detailed complaints from external sources, decided to initiate the procedure under Article 93 (2) of the EC Treaty with regard to a land-sale agreement between the City of Mainz and Grundstücksverwaltungsgesellschaft Fort Malakoff Mainz mbH & Co. KG, a real-estate holding of Siemens AG/Siemens Nixdorf Informationssysteme AG. It concluded that the terms and conditions of the agreement might contain State aid elements incompatible with the common market. The German Government was informed about the decision by letter dated 23 January 1995. The German authorities were requested to provide further information concerning the details of the case and to submit an expert valuation by the date of the sales contract of the site in question. On 19 April 1995, the German Government informed the

Commission that such expert valuation was in preparation and that it would submit its comments in substance once the expert valuation was available.

On 5 May 1995, the decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽¹⁾, with the request to other Member States and other interested parties to submit their comments. No such comments were received.

On 10 July 1995, the German Government submitted the expert valuation with some additional comments. On 9 October 1995, the case was, amongst other issues, the subject of a meeting between representatives of the Commission and the German Government. On 17 January 1996, the Commission transmitted a list of questions concerning the details of the expert valuation, and in particular their calculation concerning the economic relevance of some provisions of the sales contract. By letter dated 18 March 1996, the German authorities proposed to discuss these questions in a meeting with representatives of the administration of the City of Mainz, the land valuers and representatives of the Commission. This meeting was held on 26 March 1996 in Bonn. It was agreed that the German authorities would submit additional comments and information regarding the questions which could not be solved during that meeting in writing. The German Government sent its additional comments and information on 23 May 1996.

⁽¹⁾ OJ No C 113, 5. 5. 1995, p. 17.

II

By contract dated 24 February 1992, the City of Mainz acquired a site of 24 212 m² in the inner area of Mainz, close to the Rhine, from the *Land* of Rheinland-Pfalz which had used it for the barracks of one of its riot police units. The City of Mainz, as part of a general policy to render the inner area of the town more attractive, preferred to have the riot police unit moved to another area.

The City of Mainz acquired the site at a price of DM 33 950 000 (DM 1 402,20 per m²). This price was based on a valuation carried out by the Staatsbauamt Mainz-Süd on 8 July 1980, namely 12 years before the date of the purchase contract. The price was calculated on the basis of a value of the land of DM 10 895 400 (DM 450,00 per m²) and a value of the buildings of DM 23 054 600. According to the sales contract the ownership of the land was to be transferred by mid-1994.

The contract between the City of Mainz and the *Land* Rheinland-Pfalz stipulates that the transfer of the site to the City of Mainz is agreed to enable the City of Mainz to sell the land, after removal of the existing buildings, to Siemens AG or Siemens Nixdorf Informationssysteme AG or to related enterprises, under the following terms and conditions:

- the final purchaser has to accept contractually the obligation to construct office and business buildings for a distribution and training centre of Siemens AG and/or Siemens Nixdorf Informationssysteme AG and shall be liable to pay a contractual penalty of DM 7 million should this obligation not be fulfilled,
- the final purchaser has to let the built-up site for a minimum period of 15 years to Siemens AG, Siemens Nixdorf Informationssysteme AG or connected firms, which have to run a taxable business ('Gewerbsteuer') for the benefit of Mainz,
- the final purchaser shall be liable to pay an increased purchase price for the site which shall correspond to the actual market value of the site at the date of the purchase contract, but at least DM 40 million, half of which is to be transferred by the City of Mainz to the *Land* of Rheinland-Pfalz, should the latter provision not be fulfilled, or only partially so,
- the latter obligation shall be covered by a maximum-sum mortgage.

The main part of the said area together with other sites already belonging to the City of Mainz were sold to Grundstücksverwaltungsgesellschaft Fort Malakoff Mainz mbH & Co. KG, a real-estate holding of Siemens AG/Siemens Nixdorf Informationssysteme AG (hereinafter referred to as 'Fort Malakoff'), by contract likewise

dated 24 February 1992. The whole area comprises 22 010 m² and was sold for DM 13 528 650 (DM 614,66/m²).

The purchase contract between Fort Malakoff and the City of Mainz honours the obligations accepted by the City of Mainz *vis-à-vis* the *Land* Rheinland-Pfalz:

- Fort Malakoff is obliged to construct office and business buildings with 25 000 m² usable floor space, a 800-car parking garage for a distribution and training centre of Siemens AG/Siemens Nixdorf Informationssysteme AG that is to be created. The construction must be terminated at the latest five years after the conclusion of the purchase agreement, namely in February 1997,
- if the construction is not terminated on time, or if Fort Malakoff concludes a sales contract with a third party, the City of Mainz has the right to claim retransfer of the site, secured by a priority notice of conveyance in the *Land* Title Register, and a compounded indemnification of DM 7 million,
- Fort Malakoff is further obliged to let the built-up site no later than one year after completion of the buildings, for a minimum period of 15 years to Siemens AG, Siemens Nixdorf Informationssysteme AG or related enterprises, where these enterprises have to run a taxable business,
- in case the latter provision is not or only partially fulfilled, Fort Malakoff has to pay the difference between the purchase price agreed and the actual market value of the site at the time of sale, but at least DM 40 million covering also the abovementioned indemnification of DM 7 million,
- this potential claim of the City of Mainz was secured by a first priority maximum-sum mortgage of DM 40 million to be registered in the *Land* Title Register, the mortgage being subordinated, however, to financing debts of up to a maximum of 50 % of the costs of construction plus the purchase price.

The purchase price for the site was payable at the date of the transfer of ownership, set at 1 January 1995. There is no agreement covering interest to be paid for the intervening period.

III

The German Government is of the opinion that the terms and conditions of the land-sale agreement between the City of Mainz and Fort Malakoff does not contain elements of State aid.

They stress that the purchase price the City of Mainz paid to acquire the land (DM 1 402,20/m²) is of no relevance to the value of the site that was sold to Fort Malakoff because it acquired a built-up site and sold an empty site while the City decided to bear the costs of the dismantling of the riot police barracks, pursuing public interest for city development.

The independent group of land valuers in the City of Mainz, instructed by the City of Mainz on 14 February 1995 'to examine whether the purchase price for the site to be valued contains undue State aid elements', provided a valuation of the market value of the site in question on the date of the conclusion of the sales contract and gave its expert opinion as to the economic relevance of the different particular provisions of the purchase contract. The German Government submitted this valuation and emphasized that it shared the view of the experts concerning the economic relevance of these provisions.

The experts came to the following conclusions:

- the market value of the empty site, established on the basis of purchase prices agreed for comparable sites in the area of Mainz, was at the date of the conclusion of the sales contract DM 969 per m²,
- certain disadvantages of the location of the site as compared to other sites were identified and it was noted that, contrary to the compared sites, the purchaser would have to take several measures to drain ground water, as the site in question is close to the Rhine. The calculated disadvantages were valued at DM 58 per m². This figure was corrected to DM 59 per m² after the discussion of 26 March 1996.
- the costs of dismantling the remaining buildings (the site was sold as undeveloped and the costs of cleaning the site were to be borne by the City of Mainz) were valued at DM 44 per m²,
- the obligation on the part of the purchaser to erect a certain type of building in a predefined period was valued at DM 158,50 per m²;
- the provision that the purchaser would have to pay the purchase price only after transfer of ownership was calculated to be an advantage for the purchaser, worth DM 131 per m²,
- the obligation on Fort Malakoff to rent out the built-up site to Siemens AG and/or Siemens Nixdorf Informationssysteme AG to be used for a training centre for a minimum period of 15 years was considered to have no effect on value ('wertneutral') for the purchaser. The experts were of the opinion that such provisions are normally balanced by a rent contract which the purchaser concluded before accepting such provision and that there was no economic disadvantage for the purchaser in such obligation. This was held true also for the obligation to pay the difference between the agreed purchase price and the market value as at the date of the contract, but at least DM 40 million, if the obligation is not fulfilled because also this provision is under normal

circumstances backed in the rent contract concluded before.

- the contract between the City and Fort Malkoff provided for the obligation of the purchaser to pay the difference between the agreed purchase price and the market value at the date of the contract. It was further agreed that this potential claim should be set at a lump-sum of DM 40 million, but that this amount might ultimately be higher if land valuers appointed by the parties were to value the land at more than DM 53 528 million. The contract further provided for the obligation on the part of the purchaser to secure this potential claim by a first priority maximum-sum mortgage of DM 40 million to be registered in the *Land Title Register*. The mortgage was to be registered at first priority, but it was agreed that it might be subordinated to mortgages to cover up to 50 % of the costs of the construction of the planned buildings plus the purchase price. This obligation to provide security by way of mortgage, however, was considered to represent a disadvantage to the purchaser which would, according to the experts, under general market practices need to be balanced by a lower purchase price. Owing to the maximum-sum mortgage, the costs for the financing of the real estate project would increase because it would not be possible to offer creditors a first-ranking mortgage covering more than 50 % of the costs for the construction plus the purchase price. Thus, the interest rate for loans would be higher or the purchaser would have to use more of his own capital. The disadvantage of this provision, calculated on the basis of the normal fee for a bank guarantee (1,2 %), replacing the first-ranking mortgage, was calculated at DM 5 416 792, i.e. DM 246 per m².

The market value of the site was consequently calculated as follows:

'normal' market value	DM 968,00/m ²
— <i>minus</i> costs for drainage and disadvantages of the location	— DM 59,00/m ²
— <i>minus</i> costs for dismantling of buildings	— DM 44,00/m ²
— <i>minus</i> obligation to erect the buildings	— DM 158,50/m ²
— <i>plus</i> advantage of later payment of the purchase price	+ DM 131,00/m ²
— <i>minus</i> disadvantage related to the obligation to secure the obligation to pay the difference between the purchase price agreed and the market value by a mortgage	— DM 246,00/m ²
'special' market value	= DM 591,50/m ²

The experts concluded that the purchase price agreed (DM 13 528 650 = DM 614,66/m²) would therefore not be lower than the 'special' market value of the site.

Regarding the 'normal' market value of the site, established by the valuers on the basis of sales of comparable sites in Mainz without taking into account the various particular provisions of the sales contract between the City of Mainz and Fort Malakoff, the German Government is of the opinion that it should, owing to the status and competence of the independent committees of land valuers, in general not be contested. As concerns the opinion of the valuers regarding the particular contractual conditions of the sales contract, the German authorities expressly endorsed the calculations and argumentation of the experts.

Regarding the obligation to erect a certain building on the site within a defined period in time, the German Government is of the opinion that the provision is unusual because under normal market conditions the seller is not interested in ensuring any specific use of the site sold. In the present case, the City of Mainz, having certain experiences with other sites in the inner city which remained empty for a longer period of time, wanted to impose this obligation to avoid having an empty site for possibly a longer period which would disturb its plans for city development. The economic disadvantage related to this provision should, according to the German authorities, be balanced by a lower purchase price.

Regarding the disadvantage related to the obligation to secure the obligation to pay the difference between the purchase price agreed and the market value by a mortgage, the German Government is of the opinion that this obligation should be seen in relation to the limited financial standing of Grundstücksverwaltungsgesellschaft Fort Malakoff mbH & Co. KG which is a limited partnership (KG), the personally liable partner being a private limited company (GmbH) with a nominal capital of only DM 50 000.

IV

According to Article 92(1) of the EC Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

In the present case the question of the existence or not of State aid within the meaning of Article 92(1) of the EC Treaty centres on whether the terms and conditions of the

sale of the site to Fort Malakoff by the City of Mainz depart from normal commercial practice and criteria to such an extent as to constitute State aid (see Commission Decision 92/11/EEC⁽¹⁾ and Decision 92/465/EEC⁽²⁾).

In general, the Commission is of the opinion that the market value of a site that public authorities intend to sell may best be established by an open and unconditional bidding procedure in which all potential buyers have the chance to submit their bids and after which the best or only bid is honoured or by an adequate effort to sell the site at best market conditions (see Commission Decision of 13 October 1993 ('Fresenius')⁽³⁾).

In cases where the public authorities decide not to apply such a procedure and decide to sell a site to a given investor and to establish the price to be paid after this choice, the Commission is of the opinion that the market value of the site in question should be established by independent land valuers using general and well-accepted methods for establishing the market value/purchase price of the land to be sold on the basis of the terms and conditions of sales of comparable sites during the recent past and other generally accepted market indicators.

In the present case, the German authorities did not choose any of those procedures when concluding the land sales contract with Fort Malakoff. Therefore, the Commission, in its decision to initiate the procedure pursuant to Article 93(2) of the EC Treaty, requested the German Government to submit an expert valuation establishing the market value of the site in question at the date the sales contract was concluded.

The Commission shares the view of the German authorities that the price at which the city of Mainz acquired the site from the *Land* Rheinland-Pfalz is not necessarily the market value of the site as it was sold to Fort Malakoff. The site was acquired built-up and was sold without buildings. Therefore, the property sold was different from the property acquired, and a different valuation does not indicate that the sale was not at market value. The City as the owner of the site acquired from the *Land* has the right (§ 903 BGB) to dismantle the buildings so as to be able to sell an empty site, even if the value of its property is thereby reduced. Public authorities may take such decisions for reasons, for example, of urban development and planning, and they are in general not to be contested by the Commission (Article 222 of the EC Treaty).

⁽¹⁾ OJ No L 6, 11. 1. 1992, p. 36.

⁽²⁾ OJ No L 263, 9. 9. 1992, p. 15.

⁽³⁾ OJ No C 21, 25. 1. 1994, p. 4.

However, it is to be noted that in the present case both the *Land Rheinland-Pfalz* and the City of Mainz were, at the time of concluding the contracts, apparently of the opinion that the purchase price agreed was lower than the market value of the site. In the contract between the *Land* and the City as well as in the contract between the City of Mainz and Fort Malakoff it is stipulated that the final purchaser, Fort Malakoff, would have to pay the difference between the purchase price agreed and the actual market value of the site at the date of the contract. The fact that they agreed on a lump sum of DM 40 million to be paid notwithstanding the possible later valuation of the site does indeed indicate that they believed the sale price to be far below the actual market value. The reason for this opinion, which is now superseded by the land valuers' expert report, might have been that the standard land-value map (Bodenrichtwertatlas) for Mainz showed a standard value for mixed/core areas (Misch/Kerngebiete MI/MK, §§ 6, 7 BauNVO) of up to DM 3 000 per m². Although the site in question was not located in an area formally marked as a mixed/core area, its characteristics and environment were very close to the legal description of this kind of area. This amount gives a notion of the magnitude which might have been taken into consideration regarding the real market value of the site in question.

The experts instructed by the City of Mainz were asked 'to examine whether the purchase price for the site to be valued would include undue State aid elements'. The Commission is of the opinion that independent expert valuers are competent to establish the general market value of the site in question but are not competent to establish whether a given land-sale agreement would represent State aid or not. However, the arguments and calculations of the experts regarding the 'special' market value, i.e. the economic relevance of particular provisions of the sales contract between the City of Mainz and Fort Malakoff were expressly shared by the German authorities and may therefore be considered as the opinion of the German authorities.

In general, it is to be noted that the 'general' market value of the site was established by the experts at DM 968 per m². The amount of DM 59 per m² which was deducted by the experts with regard to certain disadvantages of the location of the site in question and the necessity of a special drainage and the amount of DM 44 per m² deducted with regard to the costs of the dismantling of some remaining buildings are regarded to be part of the general valuation of the experts concerning the particular site in question, so that the 'standard' market value of the site, which would be the purchase price to be expected under normal commercial practice and criteria, is to be considered as DM 865 per m².

The sales contract between the City of Mainz and Fort Malakoff deviates in some points from normal commer-

cial practice and criteria. The Commission, considering the arguments and calculations of the German Government as explained above, is of the opinion that certain obligations and provisions of the sales contract would under normal market conditions indeed be of some influence on the purchase price.

First, Fort Malakoff is obliged to erect a stated building on the site within a defined time-span. Such an obligation is unusual because under normal market conditions the seller is not interested in ensuring any particular use for the site sold. In the present case, the City of Mainz, having had experience with other sites in the inner city which had remained empty for a fairly long period of time, wanted to impose this obligation so as to avoid having an empty site for possibly a long period which would disturb its plans for city development. The independent valuers calculated the economic disadvantage of this contractual provision at DM 158,50 per m².

Secondly, the contract between the City and Fort Malakoff provides, according to the German Government and the experts, for an unusual time lapse between the date of the contract and the envisaged transfer of ownership. This particular provision in favour of the purchaser should be balanced by an increase of the purchase price. The independent valuers calculated the economic advantage of this contractual provision at DM 131 per m².

Taking these two points into account at the rates calculated by the experts the 'special' market value of the site sold under these conditions would have to be established at (DM 865 minus DM 158,50 plus DM 131) DM 837,50 per m².

As regards the provision of the contract whereby Fort Malakoff would have to lease the buildings to be erected for at least 15 years to Siemens AG/Siemens Nixdorf Informationssysteme AG, which would have to use them to run a taxable business the German authorities, referring to the land valuers' report, are of the opinion that this obligation would under normal commercial conditions not be balanced by a lower purchase price because every purchaser would already have a contract with the intended user of the buildings before accepting such a condition. Should the contractor of the purchaser break the tenancy contract, the purchaser would have a valid claim to cover his costs and expenses arising from the non-fulfilment of the obligation *vis-à-vis* the City. This accounts, according to the German Government, also for the obligation to pay the indemnification in the form of the increased purchase price.

The obligation to secure the potential claim to pay the difference between the purchase price agreed and the market value by a mortgage if the provision concerning the use of the buildings is not fulfilled, however, is regarded by the German authorities as representing a financial burden which under normal market conditions would be balanced by a lower purchase price. The fact

that the purchaser would not be able to offer the site at its full value as security for loans to be taken up for the construction of buildings is a financial disadvantage which would, according to the German Government, under normal commercial practices be balanced by a reduction of the purchase price calculated on the basis of the normal costs for a bank guarantee to replace the mortgage that would otherwise be possible.

It is true that a building developer would, when concluding a land purchase contract, only accept a condition that imposes the letting of the developed site to a given party and the particular use of the buildings by his client if he has a valid agreement with this intended final user ensuring him of fulfilment of such condition. Also, the obligation to pay the difference between the market value of the site in question and the purchase price agreed if the condition is not fulfilled, does not represent a particular burden, because this potential debt is covered by the claim of the developer *vis-à-vis* his client. The Commission therefore shares the position of the German Government that such a condition does not represent a particular burden to be balanced by a reduced purchase price.

The Commission, however, does not agree with the German Government's position that the obligation to grant a security by way of a mortgage to cover the potential claim is an exceptional burden which would, under normal commercial terms and practices, justify a lower purchase price. Under normal commercial practices any potential claim of an amount that is not obviously minor compared to the financial standing of the potential debtor is expected to be effectively secured. It is true that the financial reliability of a private limited company (GmbH), which is the personally liable partner in a GmbH & Co. KG (limited partnership), is relatively low when the nominal capital is limited to the legal minimum of DM 50 000. The economic disadvantage of this construction in relation to the expectation of third parties to receive valid securities to cover potential claims, however, is, under normal commercial practices, to be borne by the party using it, not its contractors.

When a limited partnership buys an unmortgaged piece of land and uses this newly acquired property to provide security for potential debts, this possible post-purchase use of the site represents merely an exploitation of the full value of what was bought. The fact that it is used to secure a potential claim of the initial seller and previous owner of the land is nothing unusual, e.g., to the use for securing claims of any third party. The intended or agreed use of property after sale to provide security for claims does not under normal commercial practices influence the purchase price to be paid for acquisition of this property. A potential obligee does, under normal

commercial practices, not bear the costs of securing his claim.

It seems inconsistent to conclude on the one hand that the obligation to pay the difference between the market value and the purchase price where the buildings to be erected on the site are not used for at least 15 years as the Siemens' training centre, is irrelevant to the value for the purchaser and therefore of no influence on the 'special' market value of the site, whilst postulating on the other hand that the mere securing of this potential debt has to be balanced by a reduction of the purchase price calculated on the basis of the price to obtain a bank guarantee at the same value.

In addition it is to be noted that the provision obliging Fort Malakoff to provide security by way of a mortgage for the potential claim dependent on Siemens' using the built-up site for at least 15 years to run its taxable business is designed to yield a tax income for the City of Mainz (Gewerbesteuer). The effective securing of a potential claim to pay the market value if that condition is not fulfilled serves the purpose of keeping the future tax payer in the city for a relatively long period.

When assessing whether in the present case the State acted in line with a normal market investor's behaviour, the future possibility of tax receipts cannot be taken into account. Also in cases where the State sells its own property the terms and conditions should be in line with the normal behaviour of a private investor that does not have the particular position of the State with his responsibilities regarding public interest and his corresponding right to collect taxes⁽¹⁾. A normal private investor is not interested in how the purchaser would use the land and in particular would not be interested in whether the particular use chosen by the purchaser would create future tax income for the community where the site in question is located. A private seller of real estate would not accept a reduction of the purchase price to balance a contractual condition designed to attract and to keep a taxpayer in a given city.

Therefore, the proposed reduction of the 'special' market value related to the mortgage agreed is not acceptable. The 'special' market value, established by independent land valuers on the basis of the conditions of sales of other comparable sites in Mainz and taking into account the unusual time lapse between the date of the contract and the envisaged transfer of ownership (both factors accounting for a net DM 27,50 per m²), is therefore to be considered at DM 837,50 per m², i.e. DM 18 433 375 for the entire site of 22 010 m². The purchaser, Fort Malakoff,

⁽¹⁾ See judgment of the Court of Justice of 14 September 1994 in Cases C-278/92, C-275/92 and C-280/92, *Spain v. Commission*, [1994] ECR I, p. 4103, paragraph 22.

paid only DM 13 528 650, i.e. DM 4 904 725 less than the market value of the site on the date of the contract.

Consequently, it is to be concluded that the terms and conditions of the land sales agreement between the City of Mainz and Fort Malakoff depart from normal commercial practice and criteria to such an extent as to constitute State aid totalling DM 4 904 725 within the meaning of Article 92(1) of the EC Treaty.

State aid which distorts or threatens to distort competition by favouring certain undertakings is, in so far as it affects trade between Member States, incompatible with the common market and therefore prohibited. The present aid, favouring a certain undertaking, Grundstücksverwaltungsgesellschaft Fort Malakoff mbH & Co. KG, a 100 % subsidiary of Siemens AG/Siemens Nixdorf Informationssysteme AG, threatens to distort intra-Community competition in the sector of commercial data processing hardware and software, facing a fierce intra-Community competition due to a constant decrease of prices, a rapid evolution of technologies and the related need for high investments in R&D and new production facilities. The aid reduces the costs for Siemens AG/Siemens Nixdorf Informationssysteme AG to set up, by its real-estate holding Fort Malakoff, its new training centre offering software training and other user training specific to its data processing products for employees of its clients. To provide such training is a normal element of the effective marketing of integrated data processing solutions in the commercial sector, such as to banks, insurance companies, etc. It is irrelevant whether Siemens might have considered setting up a new training centre only in Germany for the German-speaking employees of its clients because its European competitors would also have to bear comparable costs — or buy services from third providers of specific training — to compete effectively on, or to penetrate into, the relevant market in the German-speaking part of the Community.

The aid is to be considered as an *ad hoc* investment aid, aimed at reducing the costs for the investment in the new training centre of Siemens in Mainz. The aid was granted outside the scope of general investment aid schemes. Irrespective of whether this *ad hoc* aid may be regarded as contributing towards the development of the region, it is to be noted that Mainz is not located in an area recognized as falling under Article 92(3)(a) or (c), so that the aid cannot be considered compatible with the common market under the notion of regional investment aid.

The aid identified does not fulfil the conditions for the exceptions under Article 92(2)(a) to (c) of the EC Treaty: it is not a social aid granted to certain consumers, but an investment aid designed to attract an investor to a particular city. It is neither related to disasters or other exceptional occurrences nor is it related to the former division of Germany.

Furthermore, the aid does not promote the execution of a project of common European interest. The fact that a training centre of a provider of integrated data-processing solutions is located in a certain city is not of common European interest. The aid is also not designed to remedy a serious disturbance in the economy of a Member State. Therefore the derogation under Article 92(3)(b) of the EC Treaty does not apply either. Nor does it promote cultural activities or the preservation of the cultural heritage (Article 92(3)(d) of the EC Treaty).

V

It is concluded that the findings of the land valuers and the arguments of the German Government are accepted, but not the assertion that the obligation to provide security for the potential claim to pay the difference between the market value and the purchase price would, in normal commercial transactions, have to be balanced by a lower purchase price.

'normal' market value

- minus costs for drainage and disadvantages of the location
- minus costs for dismantling of buildings
- minus obligation to erect the buildings
- plus advantage of later payment of the purchase price
- [minus the disadvantage related to the obligation to secure the obligation to pay the difference between the purchase price agreed and the market value by a mortgage

DM 968,00/m² accepted

— DM 59,00/m² accepted

— DM 44,00/m² accepted

— DM 158,50/m² accepted

+ DM 131,00/m² accepted

— DM 246,00/m²] not accepted

'special' market value

= DM 837,50/m²

The 'special' market value of the site is to be considered as DM 837,50 per m², i.e. DM 18 433 375 for the entire site of 22 010 m². Fort Malakoff, the land agency of Siemens, paid only DM 13 528 650, i.e. DM 4 904 725 less than the market value of the site on the date of the contract.

It is therefore concluded that the sale of the site in Mainz to Fort Malakoff, a subsidiary of Siemens AG/Siemens Nixdorf Informationssysteme AG, at a purchase price below the market value, represents State aid totalling DM 4 904 725 within the meaning of Article 92 (1) of the EC Treaty, which cannot be deemed compatible with the common market.

The aid should be recovered. 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, running from the date of which the aid was granted, i.e. the transfer of ownership of the site from Mainz to Grundstücksverwaltungsgesellschaft Fort Malakoff mbH & Co. KG, a subsidiary of Siemens AG/Siemens Nixdorf Informationssysteme AG,

HAS ADOPTED THIS DECISION:

Article 1

The sale of a site in Mainz to Grundstücksverwaltungsgesellschaft Fort Malakoff mbH & Co. KG, a subsidiary of Siemens AG/Siemens Nixdorf Informationssysteme AG, at a purchase price below the market value, represents State aid totalling DM 4 904 725 within the meaning of Article 92 (1) of the EC Treaty. The aid is illegal since it

has been granted in breach of Article 93 (3) of the EC Treaty. Furthermore, the aid is incompatible with the common market since it does not meet the conditions for the exceptions provided for in Article 92 (2) and (3) thereof.

Article 2

Germany shall recover the aid 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, running from the date on which the aid was granted.

Article 3

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

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 17 July 1996.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION

of 23 October 1996

on the Community financial contribution to a programme for the control of organisms harmful to plants and plant products in the French overseas departments for 1996

(Only the French text is authentic)

(96/632/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3763/91 of 16 December 1991 introducing specific measures in respect of certain agricultural products for the benefit of the French overseas departments⁽¹⁾, as last amended by Regulation (EC) No 2598/95⁽²⁾, and in particular the first subparagraph of Article 11 (3) thereof,

Whereas Commission Decision 93/522/EEC⁽³⁾ defines the measures eligible for Community financing under programmes for the control of organisms harmful to plants and plant products in the French overseas departments, the Azores and Madeira;

Whereas specific growing conditions in the French overseas departments call for particular attention; whereas measures concerning crop production, in particular plant health measures, must be adopted or strengthened in those regions;

Whereas the plant health measures to be adopted or strengthened are particularly costly;

Whereas a programme of measures has been presented to the Commission by the competent French authorities; whereas the programme specifies the objectives to be achieved, the operations to be carried out, their duration and their cost with a view to a possible Community financial contribution;

Whereas the Community's financial contribution may cover up to 60 % of eligible expenditure, protective measures for bananas being excluded;

Whereas the plant protection operations in the French overseas departments provided for in the single programming documents for the period 1994 to 1999 and

financed from the Structural Funds cannot be the same as those contained in this programme;

Whereas the operations provided for in the European Community Framework Programme for Research and Technological Development cannot be the same as those contained in this programme;

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

HAS ADOPTED THIS DECISION:

Article 1

A Community financial contribution to the official programme for the control of organisms harmful to plants and plant products in the French overseas departments presented by France for 1996 is hereby approved.

Article 2

The official programme shall consist of four subprogrammes:

1. a subprogramme drawn up for the department of Guadeloupe in two parts:
 - structures for the evaluation, analysis and diagnosis of plant health risks,
 - control of the principal harmful organisms;
2. a subprogramme drawn up for the department of French Guiana in three parts:
 - structures for the evaluation, analysis and diagnosis of plant health risks,
 - development of control methods for the principal harmful organisms,
 - study and control of pests and diseases of rice;

⁽¹⁾ OJ No L 356, 24. 12. 1991, p. 1.

⁽²⁾ OJ No L 267, 9. 11. 1995, p. 1.

⁽³⁾ OJ No L 251, 8. 10. 1993, p. 35.

3. a subprogramme drawn up for the department of Réunion in three parts:
 - structures for the evaluation, analysis and diagnosis of plant health risks,
 - development of control methods for the principal harmful organisms,
 - study of fruit flies;
4. a subprogramme drawn up for the department of Martinique in three parts:
 - structures for the evaluation, analysis and diagnosis of plant health risks,
 - control of the principal harmful organisms,
 - development of integrated pest control.

Article 3

The maximum Community financial contribution to the programme in 1996 shall be ECU 700 000 for expenditure related to eligible measures as defined by Commission Decision 93/522/EEC out of a total expenditure of ECU 1 167 833 (excluding VAT).

The financing plan for the programme, showing the costs and their financing, is set out in Annex I hereto. If the total eligible expenditure for 1996, as presented by France, is less than ECU 1 167 833, the Community contribution shall be reduced in proportion.

The Community shall reimburse expenditure up to the amount given in the first paragraph at the accounting rate for the ecu on 1 May 1996, namely ECU 1 = FF 6,44527.

Article 4

An advance of ECU 140 000 shall be paid to France.

Article 5

The Community assistance shall relate to expenditure on eligible measures associated with the operations covered

by the programme for which provisions are adopted by France and for which the necessary financial resources are committed between 1 October and 31 December 1996. The final date for payments in connection with the operations shall be 30 September 1997; unjustified delay shall entail loss of entitlement to Community financing.

Should an extension of the deadline for payment become necessary, the competent official authorities shall submit a request, along with the necessary justification, before the final date laid down.

Article 6

Provisions on the financing of the programme, compliance with Community policies and the information to be supplied to the Commission by France are set out in Annex II.

Article 7

Any public contracts connected with investments covered by this Decision shall be subject to Community law.

Article 8

This Decision is addressed to the French Republic.

Done at Brussels, 23 October 1996.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

FINANCIAL BREAKDOWN FOR 1996

(in ecus)(¹)

	Eligible expenditure 1996		
	EC	National	Total
Guadeloupe	157 000	105 208	262 208
Martinique	192 700	128 466	321 166
French Guiana	90 500	60 463	150 963
Réunion	259 800	173 696	433 496
Total	700 000	467 833	1 167 833

⁽¹⁾ ECU 1 = FF 6,44527 (1 May 1996)

ANNEX II

I. PROVISIONS ON THE IMPLEMENTATION OF THE PROGRAMME

A. Provisions on financial implementation

1. The Commission's intention is to establish real cooperation with the authorities responsible for the implementation of the programme. In line with the programme these authorities are those indicated below.

Commitments and payments

2. France shall guarantee that all public and private bodies involved in the management and implementation of all operations part-financed by the Community will keep suitable accounting records of all transactions in order to facilitate the verification of expenditure by the Community and the national inspection authorities.
3. The initial budgetary commitment shall be based on an indicative financial plan; this commitment shall be made for one year.
4. The commitment shall be made when the decision approving assistance is adopted by the Commission under the procedure provided for in Article 16 (a) of Council Directive 77/93/EEC⁽¹⁾, as last amended by Commission Directive 96/14/EC⁽²⁾.
5. Following commitment, an initial advance of ECU 140 000 shall be paid.
6. The balance of the amount committed shall be paid as two equal payments of ECU 280 000. The first instalment of the balance shall be paid upon presentation to and approval by the Commission of an interim activity report. The second and final instalment of the balance shall be paid upon presentation to and approval by the Commission of a final activity report and a detailed breakdown of the total expenditure incurred.

Authorities responsible for the implementation of the programme

— Central administration:

Ministère de l'agriculture, de la pêche et de l'alimentation
Direction générale de l'alimentation
Sous-direction de la protection des végétaux
175 rue du Chevaleret
F-75646 PARIS CEDEX 13

— Local administration:

— Guadeloupe:

Ministère de l'agriculture, de la pêche et de l'alimentation
Direction de l'agriculture et de la forêt
Jardin Botanique
F-97109 BASSE TERRE CEDEX

— Martinique:

Ministère de l'agriculture, de la pêche et de l'alimentation
Direction de l'agriculture et de la forêt
Jardin Desclieux
BP 642
F-97262 FORT DE FRANCE CEDEX

— French Guiana:

Ministère de l'agriculture, de la pêche et de l'alimentation
Direction de l'agriculture et de la forêt
Cité Rebard
Route de Baduel
BP 746
F-97305 CAYENNE CEDEX

— Réunion:

Ministère de l'agriculture, de la pêche et de l'alimentation
Direction de l'agriculture et de la forêt
Parc de la Providence
F-97489 SAINT DENIS DE LA REUNION.

⁽¹⁾ OJ No L 26, 31. 1. 1977, p. 20.

⁽²⁾ OJ No L 68, 19. 3. 1996, p. 24.

7. The actual expenditure incurred shall be notified to the Commission broken down by type of action or sub-programme in a way demonstrating the link between the indicative financial plan and expenditure actually incurred. If France keeps suitable computerized accounts this will be acceptable.
8. All payments of aid granted by the Community pursuant to this Decision shall be made to the authority designated by France, which will also be responsible for repayment to the Community of any excess amount.
9. All commitments and payments shall be made in ecus.
Financial schedules for Community support frameworks and amounts of Community aid shall be expressed in ecus at the rate fixed by this Decision. Payment shall be made to the following account:
Ministère du budget
Direction de la comptabilité publique
Agence comptable centrale du Trésor
139 rue de Bercy
F-75572 PARIS CEDEX 12
N° 47598

Financial control

10. Inspections may be carried out by the Commission or the Court of Auditors should it so request. France and the Commission shall immediately exchange all relevant information in regard to the outcome of an inspection.
11. For three years following the last payment relating to the assistance the authority responsible for implementation shall keep available to the Commission all documentary evidence of expenditure incurred.
12. When it submits applications for payment France shall make available to the Commission all official reports relating to supervision of the measures in question.

Reduction, suspension and withdrawal of aid

13. France shall declare that Community funds are used for the intended purposes. If implementation of a measure appears to require only part of the financial assistance allotted the Commission shall immediately recover the amount due. In cases of dispute the Commission shall examine the case, asking France or the other authorities designated by France for implementation of the measure to submit their comments within two months.
14. The Commission may reduce or suspend aid for a measure if the examination confirms the existence of an irregularity, in particular of a substantial modification affecting the nature or conditions of implementation of the measure for which approval by the Commission has not been sought.

Recovery of undue payments

15. All sums unduly paid must be reimbursed to the Community by the designated authority indicated in point 8. Interest may be levied on sums not reimbursed. If for any reason the designated authority indicated in point 8 does not reimburse the Community, France shall pay the amount to the Commission.

Prevention and detection of irregularities

16. The partners shall observe a code of conduct drawn up by France in order to ensure that any irregularity in the provision of assistance programme is detected. France shall ensure that:
 - suitable action is taken in this area,
 - any amount unduly paid as a result of an irregularity is recovered,
 - action is taken to prevent irregularities.

B. Monitoring and assessment

I. Monitoring committee

1. Establishment

Independent of the financing of this action, a monitoring committee for the programme shall be set up, composed of representatives of France and the Commission. It shall review implementation of the programme and, where appropriate, propose any adjustments required.

2. The committee shall establish its own internal procedures within one month of the notification of this Decision to France.

3. Competence of monitoring committee

The committee:

- shall have as its general responsibility the satisfactory progress of the programme towards attainment of the objectives set. Its competence shall embrace the programme measures within the limits of the Community aid granted. It shall keep watch with respect to the regulatory provisions, including those on eligibility of operations and projects,
- shall, on the basis of information on the selection of projects already approved and implemented, reach an opinion on application of the selection criteria set out in the programme,
- shall propose any action required to accelerate implementation of the programme should the information furnished periodically by the interim monitoring and assessment indicators reveal a delay,
- may, in agreement with the Commission representative(s), adjust the financing plans within a limit of 15 % of the Community contribution to a sub-programme or measure for the entire period, and 20 % for any financial year, provided that the total amount scheduled in the programme is not exceeded. Care must be taken to see that the main objectives of the programme are not thereby compromised,
- shall give its opinion on the adjustments proposed to the Commission,
- shall issue an opinion on technical assistance projects scheduled in the programme,
- shall give its opinion on the final draft report,
- shall report regularly and at least twice during the period concerned, to the Standing Committee on Plant Health on the progress of the programme and expenditure incurred.

II. *Monitoring and assessment of the programme during the implementation period (continuous monitoring and assessment)*

1. The national agency responsible for implementation shall also be responsible for continuous monitoring and assessment of the programme.
2. By continuous monitoring is meant an information system on the state of progress of the programme. Continuous monitoring will cover the measures contained in the programme. It involves reference to the financial and physical indicators structured so as to permit assessment of the correspondence between expenditure on each measure and predefined physical indicators showing the degree of realization.
3. Continuous assessment of the programme will involve analysis of the quantitative results of implementation on the basis of operational, legal and procedural considerations. The purpose is to guarantee correspondence between measures and programme objectives.

Implementation report and scrutiny of the programme

4. France shall notify to the Commission, within one month of adoption of the programme, the name of the authority responsible for compilation and presentation of the final implementation report.

The final report shall contain a concise evaluation of the entire programme (degree of achievement of physical and qualitative objectives and of progress accomplished) and an assessment of the immediate impact in plant-health and economic terms.

The competent authority shall present the final report on the programme to the Commission by 31 December 1997 and to the Standing Committee on Plant Health within the following six weeks.

5. The Commission may jointly with France call in an independent assessor who shall, on the basis of the continuous monitoring, carry out the continuous assessment referred to in point 3. He may submit proposals for adjusting the subprogrammes and/or measures and amending the selection criteria for projects, etc., in the light of difficulties encountered in the course of implementation. On the basis of monitoring of management he shall give an opinion on administrative measures to be taken.

C. Information and publicity

In the framework of this action, the agency appointed as responsible for the programme shall ensure that it is adequately publicized.

It shall in particular take action to:

- make potential recipients and professional organizations aware of the possibilities offered under the programme measures,
- make the general public aware of the Community's role in the programme.

France and the agency responsible for implementation shall consult the Commission on initiatives envisaged in this area, possibly through the monitoring committee. They shall regularly notify the Commission of information and publicity measures adopted, either by a final report or through the monitoring committee.

The national legal provisions on confidentiality of information shall be complied with.

II. COMPLIANCE WITH COMMUNITY POLICIES

Community policies applying in this field must be complied with.

The programme shall be implemented in accordance with the provisions on coordination of and compliance with Community policies. The following information must be supplied by France.

1. Award of public contracts

The 'public contracts' ⁽¹⁾ questionnaire must be completed for:

- public contracts above the ceilings set by the 'supplies' and 'works' directives that are awarded by contract-awarding authorities as defined in these directives and are not covered by the exemptions specified therein,
- public contracts below these ceilings where they constitute components of a single piece of work or of uniform supplies of a value above the ceiling. By 'a single piece of work' is meant a product of building or civil engineering works intended in itself to fulfil an economic or technical function.

The thresholds will be those in force on the date of notification of this Decision.

2. Protection of the environment

(a) General information

- description of the main environmental features and problems of the region concerned, giving, *inter alia*, a description of the important conservation areas (sensitive zones),
- a comprehensive description of the major beneficial and harmful effects that the programme, given the investments planned, is likely to have on the environment,
- a description of the action planned to prevent, reduce or offset any serious harmful effects on the environment,
- a report on consultations with the responsible environmental authorities (opinion of the Ministry for the Environment or its equivalent) and, if there were any such consultations, with the public concerned.

(b) Description of planned activities

For programme measures liable to have a significantly harmful effect on the environment:

- the procedures which will be applied for assessing individual projects during implementation of the programme,
- the mechanisms planned for monitoring environmental impact during implementation, assessing results and eliminating, reducing or offsetting harmful effects.

⁽¹⁾ Commission notification to the Member States C(88) 2510 (OJ No C 22, 28. 1. 1989, p. 3) on monitoring of compliance with public procurement rules in the projects and programmes financed by the structural funds and financial tools.

COMMISSION DECISION

of 23 October 1996

amending Decision 93/522/EEC on the definition of the measures eligible for Community financing in the programmes for the control of organisms harmful to plants or plant products in the French overseas departments, in the Azores and in Madeira

(Only the French and Portuguese texts are authentic)

(96/633/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3763/91 of 16 December 1991 introducing specific measures in respect of certain agricultural products for the benefit of the French overseas departments⁽¹⁾, as last amended by Commission Regulation (EC) No 2598/95⁽²⁾, and in particular the last sentence of the last subparagraph of Article 11 (3) thereof,

Having regard to Council Regulation (EEC) No 1600/92 of 15 June 1992 concerning specific measures for the Azores and Madeira relating to certain agricultural products⁽³⁾, as last amended by Commission Regulation (EC) No 2537/95⁽⁴⁾, and in particular the last sentence of Article 33 (3) thereof,

Whereas experience has been gained and reports drawn up by France and Portugal regarding the application of Commission Decision 93/522/EEC of 30 September 1993 on the definition of the measures eligible for Community financing in the programmes for the control of organisms harmful to plants or plant products in the French overseas departments, in the Azores and in Madeira⁽⁵⁾;

Whereas Article 3 of that Decision is worded so as to allow measures which have incurred expenditure during the six months prior to notification of the Commission's decisions on the Community's annual contribution to the financing of the control programmes in question to be included retroactively;

Whereas that Article stipulates that the period of retroactivity may either exclude a part of the beginning of the calendar year during which the financing decisions are taken or include a part of the year preceding the year in which the decisions are taken, in which case there is a danger that the financing of programmes may overlap from one year to the next;

Whereas the Member States concerned are having difficulty in applying this retroactivity;

Whereas Article 4 of Decision 93/522/EEC provides that the Decision may be re-examined in the light of annual reports drawn up by France and Portugal;

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

HAS ADOPTED THIS DECISION:

Article 1

Article 3 of Decision 93/522/EEC on the definition of the measures eligible for Community financing in the programmes for the control of organisms harmful to plants or plant products in the French overseas departments, in the Azores and in Madeira is hereby amended as follows:

'The Community's contribution to the financing of the programmes for the control of organisms harmful to plants or plant products shall be decided on an annual basis and shall relate to a period to be determined at the time each programme is approved.'

Article 2

This Decision is addressed to the French Republic and the Portuguese Republic.

Done at Brussels, 23 October 1996.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 356, 24. 12. 1991, p. 1.

⁽²⁾ OJ No L 267, 9. 11. 1995, p. 1.

⁽³⁾ OJ No L 173, 27. 6. 1992, p. 1.

⁽⁴⁾ OJ No L 260, 31. 10. 1995, p. 10.

⁽⁵⁾ OJ No L 251, 8. 10. 1993, p. 35.

CORRIGENDA

Corrigendum to Commission Regulation (EC) No 2064/96 of 29 October 1996 determining the extent to which applications lodged in October 1996 for import licences for certain egg sector products and poultrymeat pursuant to Regulations (EC) No 1474/95 and (EC) No 1251/96 can be accepted

(Official Journal of the European Communities No L 277 of 30 October 1996)

Page 6:

Annex I, second column, opposite Group No E2:

for: '69,87',

read: '69,97'.

Annex II, second column, opposite Group No E1:

for: '85 992,80',

read: '65 992,80'.
