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I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 2272/96
of 22 November 1996**

**fixing the guide prices for the fishery products listed in Annex I (A), (D) and (E)
of Regulation (EEC) No 3759/92 for the 1997 fishing year**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3759/92 of 17 December 1992 on the common organization of the market in fishery and aquaculture products⁽¹⁾, and in particular Article 9 (3) thereof,

Having regard to the proposal from the Commission,

Whereas Article 9(1) and (2) of Regulation (EEC) No 3759/92 provides that a guide price shall be fixed for each of the products listed in Annex I (A), (D) and (E) of the Regulation at a level which will help to stabilize market prices and avoid the formation of surpluses in the Community; whereas that level must also help support producers' income and at the same time take account of consumers' interest;

Whereas the guide price shall be based on the average of prices as defined in Article 9 (2) of that Regulation and on an assessment of production and demand prospects;

Whereas the application of these criteria involves for the 1997 fishing year, an increase for certain products and the stabilization or decrease of prices for others compared with prices applicable during the current fishing year,

HAS ADOPTED THIS REGULATION:

Article 1

The guide prices for the fishing year from 1 January to 31 December 1997 for the products listed in Annex I (A), (D) and (E) to Regulation (EEC) No 3759/92 and the commercial categories to which they relate are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 January 1997.

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

Done at Brussels, 22 November 1996.

For the Council

The President

S. BARRETT

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

ANNEX

Species	Commercial specifications (1)			Guide price (ECU/tonne)
	Freshness category	Size	Presentation	
1. Herrings of the species <i>Clupea harengus</i>	Extra, A	1	Whole fish	274
2. Sardines of the species <i>Sardina pilchardus</i>	Extra	3	Whole fish	508
3. Picked dogfish (<i>Squalus acanthias</i>)	Extra, A	2	Whole fish Gutted fish with head	} 1 036
4. Catshanks (<i>Scyliorhinus</i> spp.)	Extra, A	1	Whole fish Gutted fish with head	
5. Redfish (<i>Sebastes</i> spp.)	A	2	Whole fish	1 121
6. Cod of the species <i>Gadus morhua</i>	A	2	Gutted fish with head	} 1 476
	A	3	Gutted fish with head	
7. Coalfish (<i>Pollachius virens</i>)	A	2	Gutted fish with head	} 762
	A	3	Gutted fish with head	
8. Haddock (<i>Melanogrammus aeglefinus</i>)	A	2	Gutted fish with head	} 1 031
	A	3	Gutted fish with head	
9. Whiting (<i>Merlangius merlangus</i>)	A	2	Gutted fish with head	} 893
	A	3	Gutted fish with head	
10. Ling (<i>Molva</i> spp.)	Extra, A	1, 2	Gutted fish with head	1 128
11. Mackerel of the species <i>Scomber scombrus</i>	Extra	1	Whole fish	} 280
	A	2	Whole fish	
12. Mackerel of the species <i>Scomber japonicus</i>	Extra	1	Whole fish	} 312
	A	2	Whole fish	
13. Anchovies (<i>Engraulis</i> spp.)	Extra	2	Whole fish	1 168
14. Plaice (<i>Pleuronectes platessa</i>)	A	2	Gutted fish with head	} 1 007
	A	3	Gutted fish with head	
15. Hake of the species <i>Merluccius merluccius</i>	A	1	Gutted fish with head	3 623
16. Megrim (<i>Lepidorhombus</i> spp.)	Extra, A	1, 2	Whole fish, gutted fish with head	2 289
17. Ray's bream (<i>Brama</i> spp.)	Extra, A	1	Whole fish	1 782
18. Monkfish (<i>Lophius</i> spp.)	Extra, A	2, 3	Whole, or gutted with head	2 664
	Extra, A	2, 3	Without head	5 449

Species	Commercial specifications ⁽¹⁾			Guide price (ECU/tonne)
	Freshness category	Size	Presentation	
19. Shrimps of the species <i>Crangon crangon</i>	A	1	Simply boiled in water	2 382
20. Edible crab (<i>Cancer pagurus</i>)	—	1	Whole	1 767
21. Norway lobster (<i>Nephrops norvegicus</i>)	E, A	1, 2	Whole	5 078
	E, A	2	Tails	4 260
22. Dab (<i>Limanda limanda</i>)	Extra, A	1	Gutted fish with head	933
23. Flounder (<i>Platichthys flesus</i>)	Extra, A	1	Gutted fish with head	547
24. Albacore or longfinned tuna (<i>Thunnus alalunga</i>)	Extra, A	1	Whole fish	2 103
		1	Gutted fish with head	2 453
25. Cuttlefish (<i>Sepia officinalis</i> and <i>Rossia macrosoma</i>)	Extra, A	1, 2	Whole	1 582
26. Sole (<i>Solea</i> spp.)	Extra, A	2, 3	Gutted fish with head	6 142
27. Deep-water prawns (<i>Pandalus borealis</i>)	A	1	Simply boiled in water	6 324
	A	1	Fresh or chilled	1 690

⁽¹⁾ The freshness categories, sizes and presentation are defined pursuant to Article 2 of Regulation (EEC) No 3759/92.

COUNCIL REGULATION (EC) No 2273/96**of 22 November 1996****fixing the guide prices for the fishery products listed in Annex II to Regulation (EEC) No 3759/92 for the 1997 fishing year**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Council Regulation (EEC) No 3759/92 of 17 December 1992 on the common organization of the market in fishery and aquaculture products⁽¹⁾, and in particular Article 9 (3),

Having regard to the proposal from the Commission,

Whereas Article 9 (1) of Regulation (EEC) No 3759/92 provides that a guide price shall be fixed annually for each of the products or groups of products listed in Annex II to that Regulation;

Whereas, according to the data available at present concerning prices for the products in question and the

criteria laid down in Article 9 (2), of that Regulation, these prices should be maintained and decreased according to the species for the 1997 fishing year,

HAS ADOPTED THIS REGULATION:

Article 1

The guide prices for the fishing year 1 January to 31 December 1997 for the products listed in Annex II to Regulation (EEC) No 3759/92 and the commercial categories to which they relate are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 January 1997.

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

Done at Brussels, 22 November 1996.

For the Council

The President

S. BARRETT

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

ANNEX

(ECU/tonne)

Group of products	Commercial specifications	Guide price
1. Sea-bream (<i>Dentex dentex</i> and <i>Pagellus</i> spp.)	Frozen, in lots or in original packages containing the same products	1 525
2. Squid of the species <i>Loligo patagonica</i>	Frozen, not cleaned, in original packages containing the same products	1 057
3. Squid (<i>Ommastrephes sagittatus</i>)	Frozen, not cleaned, in original packages containing the same products	961
4. <i>Illex argentinus</i>	Frozen, not cleaned, in original packages containing the same products	897
5. Cuttlefish of the species <i>Sepia officinalis</i> , <i>Rossia macrosoma</i> and <i>Sepiola Rondeletti</i>	Frozen, in original packages containing the same products	1 968
6. Octopus (<i>Octopus</i> spp.)	Frozen, in original packages containing the same products	1 911
7. Lesser or Greenland halibut (<i>Reinhardtius hippoglossoides</i>)	Frozen, in original packages containing the same products	1 900
8. Whole hake of the genus <i>Merluccius</i> spp.	Frozen, in original packages containing the same products	1 290
9. Fillets of hake of the genus <i>Merluccius</i> spp.	Frozen, in original packages containing the same products	1 593
10. — Prawns of the species <i>Parapenaeus longirostris</i>	Frozen, in original packages containing the same products	4 120
— Other species of the family <i>Penaeidae</i>	Frozen, in original packages containing the same products	7 985

COUNCIL REGULATION (EC) No 2274/96

of 22 November 1996

fixing the Community producer price for tuna intended for the industrial manufacture of products falling within CN code 1604 for the 1997 fishing year

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3759/92 of 17 December 1992 on the common organization of the market in fishery and aquaculture products⁽¹⁾ and in particular Article 17 (1) thereof,

Having regard to the proposal from the Commission,

Whereas Article 17 (1) of Regulation (EEC) No 3759/92 provides that a Community producer price should be fixed for tuna (of the genus *Thunnus*), skipjack or stripe-bellied bonito (*Euthynnus (Katsuwonus) pelamis*) and other species of the genus *Euthynnus* intended for the industrial manufacture of products falling within CN code 1604;

Whereas, on the basis of the criteria laid down in the first and second indents of Article 9 (2) and in Article 17 (1) of the abovementioned Regulation, the price for the 1997 fishing year should be decreased,

HAS ADOPTED THIS REGULATION:

Article 1

The Community producer price for the fishing year 1 January to 31 December 1997 for tuna (of the genus *Thunnus*), skipjack or stripe-bellied bonito (*Euthynnus (Katsuwonus) pelamis*) and other species of the genus *Euthynnus* for the industrial manufacture of products falling within CN code 1604 and the commercial category to which it relates is hereby fixed as follows:

(ECU/tonne)		
Species	Commercial specifications	Community producer price
Yellowfin tuna (<i>Thunnus albacares</i>)	Whole, weighing more than 10 kg each	1 204

Article 2

This Regulation shall enter into force on 1 January 1997.

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

Done at Brussels, 22 November 1996.

*For the Council**The President*

S. BARRETT

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

COUNCIL REGULATION (EC) No 2275/96

of 22 November 1996

introducing specific measures for live plants and floricultural products

THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

Whereas the production of live plants and floricultural products is a very important economic activity in a large number of Community Member States;

Whereas, following an increase in production within the Community and growth in imports from third countries, supply of such products is rising fast; whereas consumption should therefore be stimulated;

Whereas there is potential for increasing consumption of Community products both within the Community and abroad, in particular by improving awareness among existing and potential users and by bringing production more closely into line with consumer requirements;

Whereas the various groups working in the sector have a special role to play in implementing measures to encourage consumption;

Whereas a Community financial contribution should be provided for to encourage specific measures to increase consumption; whereas provision should be made for the regular evaluation of the measures financed in order to monitor the achievement of their objectives;

Whereas the measures thus provided for are intended to stabilize the market in live plants and floricultural products; whereas, therefore, the expenditure arising from Community part-financing thereof should be deemed intervention within the meaning of Article 3 of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy ⁽³⁾,

HAS ADOPTED THIS REGULATION:

Article 1

The Community may contribute to the financing of measures put forward and implemented by groups representing the sector to promote the consumption of Community live plants and floricultural products falling within CN code 06.

⁽¹⁾ OJ No C 216, 26. 7. 1996, p. 14.

⁽²⁾ Opinion delivered on 15 November 1996 (not yet published in the Official Journal).

⁽³⁾ OJ No L 94, 28. 4. 1970, p. 13. Regulation last amended by Regulation (EC) No 1287/95 (OJ No L 125, 8. 6. 1995, p. 1).

Article 2

1. The measures referred to in Article 1 shall cover advertising and public-awareness measures, including the organisation of and participation in fairs and other trade events, both within the Community and abroad.

Where deemed necessary, such measures may be preceded by market studies of consumer attitudes and behaviour and may be accompanied, where appropriate, by the provision of marketing advice to the various economic operators in the sector.

2. The measures referred to in Article 1 shall not be designed to promote commercial brands or to favour products from a particular Member State.

Article 3

1. Community contribution to the financing of the measures provided for in this Regulation shall be deemed intervention intended to stabilize the agricultural markets within the meaning of Article 3 (1) of Regulation (EEC) No 729/70.

2. Such Community contribution to the financing may not exceed 60 % of the actual cost of the measures.

Article 4

The measures referred to in Article 1 may be granted Community funding for a period of no more than three years. An evaluation study shall be carried out in the final year. The study shall assess the extent to which the objectives referred to in Article 1 have been achieved and the advisability of pursuing the measure concerned.

Article 5

The measures provided for in this Regulation shall be defined and the rules of applications thereof shall be adopted in accordance with the procedure provided for in Article 14 of Council Regulation (EEC) No 234/68 of 27 February 1968 on the establishment of a common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage ⁽⁴⁾.

Article 6

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

⁽⁴⁾ OJ No L 55, 2. 3. 1968, p. 1. Regulation as last amended by Regulation (EC) No 3290/94 (OJ No L 349, 31. 12. 1994, p. 105).

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

Done at Brussels, 22 November 1996.

For the Council

The President

S. BARRETT

COMMISSION REGULATION (EC) No 2276/96
of 28 November 1996

suspending the preferential customs duties and re-establishing the Common Customs Tariff duty on imports of uniflorous (standard) carnations originating in Israel

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 4088/87 of 21 December 1987 fixing conditions for the application of preferential customs duties on imports of certain flowers originating in Cyprus, Israel, Jordan and Morocco⁽¹⁾, as last amended by Regulation (EC) No 539/96⁽²⁾, and in particular Article 5 (2) (b) thereof,

Whereas Regulation (EEC) No 4088/87 lays down the conditions for applying a preferential duty on large-flowered roses, small-flowered roses, uniflorous (bloom) carnations and multiflorous (spray) carnations within the limit of tariff quotas opened annually for imports into the Community of fresh cut flowers;

Whereas Council Regulation (EC) No 1981/94⁽³⁾, as last amended by Regulation (EC) No 2266/96⁽⁴⁾, opened and provides for the administration of Community tariff quotas for cut flowers and flower buds, fresh, originating in Cyprus, Jordan, Morocco and Israel;

Whereas Article 2 of Regulation (EEC) No 4088/87 provides, on the one hand, that for a given product of a given origin, the preferential customs duty is to be applicable only if the price of the imported product is at least equal to 85 % of the Community producer price; whereas, on the other hand, the preferential customs duty is, except in exceptional cases, suspended and the Common Customs Tariff duty introduced for a given product of a given origin:

(a) if, on two successive market days, the prices of the imported product are less than 85 % of the Community producer price in respect of at least 30 % of the quantities for which prices are available on representative import markets;

or

(b) if, over a period of five to seven successive market days, the prices of the imported product are alternatively above and below 85 % of the Community producer price in respect of at least 30 % of the quantities for which prices are available on the representative import markets and if, for three days during that period, the prices of the import product have been below that level;

Whereas Commission Regulation (EC) No 1985/96⁽⁵⁾ fixes the Community producer prices for carnations and roses for the application of the import arrangements;

Whereas Commission Regulation (EEC) No 700/88⁽⁶⁾, as last amended by Regulation (EEC) No 2917/93⁽⁷⁾, lays down the detailed rules for the application of the arrangements;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92⁽⁸⁾, as last amended by Regulation (EC) No 150/95⁽⁹⁾, are used to convert amounts expressed in third country currencies and are used as the basis for determining the agricultural conversion rates of the Member States' currencies; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93⁽¹⁰⁾, as last amended by Regulation (EC) No 1482/96⁽¹¹⁾;

Whereas, on the basis of prices recorded pursuant to Regulations (EEC) No 4088/87 and (EEC) No 700/88, it must be concluded that the conditions laid down in Article 2 (2) of Regulation (EEC) No 4088/87 for suspension of the preferential customs duty are met for uniflorous (standard) carnations originating in Israel, whereas the Common Customs Tariff duty should be re-established;

Whereas the quota for the products in question covers the period 1 November 1996 to 31 October 1997; whereas, as a result, the suspension of the preferential duty and the reintroduction of the Common Customs Tariff duty apply up to the end of that period at the latest,

HAS ADOPTED THIS REGULATION:

Article 1

For imports of uniflorous (standard) carnations (CN codes ex 0603 10 13 and ex 0603 10 53) originating in Israel, the preferential customs duty fixed by Regulation (EC) No 1981/94 is hereby suspended and the Common Customs Tariff duty is hereby re-established.

Article 2

This Regulation shall enter into force on 29 November 1996 and is applicable until 31 October 1997 at the latest.

⁽¹⁾ OJ No L 382, 31. 12. 1987, p. 22.

⁽²⁾ OJ No L 79, 29. 3. 1996, p. 6.

⁽³⁾ OJ No L 199, 2. 8. 1994, p. 1.

⁽⁴⁾ OJ No L 306, 28. 11. 1996, p. 25.

⁽⁵⁾ OJ No L 264, 17. 10. 1996, p. 14.

⁽⁶⁾ OJ No L 72, 18. 3. 1988, p. 16.

⁽⁷⁾ OJ No L 264, 23. 10. 1993, p. 33.

⁽⁸⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁹⁾ OJ No L 22, 31. 1. 1995, p. 1.

⁽¹⁰⁾ OJ No L 108, 1. 5. 1993, p. 106.

⁽¹¹⁾ OJ No L 188, 27. 7. 1996, p. 22.

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

Done at Brussels, 28 November 1996.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION DECISION No 2277/96/ECSC

of 28 November 1996

on protection against dumped imports from countries not members of the
European Coal and Steel Community

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 74 thereof,

- (1) Whereas, by Decision No 2424/88/ECSC⁽¹⁾, the Commission adopted common rules for protection against dumped or subsidized imports from countries which are not members of the European Coal and Steel Community;
- (2) Whereas those rules were adopted in accordance with existing international obligations, in particular those arising from Article VI of the General Agreement on Tariffs and Trade (hereinafter referred to as 'GATT'), from the Agreement on Implementation of Article VI of the GATT (1979 Anti-Dumping Code) and from the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT (Code on Subsidies and Countervailing Duties);
- (3) Whereas the multilateral trade negotiations concluded in 1994 have led to new Agreements on the implementation of Article VI of GATT and it is therefore appropriate to amend the Community rules in the light of those new Agreements; whereas it is also desirable, in the light of the different nature of the new rules for dumping and subsidies respectively, to have a separate body of Community rules in each of those two areas; whereas, consequently, the new rules on protection against subsidies and countervailing duties will be contained in a separate Decision;
- (4) Whereas, in applying the rules it is essential, in order to maintain the balance of rights and obligations which the GATT Agreement establishes, that the Community take account of how they are interpreted by the Community's major trading partners;
- (5) Whereas the new agreement on dumping, namely the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as 'the 1994 Anti-Dumping Agreement') contains new and detailed rules, relating in particular to the calculation of dumping, procedures for initiating and pursuing an investigation, including the establishment and treatment of

the facts, the imposition of provisional measures, the imposition and collection of anti-dumping duties, the duration and review of anti-dumping measures and the public disclosure of information relating to anti-dumping investigations; whereas, in view of the extent of the changes and to ensure a proper and transparent application of the new rules, the language of the new agreements should be brought into Community legislation as far as possible;

- (6) Whereas the 1994 Anti-dumping Agreement has been implemented by the European Community through Council Regulation (EC) No 384/96⁽²⁾, whereas it is therefore appropriate to provide for the analogous application by the European Coal and Steel Community of the principles and definitions contained in Regulation (EC) No 384/96 to ensure the homogeneity of the external trade legislation of the European Communities, whilst taking account of the decision making processes of the European Coal and Steel Community;
- (7) Whereas it is desirable to lay down clear and detailed rules on the calculation of normal value; whereas in particular such value should in all cases be based on representative sales in the ordinary course of trade in the exporting country; whereas, it is expedient to define the circumstances in which domestic sales may be considered to be made at a loss and may be disregarded, and in which recourse may be had to remaining sales, or to constructed normal value, or to sales to a third country; whereas it is also desirable to provide for a proper allocation of costs, even in start-up situations; whereas it is also appropriate to lay down guidance as to definition of start-up and the extent and method of allocation; whereas it is also necessary, when constructing normal value, to indicate the methodology that is to be applied in determining the amounts for selling, general and administrative costs and the profit margin that should be included in such value;
- (8) Whereas when determining normal value for non-market economy countries, it appears prudent to set out rules for choosing the appropriate market-economy third country that it is to be used for such purpose and, where it is not possible to find a suitable third country, to provide that normal value may be established on some other reasonable basis;

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 18.

⁽²⁾ OJ No L 56, 6. 3. 1996, p. 1.

- (9) Whereas it is expedient to define the export price and to enumerate the adjustments which are to be made in those cases where a reconstruction of this price from the first open-market price is deemed necessary;
- (10) Whereas, for the purpose of ensuring a fair comparison between export price and normal value, it is advisable to list the factors which may affect prices and price comparability and to lay down specific rules as to when and how the adjustments should be made, including the fact that any duplication of adjustments should be avoided; whereas it is also necessary to provide that comparison may be made using average prices although individual export prices may be compared to an average normal value where the former vary by customer, region or time period;
- (11) Whereas it is desirable to lay down clear and detailed guidance as to the factors which may be relevant for the determination of whether the dumped imports have caused material injury or are threatening to cause injury; whereas, in demonstrating that the volume and price levels of the imports concerned are responsible for injury sustained by a Community industry, attention should be given to the effect of other factors and in particular prevailing market conditions in the Community;
- (12) Whereas it is advisable to define the term 'Community industry' and to provide that parties related to exporters may be excluded from such industry and to define the term 'related'; whereas it is also necessary to provide for anti-dumping action to be taken on behalf of producers in a region of the Community and to lay down guidelines on the definition of such a region;
- (13) Whereas it is necessary to lay down who may lodge an anti-dumping complaint, including the extent to which it should be supported by the Community industry, and to lay down the information on dumping, injury and causation which such a complaint should contain; whereas it is also expedient to specify the procedures for the rejection of complaints or the initiation of proceedings;
- (14) Whereas it is necessary to lay down the manner in which interested parties should be given notice of the information which the authorities require, and should have ample opportunity to present all relevant evidence and to defend their interests; whereas it is also desirable to set out clearly the rules and procedures to be followed during the investigation,
- in particular the rules whereby interested parties are to make themselves known, present their views and submit information within specified time-limits, if such views and information are to be taken into account; whereas it is also appropriate to set out the conditions under which an interested party may have access to, and comment on, information presented by other interested parties; whereas there should also be cooperation between the Member States and the Commission in the collection of information;
- (15) Whereas it is necessary to lay down the conditions under which provisional duties may be imposed, including the condition that they may be imposed no earlier than 60 days from initiation and no later than nine months thereafter; whereas, for administrative reasons, it is also necessary to provide that such duties may in all cases be imposed by the Commission either directly for a nine-month period or in two stages of six and three months;
- (16) Whereas it is necessary to specify procedures for accepting undertakings which eliminate dumping and injury instead of imposing provisional or definitive duties; whereas it is also appropriate to lay down the consequences of any breach or withdrawal of undertakings and to provide that provisional duties may be imposed in cases of suspected violation or where further investigation is necessary to supplement the findings; whereas, in accepting undertakings, care should be taken that the proposed undertakings, and their enforcement, do not lead to anti-competitive behaviour;
- (17) Whereas it is necessary to provide that the termination of cases should, irrespective of whether definitive measures are adopted or not, normally take place within 12 months, and in no case later than 15 months, from the initiation of the investigation; whereas investigations or proceedings should be terminated where the dumping is *de minimis* or the injury is negligible, and it is appropriate to define those terms; whereas, where measures are to be imposed, it is necessary to provide for the termination of investigations and to lay down that measures should be less than the margin of dumping if such lesser amount would remove the injury, as well as to specify the method of calculating the level of measures in cases of sampling;
- (18) Whereas it is necessary to provide for retroactive collection of provisional duties if that is deemed appropriate, and to define the circumstances which may trigger the retroactive application of duties to

avoid the undermining of the definitive measures to be applied; whereas it is also necessary to provide that duties may be applied retroactively in cases of breach or withdrawal of undertakings;

- (19) Whereas it is necessary to provide that measures are to lapse after five years unless a review indicates that they should be maintained; whereas it is also necessary to provide, in cases where sufficient evidence is submitted of changed circumstances, for interim reviews or for investigations to determine whether refunds of antidumping duties are warranted; whereas it is also appropriate to lay down that in any recalculation of dumping which necessitates a reconstruction of export prices, duties are not to be treated as a cost incurred between importation and resale where the said duty is being reflected in the prices of the products subject to measures in the Community;
- (20) Whereas it is necessary to provide specifically for the reassessment of export prices and dumping margins where the duty is being absorbed by the exporter through a form of compensatory arrangement and the measures are not being reflected in the prices of the products subject to measures in the Community;
- (21) Whereas the 1994 Anti-Dumping Agreement does not contain provisions regarding the circumvention of anti-dumping measures, though a separate GATT Ministerial Decision recognizes circumvention as a problem and has referred it to the GATT Anti-dumping Committee for resolution; whereas given the failure of the multilateral negotiations so far and pending the outcome of the referral to the GATT Anti-Dumping Committee, it is necessary to introduce new provisions into Community legislation to deal with practices which have as their main aim the circumvention of anti-dumping measures;
- (22) Whereas it is expedient to permit suspension of anti-dumping measures where there is a temporary change in market conditions which makes the continued imposition of such measures temporarily inappropriate;
- (23) Whereas it is necessary to provide that imports under investigation may be made subject to registration upon importation in order to enable measures to be applied subsequently against such imports;
- (24) Whereas in order to ensure proper enforcement of measures, it is necessary that Member States
- monitor, and report to the Commission, the import trade of products subject to investigation or subject to measures, and also the amount of duties collected under this Decision;
- (25) Whereas it is necessary to provide for consultation of an Advisory Committee at regular and specified stages of the investigation; whereas the Committee should consist of representatives of Member States with a representative of the Commission as chairman;
- (26) Whereas it is expedient to provide for verification visits to check information submitted on dumping and injury, such visits being, however, conditional on proper replies to questionnaires being received;
- (27) Whereas it is essential to provide for sampling in cases where the number of parties or transactions is large in order to permit completion of investigations within the appointed time-limits;
- (28) Whereas it is necessary to provide that where parties do not cooperate satisfactorily other information may be used to establish findings and that such information may be less favourable to the parties than if they had cooperated;
- (29) Whereas provision should be made for the treatment of confidential information so that business secrets are not divulged;
- (30) Whereas it is essential that provision be made for proper disclosure of essential facts and considerations to parties which qualify for such treatment and that such disclosure be made, with due regard to the decision-making process in the Community, within a time period which permits parties to defend their interests;
- (31) Whereas it is prudent to provide for an administrative system under which arguments can be presented as to whether measures are in the Community interest, including the consumers' interest, and to lay down the time periods within which such information has to be presented as well as the disclosure rights of the parties concerned;
- (32) Whereas, for the reasons given in particular in recitals 3 and 6, it is appropriate to reformulate the Community provisions concerning protection against dumped imports from countries not members of the European Coal and Steel Community; whereas those provisions contained in Decision 2424/88/ECSC should therefore no longer apply,

HAS ADOPTED THIS DECISION:

Article 1

Principles

1. An anti-dumping duty may be applied to any dumped product whose release for free circulation in the Community causes injury.
2. A product is to be considered as being dumped if its export price to the Community is less than a comparable price for the like product, in the ordinary course of trade, as established for the exporting country.
3. The exporting country shall normally be the country of origin. However, it may be an intermediate country, except where, for example, the products are merely transhipped through that country, or the products concerned are not produced in that country, or there is no comparable price for them in that country.
4. For the purpose of this Decision, the term 'like product' shall be interpreted to mean a product which is identical, that is to say, alike in all respects, to the product under consideration, or in the absence of such a product, another product which although not alike in all respects, has characteristics closely resembling those of the product under consideration.

Article 2

Determination of dumping

A. Normal value

1. The normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country.

However, where the exporter in the exporting country does not produce or does not sell the like product, the normal value may be established on the basis of prices of other sellers or producers.

Prices between parties which appear to be associated or to have a compensatory arrangement with each other may not be considered to be in the ordinary course of trade and may not be used to establish normal value unless it is determined that they are unaffected by the relationship.

2. Sales of the like product intended for domestic consumption shall normally be used to determine normal value if such sales volume constitutes 5 % or more of the sales volume of the product under consideration to the Community. However, a lower volume of sales may be used when, for example, the prices charged are considered representative for the market concerned.
3. When there are no or insufficient sales of the like product in the ordinary course of trade, or where because

of the particular market situation such sales do not permit a proper comparison, the normal value of the like product shall be constructed on the basis of the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs and for profits, or on the basis of the export prices, in the ordinary course of trade, to an appropriate third country, provided that those prices are representative.

4. Sales of the like product in the domestic market of the exporting country, or export sales to a third country, at prices below unit production costs (fixed and variable) plus selling, general and administrative costs may be treated as not being in the ordinary course of trade by reason of price, and may be disregarded in determining normal value, only if it is determined that such sales are made within an extended period of time in substantial quantities, and are at prices which do not provide for the recovery of all costs within a reasonable period of time.

If prices which are below costs at the time of sale are above weighted average costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

The extended period of time referred to in the first subparagraph shall normally be one year but shall in no case be less than six months, and sales below unit cost shall be considered to be made in substantial quantities within such a period when it is established that the weighted average selling price is below the weighted average unit cost, or that the volume of sales below unit cost is not less than 20 % of sales being used to determine normal value.

5. Costs shall normally be calculated on the basis of records kept by the party under investigation, provided that such records are in accordance with the generally accepted accounting principles of the country concerned and that it is shown that the records reasonably reflect the costs associated with the production and sale of the product under consideration.

Consideration shall be given to evidence submitted on the proper allocation of costs, provided that it is shown that such allocations have been historically utilised. In the absence of a more appropriate method, preference shall be given to the allocation of costs on the basis of turnover. Unless already reflected in such cost allocations, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production.

Where the costs for part of the period for cost recovery are affected by the use of new production facilities requiring substantial additional investment and by low capacity-utilization rates which are the result of start-up operations taking place within or during part of the investigation period, the average costs for the start-up phase shall be those applicable, under the abovementioned allocation rules, at the end of such a phase, and shall be included at that level, for the period concerned, in the

weighted average costs referred to in the second subparagraph of paragraph 4. The length of a start-up phase shall be determined in relation to the circumstances of the producer or exporter concerned, but shall not exceed an appropriate initial portion of the period for cost recovery. For this adjustment to costs applicable during the investigation period, information relating to a start-up phase which extends beyond that period shall be taken into account where it is submitted prior to verification visits and within three months of initiation of the investigation.

6. The amounts for selling, for general and administrative costs and for profits shall be based on actual data pertaining to production and sales, in the ordinary course of trade, of the like product, by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:

- (a) the weighted average of the actual amounts determined for other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin;
- (b) the actual amounts applicable to production and sales, in the ordinary course of trade, of the same general category of products for the exporter or producer in question in the domestic market of the country of origin;
- (c) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

7. In the case of imports from non-market economy countries and, in particular, those to which Council Regulation (EC) No 519/94⁽¹⁾ applies, normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including the Community, or where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Community for the like product, duly adjusted if necessary to include a reasonable profit margin.

An appropriate market-economy third country shall be selected in a not unreasonable manner, due account being

taken of any reliable information made available at the time of selection. Account shall also be taken of time-limits; where appropriate, a market-economy third country which is subject to the same investigation shall be used.

The parties to the investigation shall be informed shortly after its initiation of the market economy third country envisaged and shall be given 10 days to comment.

B. *Export price*

8. The export price shall be the price actually paid or payable for the product when sold for export from the exporting country to the Community.

9. In cases where there is no export price or where it appears that the export price is unreliable because of an association or a compensatory arrangement between the exporter and the importer of a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer or if the products are not resold to an independent buyer or are not resold in the condition in which they were imported, on any reasonable basis.

In these cases, adjustment for all costs, including duties and taxes, incurred between importation and resale, and for profits accruing, shall be made so as to establish a reliable export price, at the Community frontier level.

The items for which adjustment shall be made shall include those normally borne by an importer but paid by any party, either inside or outside the Community, which appears to be associated or to have a compensatory arrangement with the importer or exporter, including: usual transport, insurance, handling, loading and ancillary costs; customs duties, any anti-dumping duties, and other taxes payable in the importing country by reason of the importation or sale of the goods; and a reasonable margin for selling, general and administrative costs and profit.

C. *Comparison*

10. A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade and in respect of sales made at as nearly as possible the same time and with due account taken of other differences which affect price comparability. Where the normal value and the export price as established are not on such a comparable basis due allowance, in the form of adjustments, shall be made in each case, on its merits, for differences in factors which

⁽¹⁾ OJ No L 67, 10. 3. 1994, p. 89.

are claimed, and demonstrated, to affect prices and hence price comparability. Any duplication when making adjustments shall be avoided, in particular in relation to discounts, rebates, quantities and level of trade. When the specified conditions are met, the factors for which adjustment can be made are as follows:

(a) Physical characteristics

An adjustment shall be made for differences in the physical characteristics of the product concerned. The amount of the adjustment shall correspond to a reasonable estimate of the market value of the difference.

(b) Import charges and indirect taxes

An adjustment shall be made to normal value for an amount corresponding to any import charges or indirect taxes borne by the like product and by materials physically incorporated therein, when intended for consumption in the exporting country and not collected or refunded in respect of the product exported to the Community.

(c) Discounts, rebates and quantities

An adjustment shall be made for differences in discounts and rebates, including those given for differences in quantities, if these are properly quantified and are directly linked to the sales under consideration. An adjustment may also be made for deferred discounts and rebates if the claim is based on consistent practice in earlier periods, including compliance with the conditions required to qualify for the discount or rebates.

(d) Level of trade

An adjustment for differences in levels of trade, including any differences which may arise in OEM (Original Equipment Manufacturer) sales, shall be granted where, in relation to the distribution chain in both markets, it is shown that the export price, including a constructed export price, is at a different level of trade to the normal value and the difference has affected price comparability which is demonstrated by consistent and distinct differences in functions and prices of the seller for the different levels of trade in the domestic market of the exporting country. The amount of the adjustment shall be based on the market value of the difference.

(e) Transport, insurance, handling, loading, and ancillary costs

An adjustment shall be made for differences in the directly related costs incurred for conveying the product concerned from the premises of the exporter to an independent buyer, where such costs are included in the prices charged. Those costs shall

include transport, insurance, handling, loading and ancillary costs.

(f) Packing

An adjustment shall be made for differences in the directly related packing costs for the product concerned.

(g) Credit

An adjustment shall be made for differences in the cost of any credit granted for the sales under consideration, provided that it is a factor taken into account in the determination of the prices charged.

(h) After-sales costs

An adjustment shall be made for differences in the direct costs of providing warranties, guarantees, technical assistance and services, as provided for by law and/or in the sales contract.

(i) Commissions

An adjustment shall be made for differences in commissions paid in respect of the sales under consideration.

(j) Currency conversions

When the price comparison requires a conversion of currencies, such conversion shall be made using the rate of exchange on the date of sale, except that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Normally, the date of sale shall be the date of invoice but the date of contract, purchase order or order confirmation may be used if these more appropriately establish the material terms of sale. Fluctuations in exchange rates shall be ignored and exporters shall be granted 60 days to reflect a sustained movement in exchange rates during the investigation period.

D. Dumping margin

11. Subject to the relevant provisions governing fair comparison, the existence of margins of dumping during the investigation period shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all export transactions to the Community, or by a comparison of individual normal values and individual export prices to the Community on a transaction-to-transaction basis. However, a normal value established on a weighted average basis may be compared to prices of all individual export transactions to the Community, if there is a pattern of export prices which differs significantly among different purchasers, regions or time periods, and if the methods specified in the first sentence of this paragraph would not reflect the full degree of dumping being practised. This paragraph shall not preclude the use of sampling in accordance with Article 17.

12. The dumping margin shall be the amount by which the normal value exceeds the export price. Where dumping margins vary, a weighted average dumping margin may be established.

Article 3

Determination of injury

1. Pursuant to this Decision, the term 'injury' shall, unless otherwise specified, be taken to mean material injury to the Community industry, threat of material injury to the Community industry or material retardation of the establishment of such an industry, and shall be interpreted in accordance with the provisions of this Article.

2. A determination of injury shall be based on positive evidence and shall involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the Community market for like products, and (b) the consequent impact of those imports on the Community industry.

3. With regard to the volume of the dumped imports, consideration shall be given to whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the Community. With regard to the effect of the dumped imports on prices, consideration shall be given to whether there has been significant price undercutting by the dumped imports as compared with the price of a like product of the Community industry, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases which would otherwise have occurred, to a significant degree. No one or more of these factors can necessarily give decisive guidance.

4. Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the effects of such imports shall be cumulatively assessed only if it is determined that (a) the margin of dumping established in relation to the imports from each country is more than *de minimis* as defined in Article 9 (3) and that the volume of imports from each country is not negligible and (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between imported products and the conditions of competition between the imported products and the like Community product.

5. The examination of the impact of the dumped imports on the Community industry concerned shall include an evaluation of all relevant economic factors and

indices having a bearing on the state of the industry, including: the fact that an industry is still in the process of recovering from the effects of past dumping or subsidization; the magnitude of the actual margin of dumping; actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting Community prices; actual and potential negative effects on cash flow, stocks, employment, wages, growth, or ability to raise capital or investments. This list is not exhaustive, nor can any one or more of these factors necessarily give decisive guidance.

6. It must be demonstrated, from all the relevant evidence presented in relation to paragraph 2, that the dumped imports are causing injury within the meaning of this Decision. Specifically, this shall entail a demonstration that the volume and/or price levels identified pursuant to paragraph 3 are responsible for an impact on the Community industry as provided for in paragraph 5, and that this impact exists to a degree which enables it to be classified as material.

7. Known factors other than the dumped imports which at the same time are injuring the Community industry shall also be examined to ensure that injury caused by these other factors is not attributed to the dumped imports under paragraph 6. Factors which may be considered in this respect include the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, restrictive trade practices of, and competition between, third country and Community producers, developments in technology and the export performance and productivity of the Community industry.

8. The effect of the dumped imports shall be assessed in relation to the production of the Community industry of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the dumped imports shall be assessed by examination of the production of the narrowest group or range of products that includes the like product, for which the necessary information can be provided.

9. A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.

In making a determination regarding the existence of a threat of material injury, consideration should be given to *inter alia* such factors as:

- (a) a significant rate of increase of dumped imports into the Community market indicating the likelihood of substantially increased imports;
- (b) sufficient freely disposable capacity of the exporter or an imminent substantial increase in such capacity indicating the likelihood of substantially increased dumped exports to the Community, account being taken of the availability of other export markets to absorb any additional exports;
- (c) whether imports are entering at prices that would, to a significant degree, depress prices or prevent price increases which otherwise would have occurred, and would probably increase demand for further imports; and
- (d) stock-levels of the product being investigated.

No one of the factors listed above by itself can necessarily give decisive guidance, but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury will occur.

Article 4

Definition of 'Community industry'

1. For the purposes of this Decision, the term 'Community industry' shall be interpreted as referring to the Community producers, as a whole, of the like products or to those of them whose collective output of the products constitutes a major proportion, as defined in Article 5 (4), of the total Community production of those products, except that:

- (a) when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term 'Community industry' may be interpreted as referring to the rest of the producers;
- (b) in exceptional circumstances the territory of the Community may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if (i) the producers within such a market sell all or almost all of their production of the product in question in that market, and (ii) the demand in that market is not to any substantial degree met by producers of the product in question located elsewhere in the Community. In such circumstances, injury may be found to exist even where a major portion of the total Community industry is not injured, provided that there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing

injury to the producers of all or almost all of the production within such market.

2. For the purpose of paragraph 1, producers shall be considered to be related to exporters or importers only if (a) one of them directly or indirectly controls the other, or (b) both of them are directly or indirectly controlled by a third person, or (c) together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers. For the purpose of this paragraph, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

3. Where the Community industry has been interpreted as referring to the producers in a certain region, the exporters shall be given an opportunity to offer undertakings pursuant to Article 8 in respect of the region concerned. In such cases, when evaluating the Community interest of the measures, special account shall be taken of the interest of the region. If an adequate undertaking is not offered promptly or the situations set out in Article 8 (9) and (10) apply, a provisional or definitive duty may be imposed in respect of the Community as a whole. In such cases, the duties may, if practicable, be limited to specific producers or exporters.

4. The provisions of Article 3 (8) shall be applicable to this Article.

Article 5

Initiation of proceedings

1. Except as provided for in paragraph 6, an investigation to determine the existence, degree and effect of any alleged dumping shall be initiated upon a written complaint by any natural or legal person, or any association not having legal personality, acting on behalf of the Community industry.

The complaint may be submitted to the Commission, or to a Member State, which shall forward it to the Commission. The Commission shall send Member States a copy of any complaint it receives. The complaint shall be deemed to have been lodged on the first working day following its delivery to the Commission by registered mail or following the issuing of an acknowledgement of receipt by the Commission.

Where, in the absence of any complaint, a Member State is in possession of sufficient evidence of dumping and of resultant injury to the Community industry, it shall immediately communicate such evidence to the Commission.

2. A complaint under paragraph 1 shall include evidence of dumping, injury and a causal link between the allegedly dumped imports and the alleged injury. The complaint shall contain such information as is reasonably available to the complainant on the following:

- (a) identity of the complainant and a description of the volume and value of the Community production of the like product by the complainant. Where a written complaint is made on behalf of the Community industry, the complaint shall identify the industry on behalf of which the complaint is made by a list of all known Community producers of the like product (or associations of Community producers of the like product) and, to the extent possible, a description of the volume and value of Community production of the like product accounted for by such producers;
- (b) a complete description of the allegedly dumped product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer, and a list of known persons importing the product in question;
- (c) information on prices at which the product in question is sold when destined for consumption in the domestic markets of the country or countries of origin or export (or, where appropriate, information on the prices at which the product is sold from the country or countries of origin or export to a third country or countries or on the constructed value of the product) and information on export prices or, where appropriate, on the prices at which the product is first resold to an independent buyer in the Community;
- (d) information on changes in the volume of the allegedly dumped imports, the effect of those imports on prices of the like product on the Community market and the consequent impact of the imports on the Community industry, as demonstrated by relevant factors and indices having a bearing on the state of the Community industry, such as those listed in Article 3 (3) and (5).

3. The Commission shall, as far as possible, examine the accuracy and adequacy of the evidence provided in the complaint to determine whether there is sufficient evidence to justify the initiation of an investigation.

4. An investigation shall not be initiated pursuant to paragraph 1 unless it has been determined, on the basis of an examination as to the degree of support for, or opposition to, the complaint expressed by Community producers of the like product, that the complaint has been made by or on behalf of the Community industry. The complaint shall be considered to have been made by or on behalf of the Community industry if it is supported by those Community producers whose collective output constitutes more than 50 % of the total production of the

like product produced by that portion of the Community industry expressing either support for or opposition to the complaint. However, no investigation shall be initiated when Community producers expressly supporting the complaint account for less than 25 % of total production of the like product produced by the Community industry.

5. The authorities shall, unless a decision has been made to initiate an investigation, avoid publishing the complaint seeking the initiation of an investigation. However, after receipt of a properly documented complaint and before proceeding to initiate an investigation, the government of the exporting country concerned shall be notified.

6. If in special circumstances, it is decided to initiate an investigation without having received a written complaint by or on behalf of the Community industry for the initiation of such investigation, this shall be done on the basis of sufficient evidence of dumping, injury and a causal link, as described in paragraph 2, to justify such initiation.

7. The evidence of both dumping and injury shall be considered simultaneously in the decision as to whether or not to initiate an investigation. A complaint shall be rejected where there is insufficient evidence of either dumping or of injury to justify proceeding with the case. Proceedings shall not be initiated against countries whose imports represent a market share of below 1 %, unless such countries collectively account for 3 % or more of Community consumption.

8. The complaint may be withdrawn prior to initiation, in which case it shall be considered not to have been lodged.

9. Where, after consultation, it is apparent that there is sufficient evidence to justify initiating a proceeding, the Commission shall do so within 45 days of the lodging of the complaint and shall publish a notice in the Official Journal of the European Communities. Where insufficient evidence has been presented, the complainant shall, after consultation, be so informed within 45 days of the date on which the complaint is lodged with the Commission.

10. The notice of initiation of the proceedings shall announce the initiation of an investigation, indicate the product and countries concerned, give a summary of the information received, and provide that all relevant information is to be communicated to the Commission; it shall state the periods within which interested parties may make themselves known, present their views in writing and submit information if such views and information are to be taken into account during the investigation; it shall also state the period within which interested parties may apply to be heard by the Commission in accordance with Article 6 (5).

11. The Commission shall advise the exporters, importers and representative associations of importers or exporters known by it to be concerned, as well as representatives of the exporting country and the complainants, of the initiation of the proceedings and shall, with due regard to the protection of confidential information, supply the full text of the written complaint received pursuant to paragraph 1 to the known exporters and to the authorities of the exporting country, and make it available upon request to other interested parties involved. Where the number of exporters involved is particularly high, the full text of the written complaint may instead be supplied only to the authorities of the exporting country or to the relevant trade association.

12. An anti-dumping investigation shall not hinder the procedures for customs clearance.

Article 6

The investigation

1. Following the initiation of the proceeding, the Commission, acting in cooperation with the Member States, shall commence an investigation at Community level. Such investigation shall cover both dumping and injury and these shall be investigated simultaneously. For the purpose of a representative finding, an investigation period shall be selected which, in the case of dumping shall, normally, cover a period of not less than six months immediately prior to the initiation of the proceeding. Information relating to a period subsequent to the investigation period shall, normally, not be taken into account.

2. Parties receiving questionnaires used in an anti-dumping investigation shall be allowed at least 30 days to reply. The time-limit for exporters shall be counted from the date of receipt of the questionnaire, which for this purpose shall be deemed to have been received one week from the day on which it was sent to the exporter or transmitted to the appropriate diplomatic representative of the exporting country. An extension to the 30 day period may be granted, due account being taken of the time-limits of the investigation, provided that the party shows due cause for such extension, in terms of its particular circumstances.

3. The Commission may request Member States to supply information, and Member States shall take whatever steps are necessary in order to give effect to such requests. They shall send to the Commission the information requested together with the results of all inspections, checks or investigations carried out. Where this information is of general interest or where its transmission has been requested by a Member State, the Commission shall forward it to the Member States, provided it is not confidential, in which case a non-confidential summary shall be forwarded.

4. The Commission may request Member States to carry out all necessary checks and inspections, particularly

amongst importers, traders and Community producers, and to carry out investigations in third countries, provided that the firms concerned give their consent and that the government of the country in question has been officially notified and raises no objection. Member States shall take whatever steps are necessary in order to give effect to such requests from the Commission. Officials of the Commission shall be authorized, if the Commission or a Member State so requests, to assist the officials of Member States in carrying out their duties.

5. The interested parties which have made themselves known in accordance with Article 5 (10) shall be heard if they have, within the period prescribed in the notice published in the *Official Journal of the European Communities*, made a written request for a hearing showing that they are an interested party likely to be affected by the result of the proceeding and that there are particular reasons why they should be heard.

6. Opportunities shall, on request, be provided for the importers, exporters, representatives of the government of the exporting country and the complainants which have made themselves known in accordance with Article 5 (10), to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Oral information provided under this paragraph shall be taken into account in so far as it is subsequently confirmed in writing.

7. The complainants, importers and exporters and their representative associations, users and consumer organizations, which have made themselves known in accordance with Article 5 (10), as well as the representatives of the exporting country may, upon written request, inspect all information made available by any party to an investigation, as distinct from internal documents prepared by the authorities of the Community or its Member States, which is relevant to the presentation of their cases and not confidential within the meaning of Article 19, and that is used in the investigation. Such parties may respond to such information and their comments shall be taken into consideration, wherever they are sufficiently substantiated in the response.

8. Except in the circumstances provided for in Article 18, the information which is supplied by interested parties and upon which findings are based shall be examined for accuracy as far as possible.

9. For proceedings initiated pursuant to Article 5 (9), an investigation shall, whenever possible, be concluded within one year. In any event, such investigations shall in all cases be concluded within 15 months of initiation, in accordance with the findings made pursuant to Articles 8 and 9.

*Article 7***Provisional measures**

1. Provisional duties may be imposed if proceedings have been initiated in accordance with Article 5, if a notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments in accordance with Article 5 (10), if a provisional affirmative determination has been made of dumping and consequent injury to the Community industry, and if the Community interest calls for intervention to prevent such injury. The provisional duties shall be imposed no earlier than 60 days from the initiation of the proceedings but not later than nine months from the initiation of the proceedings.
2. The amount of the provisional anti-dumping duty shall not exceed the margin of dumping as provisionally established, but it shall be less than the margin if such lesser duty would be adequate to remove the injury to the Community industry.
3. Provisional duties shall be secured by a guarantee, and the release of the products concerned for free circulation in the Community shall be conditional upon the provision of such guarantee.
4. The Commission shall take provisional action after consultation or, in cases of extreme urgency, after informing the Member States. In this latter case, consultations shall take place ten days, at the latest, after notification to the Member States of the action taken by the Commission.
5. Where a Member State requests immediate intervention by the Commission and where the conditions in paragraph 1 are met, the Commission shall, within a maximum of five working days of receipt of the request, decide whether a provisional anti-dumping duty shall be imposed.
6. The Commission shall forthwith inform the Member States of any decision taken under paragraphs 1 to 5.
7. Provisional duties may be imposed for six months and extended for a further three months or they may be imposed for nine months. However, they may only be extended, or imposed for a nine month period, where exporters representing a significant proportion of the trade involved so request or do not object upon notification by the Commission.

*Article 8***Undertakings**

1. Investigations may be terminated without the imposition of provisional or definitive duties upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease exports to the area in question at dumped prices, so that the Commission, after consultation, is satisfied that the injurious effect of the dumping is eliminated. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping and they shall be less than the margin of dumping if such increases would be adequate to remove the injury to the Community industry.
2. Undertakings may be suggested by the Commission, but no exporter shall be obliged to enter into such an undertaking. The fact that exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice consideration of the case. However, it may be determined that a threat of injury is more likely to materialize if the dumped imports continue. Undertakings shall not be sought or accepted from exporters unless a provisional affirmative determination of dumping and injury caused by such dumping has been made. Save in exceptional circumstances, undertakings may not be offered later than the end of the period during which representations may be made pursuant to Article 20 (5).
3. Undertakings offered need not be accepted if their acceptance is considered impractical, such as where the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy. The exporter concerned may be provided with the reasons for which it is proposed to reject the offer of an undertaking and may be given an opportunity to make comments thereon. The reasons for rejection shall be set out in the definitive decision.
4. Parties which offer an undertaking shall be required to provide a non-confidential version of such undertaking, so that it may be made available to interested parties to the investigation.
5. Where undertakings are, after consultation, accepted, the investigation shall be terminated by the Commission.
6. If the undertakings are accepted, the investigation of dumping and injury shall normally be completed. In such a case, if a negative determination of dumping or injury is made, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to the existence of an undertaking. In such cases it may be required that an undertaking be maintained for a reasonable period. In the event that an affirmative determination of dumping and injury is made, the undertaking shall continue, consistently with its terms and the provisions of this Decision.

7. The Commission shall require any exporter from which an undertaking has been accepted to provide, periodically, information relevant to the fulfilment of such undertaking, and to permit verification of pertinent data. Non-compliance with such requirements shall be construed as a breach of the undertaking.

8. Where undertakings are accepted from certain exporters during the course of an investigation, they shall, for the purpose of Article 11, be deemed to take effect from the date on which the investigation is concluded for the exporting country.

9. In case of breach or withdrawal of undertakings by any party, a definitive duty shall be imposed in accordance with Article 9, on the basis of the facts established within the context of the investigation which led to the undertaking, provided that such investigation was concluded with a final determination as to dumping and injury and that the exporter concerned has, except where he himself has withdrawn the undertaking, been given an opportunity to comment.

10. A provisional duty may, after consultation, be imposed in accordance with Article 7 on the basis of the best information available, where there is reason to believe that an undertaking is being breached, or in case of breach or withdrawal of an undertaking where the investigation which led to the undertaking has not been concluded.

Article 9

Termination without measures; imposition of definitive duties

1. Where the complaint is withdrawn, the proceeding may be terminated unless such termination would not be in the Community interest.

2. Where, after consultation, protective measures are unnecessary, the investigation or proceeding shall be terminated by the Commission.

3. For a proceeding initiated pursuant to Article 5 (9), injury shall normally be regarded as negligible where the imports concerned represent less than the volumes set out in Article 5 (7). For the same proceeding, there shall be immediate termination where it is determined that the margin of dumping is less than 2 %, expressed as a percentage of the export price, provided always that it is only the investigation that shall be terminated where the margin is below 2 % for individual exporters and they shall remain subject to the proceeding and may be re-investigated in any subsequent review carried out for the country concerned pursuant to Article 11.

4. Where the facts as finally established show that there is dumping and injury caused thereby, and the

Community interest calls for intervention in accordance with Article 21, a definitive anti-dumping duty shall be imposed by the Commission, after consultation of the Advisory Committee. The amount of the anti-dumping duty shall not exceed the margin of dumping established but it should be less than the margin if such lesser duty would be adequate to remove the injury to the Community industry.

5. An anti-dumping duty shall be imposed in the appropriate amounts in each case, on a non-discriminatory basis on imports of a product from all sources found to be dumped and causing injury, except as to imports from those sources from which undertakings under the terms of this Decision have been accepted. The decision imposing the duty shall specify the duty for each supplier or, if that is impracticable, and as a general rule in the cases referred to in Article 2 (7), the supplying country concerned.

6. When the Commission has limited its examination in accordance with Article 17, any anti-dumping duty applied to imports from exporters or producers which have made themselves known in accordance with Article 17 but were not included in the examination shall not exceed the weighted average margin of dumping established for the parties in the sample. For the purpose of this paragraph, the Commission shall disregard any zero and *de minimis* margins, and margins established in the circumstances referred to in Article 18. Individual duties shall be applied to imports from any exporter or producer which is granted individual treatment, as provided for in Article 17.

Article 10

Retroactivity

1. Provisional measures and definitive anti-dumping duties shall only be applied to products which enter free circulation after the time when the decision taken pursuant to Articles 7 (1) or 9 (4), as the case may be, enters into force, subject to the exceptions set out in this Decision.

2. Where a provisional duty has been applied and the facts as finally established show that there is dumping and injury, the Commission shall decide, irrespective of whether a definitive anti-dumping duty is to be imposed, what proportion of the provisional duty is to be definitively collected. For this purpose, 'injury' shall not include material retardation of the establishment of a Community industry, nor threat of material injury, except where it is found that this would, in the absence of provisional measures, have developed into material injury. In all other cases involving such threat or retardation, any provisional amounts shall be released and definitive duties can only be imposed from the date that a final determination of threat or material retardation is made.

3. If the definitive anti-dumping duty is higher than the provisional duty, the difference shall not be collected. If the definitive duty is lower than the provisional duty, the duty shall be recalculated. Where a final determination is negative, the provisional duty shall not be confirmed.

4. A definitive anti-dumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures but not prior to the initiation of the investigation, provided that imports have been registered in accordance with Article 14 (5), the Commission has allowed the importers concerned an opportunity to comment, and:

- (a) there is, for the product in question, a history of dumping over an extended period, or the importer was aware of, or should have been aware of, the dumping as regards the extent of the dumping and injury alleged or found; and
- (b) in addition to the level of imports which caused injury during the investigation period, there is a further substantial rise in imports which, in the light of its timing and volume and other circumstances, is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied.

5. In cases of breach or withdrawal of undertakings, definitive duties may be levied on goods entered for free circulation not more than 90 days before the application of provisional measures, provided that imports have been registered in accordance with Article 14 (5), and that any such retroactive assessment shall not apply to imports entered before the breach or withdrawal of the undertaking.

Article 11

Duration, reviews and refunds

1. An anti-dumping measure shall remain in force only as long as, and to the extent that, it is necessary to counteract the dumping which is causing injury.

2. A definitive anti-dumping measure shall expire five years from its imposition or five years from the date of the conclusion of the most recent review which has covered both dumping and injury, unless it is determined in a review that the expiry would be likely to lead to a continuation or recurrence of dumping and injury. Such an expiry review shall be initiated on the initiative of the Commission, or upon request made by or on behalf of Community producers, and the measure shall remain in force pending the outcome of such review.

An expiry review shall be initiated where the request contains sufficient evidence that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury. Such a likelihood may, for example, be indicated by evidence of continued dumping and injury or evidence that the removal of injury is partly or solely due to the existence of measures or evidence that the circumstances of the exporters, or market conditions, are such that they would indicate the likelihood of further injurious dumping.

In carrying out investigations under this paragraph, the exporters, importers, the representatives of the exporting country and the Community producers shall be provided with the opportunity to amplify, rebut or comment on the matters set out in the review request, and conclusions shall be reached with due account taken of all relevant and duly documented evidence presented in relation to the question as to whether the expiry of measures would be likely, or unlikely, to lead to the continuation or recurrence of dumping and injury.

A notice of impending expiry shall be published in the *Official Journal of the European Communities* at an appropriate time in the final year of the period of application of the measures as defined in this paragraph. Thereafter, the Community producers shall, no later than three months before the end of the five year period, be entitled to lodge a review request in accordance with the second subparagraph. A notice announcing the actual expiry of measures pursuant to this paragraph shall also be published.

3. The need for the continued imposition of measures may also be reviewed, where warranted, on the initiative of the Commission or at the request of a Member State or, provided that a reasonable period of time of at least one year has elapsed since the imposition of the definitive measure, upon a request by any exporter or importer or by the Community producers which contains sufficient evidence substantiating the need for such an interim review.

An interim review shall be initiated where the request contains sufficient evidence that the continued imposition of the measure is no longer necessary to offset dumping and/or that the injury would be unlikely to continue or recur if the measure were removed or varied, or that the existing measure is not, or is no longer, sufficient to counteract the dumping which is causing injury.

In carrying out investigations pursuant to this paragraph, the Commission may, *inter alia*, consider whether the circumstances with regard to dumping and injury have changed significantly, or whether existing measures are

achieving the intended results in removing the injury previously established under Article 3. In these respects, account shall be taken in the final determination of all relevant and duly documented evidence.

4. A review shall also be carried out for the purpose of determining individual margins of dumping for new exporters in the exporting country in question which have not exported the product during the period of investigation on which the measures were based.

The review shall be initiated where a new exporter or producer can show that it is not related to any of the exporters or producers in the exporting country which are subject to the anti-dumping measures on the product, and that it has actually exported to the Community following the abovementioned investigation period, or where it can demonstrate it has entered into an irrevocable contractual obligation to export a significant quantity to the Community.

A review for a new exporter shall be initiated, and carried out on an accelerated basis, after consultation of the Advisory Committee and after Community producers have been given an opportunity to comment. The Commission decision initiating a review shall repeal the duty in force with regard to the new exporter concerned by amending the Decision which has imposed such duty, and by making imports subject to registration in accordance with Article 14 (5) in order to ensure that, should the review result in a determination of dumping in respect of such an exporter, anti-dumping duties can be levied retroactively to the date of the initiation of the review.

The provisions of this paragraph shall not apply where duties have been imposed under Article 9 (6).

5. The relevant provisions of this Decision with regard to procedures and the conduct of investigations, excluding those relating to time-limits, shall apply to any review carried out pursuant to paragraphs 2, 3 and 4. Any such review shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review.

6. Reviews pursuant to this Article shall be initiated by the Commission after consultation of the Advisory Committee. Where warranted by reviews, measures shall be repealed or maintained pursuant to paragraph 2, or repealed, maintained or amended pursuant to paragraphs 3 and 4. Where measures are repealed for individual exporters, but not for the country as a whole, such exporters shall remain subject to the proceeding and may, automatically, be re-investigated in any subsequent review carried out for that country pursuant to this Article.

7. Where a review of measures pursuant to paragraph 3 is in progress at the end of the period of application of

measures as defined in paragraph 2, such review shall also cover the circumstances set out in paragraph 2.

8. Notwithstanding paragraph 2, an importer may request reimbursement of duties collected where it is shown that the dumping margin, on the basis of which duties were paid, has been eliminated, or reduced to a level which is below the level of the duty in force.

In requesting a refund of anti-dumping duties, the importer shall submit an application to the Commission. The application shall be submitted via the Member State of the territory in which the products were released for free circulation, and within six months of the date on which the amount of the definitive duties to be levied was duly determined by the competent authorities or of the date on which a decision was made definitively to collect the amounts secured by way of provisional duty. Member States shall forward the request to the Commission forthwith.

An application for refund shall only be considered to be duly supported by evidence where it contains precise information on the amount of refund of anti-dumping duties claimed and all customs documentation relating to the calculation and payment of such amount. It shall also include evidence, for a representative period, of normal values and export prices to the Community for the exporter or producer to which the duty applies. In cases where the importer is not associated with the exporter or producer concerned and such information is not immediately available, or where the exporter or producer is unwilling to release it to the importer, the application shall contain a statement from the exporter or producer that the dumping margin has been reduced or eliminated, as specified in this Article, and that the relevant supporting evidence will be supplied to the Commission. Where such evidence is not forthcoming from the exporter or producer within a reasonable period of time the application shall be rejected.

The Commission shall, after consultation of the Advisory Committee, decide whether and to what extent the application should be granted, or it may decide at any time to initiate an interim review, whereupon the information and findings from such review carried out in accordance with the provisions applicable for such reviews, shall be used to determine whether and to what extent a refund is justified. Refunds of duties shall normally take place within 12 months, and in no circumstances more than 18 months after the date on which a request for a refund, duly supported by evidence, has been made by an importer of the product subject to the anti-dumping duty. The payment of any refund authorized should normally be made by Member States within 90 days of the abovementioned decision.

9. In all review or refund investigations carried out pursuant to this Article, the Commission shall, provided that circumstances have not changed, apply the same

methodology as in the investigation which led to the duty, with due account being taken of Article 2, and in particular paragraphs 11 and 12 thereof, and of Article 17.

10. In any investigation carried out pursuant to this Article, the Commission shall examine the reliability of export prices in accordance with Article 2. However, where it is decided to construct the export price in accordance with Article 2 (9), it shall calculate it with no deduction for the amount of anti-dumping duties paid when conclusive evidence is provided that the duty is duly reflected in resale prices and the subsequent selling prices in the Community.

Article 12

1. Where the Community industry submits sufficient information showing that measures have led to no movement, or insufficient movement, in resale prices or subsequent selling prices in the Community, the investigation may, after consultation, be reopened to examine whether the measure has had effects on the abovementioned prices.

2. During a re-investigation pursuant to this Article, exporters, importers and Community producers shall be provided with an opportunity to clarify the situation with regard to resale prices and subsequent selling prices; if it is concluded that the measure should have led to movements in such prices, then, in order to remove the injury previously established in accordance with Article 3, export prices shall be reassessed in accordance with Article 2 and dumping margins shall be recalculated to take account of the reassessed export prices. Where it is considered that a lack of movement in the prices in the Community is due to a fall in export prices which has occurred prior to or following the imposition of measures, dumping margins may be recalculated to take account of such lower export prices.

3. Where a re-investigation pursuant to this Article shows increased dumping the measures in force shall, after consultation of the Advisory Committee, be amended by the Commission, in accordance with the new findings on export prices.

4. The relevant provisions of Article 5 and 6 shall apply to any review carried out pursuant to this Article, except that such review shall be carried out expeditiously and shall normally be concluded within six months of the date of initiation of the re-investigation.

5. Alleged changes in normal value shall only be taken into account under this Article where complete information on revised normal values, duly substantiated by

evidence, is made available to the Commission within the time-limits set out in the notice of initiation of an investigation. Where an investigation involves a re-examination of normal values, imports may be made subject to registration in accordance with Article 14 (5) pending the outcome of the re-investigation.

Article 13

Circumvention

1. Anti-dumping duties imposed pursuant to this Decision may be extended to imports from third countries of like products, or parts thereof, when circumvention of the measure in force is taking place. Circumvention shall be defined as a change in the pattern of trade between third countries and the Community which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like products and there is evidence of dumping in relation to the normal values previously established for the like or similar products.

2. Investigations shall be initiated pursuant to this Article where the request contains sufficient evidence regarding the factors set out in paragraph 1. Initiations shall be made, after consultation of the Advisory Committee, by Commission Decision which shall also instruct the customs authorities to make imports subject to registration in accordance with Article 14 (5) or to request guarantees. Investigations shall be carried out by the Commission, which may be assisted by customs authorities and shall be concluded within nine months. When the facts as finally ascertained justify the extension of measures, this shall be done by the Commission, after consultation of the Advisory Committee, from the date on which registration was imposed pursuant to Article 14 (5) or on which guarantees were requested. The relevant procedural provisions of this Decision with regard to initiations and the conduct of investigations shall apply pursuant to this Article.

3. Products shall not be subject to registration pursuant to Article 14 (5) or measures where they are accompanied by a customs certificate declaring that the importation of the goods does not constitute circumvention. These certificates may be issued to importers, upon written application following authorization by decision of the Commission and they shall remain valid for the period, and under the conditions, set down therein.

4. Nothing in this Article shall preclude the normal application of the provisions in force concerning customs duties.

*Article 14***General provisions**

1. Provisional or definitive anti-dumping duties shall be imposed by a Commission Decision, and collected by Member States in the form and at the rate specified and according to the other criteria laid down in the Decision imposing such duties. Such duties shall also be collected independently of the customs duties, taxes and other charges normally imposed on imports. No product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidization.

2. Decisions imposing provisional or definitive anti-dumping duties, and Decisions accepting undertakings or terminating investigations or proceedings, shall be published in the *Official Journal of the European Communities*. Such Decisions shall contain in particular, due regard being had to the protection of confidential information, the names of the exporters, if possible, or of the countries involved, a description of the product and a summary of the material facts and considerations relevant to the dumping and injury determinations. In each case, a copy of the Decision shall be sent to known interested parties. The provisions of this paragraph shall apply *mutatis mutandis* to reviews.

3. Special provisions, in particular with regard to the common definition of the concept of origin as contained in Council Regulation (EEC) No 2913/92⁽¹⁾, may be adopted pursuant to this Decision.

4. In the Community interest, measures imposed pursuant to this Decision may, after consultation of the Advisory Committee, be suspended by a decision of the Commission for a period of nine months. The suspension may be extended for a further period, not exceeding one year, if the Commission after consultation so decides. Measures may only be suspended where market conditions have temporarily changed to such an extent that injury would be unlikely to resume as a result of the suspension, and provided that the Community industry has been given an opportunity to comment and these comments have been taken into account. Measures may, at any time and after consultation, be reinstated if the reason for suspension is no longer applicable.

5. The Commission may, after consulting the Advisory Committee, direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports from the date of such registration. Imports may be made subject to registration following a request from the Community industry which contains sufficient evidence

to justify such action. Registration shall be introduced by a Commission Decision which shall specify the purpose of the action and, if appropriate, the estimated amount of possible future liability. Imports shall not be made subject to registration for a period longer than nine months.

6. Member States shall report to the Commission every month, on the import trade in products subject to investigation and to measures, and on the amount of duties collected pursuant to this Decision.

*Article 15***Consultations**

1. Any consultations provided for in this Decision shall take place within an Advisory Committee, which shall consist of representatives of each Member State, with a representative of the Commission as chairman. Consultations shall be held immediately on request of a Member State or on the initiative of the Commission and in any event within a period of time which allows the time-limits set by this Decision to be adhered to.

2. The Committee shall meet when convened by its chairman. He shall provide the Member States, as promptly as possible, with all relevant information.

3. Where necessary, consultation may be in writing only; in that event, the Commission shall notify the Member States and shall specify a period within which they shall be entitled to express their opinions or to request an oral consultation which the chairman shall arrange, provided that such oral consultation can be held within a period of time which allows the time-limits set by this Decision to be adhered to.

4. Consultation shall cover, in particular:

- (a) the existence of dumping and the methods of establishing the dumping margin;
- (b) the existence and extent of injury;
- (c) the causal link between the dumped imports and injury;
- (d) the measures which, in the circumstances, are appropriate to prevent or remedy the injury caused by dumping and the ways and means of putting such measures into effect.

*Article 16***Verification visits**

1. The Commission shall, where it considers it appropriate, carry out visits to examine the records of importers, exporters, traders, agents, producers, trade associations and organizations, to verify information provided on dumping and injury. In the absence of a proper and timely reply, a verification visit may not be carried out.

⁽¹⁾ OJ No L 302, 19. 10. 1992, p. 1.

2. The Commission may carry out investigations in third countries as required, provided it obtains the agreement of the firms concerned, that it notifies the representatives of the government of the country in question and that the latter does not object to the investigation. As soon as the agreement of the firms concerned has been obtained the Commission should notify the authorities of the exporting country of the names and addresses of the firms to be visited and the dates agreed.

3. The firms concerned shall be advised of the nature of the information to be verified during verification visits and of any further information which needs to be provided during such visits, though this should not preclude requests made during the verification for further details to be provided in the light of information obtained.

4. In investigations carried out pursuant to paragraphs 1, 2 and 3, the Commission shall be assisted by officials of those Member States who so request.

Article 17

Sampling

1. In cases where the number of complainants, exporters or importers, types of product or transactions is large, the investigation may be limited to a reasonable number of parties, products or transactions by using samples which are statistically valid on the basis of information available at the time of the selection, or to the largest representative volume of production, sales or exports which can reasonably be investigated within the time available.

2. The final selection of parties, types of products or transactions made under these sampling provisions shall rest with the Commission, though preference shall be given to choosing a sample in consultation with, and with the consent of, the parties concerned, provided such parties make themselves known and make sufficient information available, within three weeks of initiation of the investigation, to enable a representative sample to be chosen.

3. In cases where the examination has been limited in accordance with this Article, an individual margin of dumping shall, nevertheless, be calculated for any exporter or producer not initially selected who submits the necessary information within the time-limits provided for in this Decision, except where the number of exporters or producers is so large that individual examinations

would be unduly burdensome and would prevent completion of the investigation in good time.

4. Where it is decided to sample and there is a degree of non-cooperation by some or all of the parties selected which is likely materially to affect the outcome of the investigation, a new sample may be selected. However, if a material degree of non-cooperation persists or there is insufficient time to select a new sample, the relevant provisions of Article 18 shall apply.

Article 18

Non-cooperation

1. In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within the time-limits provided in this Decision, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made on the basis of the facts available. Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of facts available. Interested parties shall be made aware of the consequences of non-cooperation.

2. Failure to give a computerized response shall not be deemed to constitute non-cooperation, provided that the interested party shows that presenting the response as requested would result in an unreasonable extra burden or unreasonable additional cost.

3. Where the information submitted by an interested party is not ideal in all respects it should nevertheless not be disregarded, provided that any deficiencies are not such as to cause undue difficulty in arriving at a reasonably accurate finding and that the information is appropriately submitted in good time and is verifiable, and that the party has acted to the best of its ability.

4. If evidence or information is not accepted, the supplying party shall be informed forthwith of the reasons therefor and shall be granted an opportunity to provide further explanations within the time-limit specified. If the explanations are considered unsatisfactory, the reasons for rejection of such evidence or information shall be disclosed and given in published findings.

5. If determinations, including those regarding normal value, are based on the provisions of paragraph 1, including the information supplied in the complaint, they shall, where practicable and with due regard to the time-limits of the investigation, be checked by reference to information from other independent sources which may be available, such as published price lists, official import statistics and customs returns, or information obtained from other interested parties during the investigation.

6. If an interested party does not cooperate, or cooperates only partially, so that relevant information is thereby withheld, the result may be less favourable to the party than if it had cooperated.

Article 19

Confidentiality

1. Any information which is by nature confidential, (for example, because its disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom he has acquired the information) or which is provided on a confidential basis by parties to an investigation shall, if good cause is shown, be treated as such by the authorities.

2. Interested parties providing confidential information shall be required to furnish non-confidential summaries thereof. Those summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.

3. If it is considered that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information available or to authorize its disclosure in generalized or summary form, such information may be disregarded unless it can be satisfactorily demonstrated from appropriate sources that the information is correct. Requests for confidentiality shall not be arbitrarily rejected.

4. This Article shall not preclude the disclosure of general information by the Community authorities and in particular of the reasons on which decisions taken pursuant to this Decision are based, or disclosure of the evidence relied on by the Community authorities in so far as is necessary to explain those reasons in court proceedings. Such disclosure must take into account the legitimate interests of the parties concerned that their business secrets shall not be divulged.

5. The Commission and Member States, or the officials of any of these, shall not reveal any information received pursuant to this Decision for which confidential treatment has been requested by its supplier, without specific permission from the supplier. Exchanges of information between the Commission and Member States, or any information relating to consultations made pursuant to Article 15, or any internal documents prepared by the

authorities of the Community or its Member States, shall not be divulged except as specifically provided for in this Decision.

6. Information received pursuant to this Decision shall be used only for the purpose for which it was requested.

Article 20

Disclosure

1. The complainants, importers and exporters and their representative associations, and representatives of the exporting country, may request disclosure of the details underlying the essential facts and considerations on the basis of which provisional measures have been imposed. Requests for such disclosure shall be made in writing immediately following the imposition of provisional measures, and the disclosure shall be made in writing as soon as possible thereafter.

2. The parties mentioned in paragraph 1 may request final disclosure of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive measures, or the termination of an investigation or proceedings without the imposition of measures, particular attention being paid to the disclosure of any facts or considerations which are different from those used for any provisional measures.

3. Requests for final disclosure, as defined in paragraph 2, shall be addressed to the Commission in writing and shall have been received, in cases where a provisional duty has been applied, not later than one month after publication of the imposition of that duty. Where a provisional duty has not been applied, parties shall be provided with an opportunity to request final disclosure within time-limits set by the Commission.

4. Final disclosure shall be given in writing. It shall be made, due regard being had to the protection of confidential information, as soon as possible and, normally, not later than one month prior to a definitive decision by the Commission. Where the Commission is not in a position to disclose certain facts or considerations at that time, they shall be disclosed as soon as possible thereafter. Disclosure shall not prejudice any subsequent decision which may be taken by the Commission but where such decision is based on any different facts and considerations, they shall be disclosed as soon as possible.

5. Representations made after final disclosure is given shall be taken into consideration only if received within a period to be set by the Commission in each case, which shall be at least 10 days, due consideration being given to the urgency of the matter.

*Article 21***Community interest**

1. A determination as to whether the Community interest calls for the intervention shall be based on an appreciation of all the various interests taken as a whole, including the interests of the domestic industry and users and consumers; and a determination pursuant to this Article shall be made only where all parties have been given the opportunity to make their views known pursuant to paragraph 2. In such an examination, the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition shall be given special consideration. Measures, as determined on the basis of the dumping and injury found, may not be applied where the authorities, on the basis of all the information submitted, can clearly conclude that it is not in the Community interest to apply such measures.

2. In order to provide a sound basis on which the authorities can take account of all views and information in the decision as to whether or not the imposition of measures is in the Community interest, the complainants, importers and their representative associations, representative users and representative consumer organizations may, within the time-limits specified in the notice of initiation of the anti-dumping investigation, make themselves known and provide information to the Commission. Such information, or appropriate summaries thereof, shall be made available to the other parties specified in this Article, and they shall be entitled to respond to such information.

3. The parties which have acted in conformity with paragraph 2 may request a hearing. Such requests shall be granted when they are submitted within the time-limits set in paragraph 2, and when they set out the reasons, in terms of the Community interest, why the parties should be heard.

4. The parties which have acted in conformity with paragraph 2 may provide comments on the application of any provisional duties imposed. Such comments shall be received within one month of the application of such measures if they are to be taken into account and they, or appropriate summaries thereof, shall be made available to other parties who shall be entitled to respond to such comments.

5. The Commission shall examine the information which is properly submitted and the extent to which it is

representative and the results of such analysis, together with an opinion on its merits, shall be transmitted to the Advisory Committee for consultation.

6. The parties which have acted in conformity with paragraph 2 may request the facts and considerations on which final decisions are likely to be taken to be made available to them. Such information shall be made available to the extent possible and without prejudice to any subsequent decision taken by the Commission.

7. Information shall only be taken into account where it is supported by actual evidence which substantiates its validity.

*Article 22***Final provisions**

This Decision shall not preclude the application of:

- (a) any special rules laid down in agreements concluded between the Community and third countries;
- (b) special measures, provided that such action does not run counter to obligations under the GATT.

*Article 23***Non-application of existing legislation and transitional measures**

As from the date of entry into force of this Decision the provisions of Decision 2424/88/ECSC shall no longer apply as regards protection against dumped imports from countries not members of the European Coal and Steel Community.

References to those provisions shall be construed as references to this Decision.

*Article 24***Entry into force**

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

The time-limits provided for in Articles 6 (9) and 7 (1) of this Decision shall not apply to investigations initiated before the date of entry into force of this Decision.

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

Done at Brussels, 28 November 1996.

For the Commission

Leon BRITTAN

Vice-President

COMMISSION REGULATION (EC) No 2278/96

of 28 November 1996

modifying Regulation (EEC) No 1863/90 laying down detailed rules for the application of Council Regulation (EEC) No 4045/89 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund and repealing Directive 77/435/EEC

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Treaty establishing the European Community,

HAS ADOPTED THIS REGULATION:

Having regard to Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund and repealing Directive 77/435/EEC⁽¹⁾, as last amended by Regulation (EC) No 3235/94⁽²⁾, and in particular Article 19 thereof,

Whereas Article 7 of Regulation (EEC) No 4045/89 establishes a system of mutual assistance between Member States for the purpose of carrying out the scrutinies provided for in Articles 2 and 3 of that Regulation and requires that the Commission establish the provisions for the coordination of joint actions involving mutual assistance between two or more Member States; whereas it is appropriate, therefore, that these provisions should be introduced into Commission Regulation (EEC) No 1863/90⁽³⁾, as amended by Regulation (EC) No 2992/95⁽⁴⁾;

Whereas Annex II of Regulation (EEC) No 1863/90 sets out the information to be included in the annual reports submitted by Member States under Article 9 (1) of Regulation (EEC) No 4045/89; whereas this should be amended to provide expressly for the inclusion of the results of the scrutinies carried out;

Whereas errors have been discovered in certain language versions of Annexes III and IV of Regulation (EEC) No 1863/90 which should be corrected; whereas for the sake of clarity it is desirable to replace the whole of the annexes with the corrected versions; whereas the corrected annexes should have effect from the date of entry into force of Regulation (EC) No 2992/95 by which the original annexes were introduced;

Article 1

Regulation (EEC) No 1863/90 is amended as follows:

1. The following Articles shall be renumbered as follows:

- Article 4a shall become Article 5,
- Article 4b shall become Article 6,
- Article 5 shall become Article 8,

2. The following title, subtitle and Article are added after Article 6:

*'TITLE III**Joint actions**Article 7*

1. The Commission, on its own initiative, or on the basis of a proposal by a Member State, and with the agreement of the Member States concerned, may decide to coordinate joint actions involving mutual assistance between two or more Member States, as foreseen in Article 7 (1) of Regulation (EEC) No 4045/89, having regard, in particular, to,

- the degree of risk presented,
- the extent of operations, in particular the frequency of intra- and extra-Community trade, and their financial importance,
- the need to achieve a uniform approach.

2. In agreement with the Member States involved, a Member State shall be designated responsible for the management of the joint action. However, each Member State shall remain responsible for carrying out the scrutinies required by Regulation (EEC) No 4045/89, as well as for the resulting consequences.

3. Each Member State involved shall:

- designate those persons or services responsible for carrying out the joint action on its behalf,

⁽¹⁾ OJ No L 388, 30. 12. 1989, p. 18.

⁽²⁾ OJ No L 338, 28. 12. 1994, p. 16.

⁽³⁾ OJ No L 170, 3. 7. 1990, p. 23.

⁽⁴⁾ OJ No L 312, 23. 12. 1995, p. 11.

- ensure that a sufficient number of adequately experienced officials is made available for the conduct of the joint action,
- ensure that within set time limits the scrutiny is carried out and the report finalised and made available to all participating Member States and to the Commission.'

Article 2

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

3. Annex II is replaced by Annex A to this Regulation.

4. Annexes III and IV are replaced by Annexes B and C, respectively, to this Regulation.

The provisions of Article 1 point 4 are applicable with effect from 30. 12. 1995.

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

Done at Brussels, 28 November 1996.

For the Commission

Franz FISCHLER

Member of the Commission

*ANNEX A**ANNEX II*

Information to be provided in the annual report submitted by Member States under Article 9 (1) of Council Regulation (EEC) No 4045/89 ('the Regulation').

1. Administration of the Regulation

The administration of the Regulation, including changes to the organizations responsible for controls and to the special department responsible for monitoring the application of the Regulation as referred to in Article 11, and to the competences of those organisations,

2. Legislative changes

Any national legislative changes relevant to the application of the Regulation that have intervened since the previous annual report.

3. Amendments to the scrutiny programme

A description of any amendments or modifications that were made to the scrutiny programme submitted to the Commission under Article 10 (2) of the Regulation since the date of submission of that programme.

4. Execution of the scrutiny programme

The execution of the programme of scrutinies for the period ending on the 30th of June preceding the latest date for submission of this report, as referred to in Article 9 (1) of the Regulation, including, both in total and broken down by control body (where more than one carries out controls under the Regulation):

- (a) the number of scrutinies carried out and the number of undertakings subject to these scrutinies;
- (b) the number of scrutinies still in the course of being carried out and the number of undertakings subject to these scrutinies;
- (c) the number of scrutinies planned for the period in question that were not carried out and the number of undertakings that were not subject to scrutiny as a result of the non-execution of these scrutinies;
- (d) the reasons why the scrutinies referred to in (c) above were not carried out;
- (e) the breakdown, by amounts received by or paid to, and by measure, of the scrutinies referred to in (a), (b), and (c) above;
- (f) the results of the scrutinies referred to in point (a) above, including:
 - the number of scrutinies for which irregularities were discovered, and the number of undertakings involved,
 - the nature of these irregularities,
 - the measure concerned where an irregularity was discovered,
 - the estimated financial consequence of each irregularity;
- (g) the results of those scrutinies carried out pursuant to the scrutiny period prior to that covered by the present report, for which the results were not available at the time of submission of the report for that scrutiny period, including:
 - the number of scrutinies for which irregularities were discovered, and the number of undertakings involved,
 - the nature of these irregularities,
 - the measure concerned where an irregularity was discovered,
 - the estimated financial consequence of each irregularity;
- (h) an indication of the average duration of scrutinies in person-days, indicating, where practicable, the time spent on planning, preparation, execution of controls, and reporting.

5. Mutual assistance

Mutual assistance requests made and received under Article 7 of the Regulation, including the results of scrutinies carried out as a matter of priority under Articles 7 (2) and 7 (4), and a summary of the lists both sent and received under Articles 7 (2) and 7 (3).

6. Resources

Details of the resources available for the carrying out of the scrutinies under the Regulation, including:

- (a) the number of staff, expressed in person/years, allocated to scrutinies under the Regulation, by control body, and, where appropriate, region;
- (b) training received by staff working on scrutinies under the Regulation, with an indication of the proportion of the staff referred to in paragraph (a) above who have received such training, and the nature of the training itself; and,
- (c) computer equipment and tools at the disposal of staff working on scrutinies under the Regulation.

7. Difficulties in applying the Regulation

Any difficulties encountered in the application of the Regulation, and the measures taken to overcome them or proposals to this end.

8. Suggestions for improvement

Where appropriate, any suggestions for improvement, either in the application of the Regulation, or in the Regulation itself.

ANNEX B

ANNEX III

SHEET A

PROPOSED SCRUTINY PROGRAMME FOR THE PERIOD

(Article 10 of Regulation (EEC) No 4045/89)

1. The criterion for calculation of the minimum number of undertakings required to be controlled = not less than half of the number of undertakings whose receipts or payments, or the sum thereof, amounted to more than ECU 100 000 for the EAGGF financial year

i.e.:

$\times \frac{1}{2} =$

2. For measures for which risk analysis has not been used as the main selection criterion:

The number of undertakings having received or made payments under the system of financing by the Guarantee Section of the EAGGF in the financial year was as follows:

A (1) Total number

Total number whose receipts or payments, or the sum thereof, were in the following categories

A (2) Exceeding ECU 300 000

A (3) ECU 300 000 or less, but not less than ECU 30 000

The number of undertakings in each of the above categories which it is intended to scrutinize in are:

3. Total number of undertakings proposed for scrutiny in

A (4) Total number

A (5) Total based upon risk analysis

A (6) < ECU 30 000

Notes on boxes:

A (2) It is compulsory to scrutinize undertakings in this category which were not scrutinized in accordance with this Regulation during the two scrutiny periods preceding this scrutiny period, unless the payments that they received were under a measure or measures for which risk analysis techniques of selection have been adopted.

A (6) Undertakings in this category are to be scrutinized only for specific reasons which are to be indicated in sheet D of this Annex.

B (1) EAGGF Budget Article or Item No	B (2) Number of scrutinies planned	Only for measures where risk analysis will not be applied				B (5) Scrutinies planned to undertakings whose receipts or payments, or the sum thereof were less than ECU 30 000 during the EAGGF financial year ...	B (6) Total expenditure by EAGGF budget heading to be controlled during the period ... (ECU)	B (7) Total expenditure by EAGGF budget heading during the EAGGF financial year ... (ECU)
		B (3) Scrutinies planned to undertakings whose receipts or payments, or the sum thereof exceeded ECU 300 000 during the EAGGF financial year ...		B (4) Scrutinies planned to undertakings whose receipts or payments, or the sum thereof were in the range ECU 30 000 to ECU 300 000 during the EAGGF financial year ...				
		(i) number of undertakings	(ii) expenditure thereby controlled (ECU)	(i) number of undertakings	(ii) expenditure thereby controlled (ECU)			

SHEET C

PROPOSED SCRUTINY PROGRAMME FOR THE PERIOD

(Article 10 of Regulation (EEC) No 4045/89)

Criteria adopted in drawing up the programme in the area of export refunds and other sectors where risk analysis selection techniques have been adopted where these differ from those included in the proposals for risk analysis sent to the Commission under Article 2 (2) of Regulation (EEC) No 4045/89

Sector where scrutiny is proposed (show EAGGF budget heading as set out in column B(1) of Sheet B of this Annex)	Comments on risk and selection criteria adopted (give brief details — e.g. detected irregularities or exceptional increase in expenditure)

PROPOSED SCRUTINY PROGRAMME FOR THE PERIOD

SHEET D

(Article 10 of Regulation (EEC) No 4045/89)

Proposed scrutinies, if any, of undertakings whose receipts or payments, or the sum thereof, were less than ECU 30 000 during the EAGGF financial year

EAGGF budget heading (as set out in column B (1) of Sheet B)	Number of undertakings that it is proposed to scrutinize	Specific reason for scrutiny

SHEET E

PROPOSED SCRUTINY PROGRAMME FOR THE PERIOD

(Article 10 of Regulation (EEC) No 4045/89)

Control body (breakdown by region and office)	Number of controls planned	Aggregate number of controller/years allocated to controls under Regulation (EEC) No 4045/89 (where controllers work only part-time on controls under Regulation (EEC) No 4045/89, only this fraction of their working year should be included).

ANNEX C

ANNEX IV

LIST OF UNDERTAKINGS ESTABLISHED IN A MEMBER STATE OTHER THAN THAT IN WHICH PAYMENT OF THE AMOUNT IN QUESTION HAS OR SHOULD HAVE BEEN MADE OR RECEIVED

(Article 7 (1) and (2) of Regulation (EEC) No 4045/89)

Member State in which payment was made or received

Date of dispatch of the list

Member State in which undertaking is established

(1) Name and address		(2) Nature of expenditure (show each payment separately by EAGGF budgetary line and type of payment)	(3) Amount (in national currency) per individual payment which during the EAGGF financial year was:		(4) Indicate whether inspection of the undertaking requested in accordance with Article 7 (2) (see note A)
(i) of undertaking in Member State where established	(ii) to which payment made or from which payment received		(i) paid to undertaking	(ii) paid by undertaking	

Notes:

- A. If so a specific request should be sent, using the specimen form set out in Annex VI, including all the information needed to enable the recipient to correctly identify the undertaking concerned.
- B. A copy of this list must be sent to the Commission (DG VI-G-3).
- C. Where are no undertakings established in other Member States as far as your country is concerned, it is requested that this fact is communicated to all other Member States and to the Commission (DG VI-G-3).
- D. If a request for inspection of an undertaking in accordance with Article 7 (2) is made subsequent to the dispatch of this list, a copy of the request, in accordance with Annex VI, should nonetheless be sent to the Commission (DG VI-G-3).

COMMISSION REGULATION (EC) No 2279/96

of 28 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 29 November 1996.

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

Done at Brussels, 28 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 28 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	69,5
	624	126,9
	999	98,2
0707 00 40	624	131,1
	999	131,1
0709 90 79	052	75,2
	999	75,2
0805 20 31	052	51,6
	204	93,4
	999	72,5
0805 20 33, 0805 20 35, 0805 20 37, 0805 20 39	052	62,7
	999	62,7
0805 30 40	052	68,0
	600	78,2
	999	73,1
0808 10 92, 0808 10 94, 0808 10 98	060	44,6
	064	48,1
	400	79,0
	404	70,5
	999	60,5
0808 20 67	052	66,8
	064	77,7
	400	93,9
	624	66,0
	999	76,1

⁽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 2280/96

of 28 November 1996

determining the world market price for unginned cotton and the rate for the aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Greece, and in particular paragraphs 3 and 10 of Protocol 4 on cotton, as last amended by Council Regulation (EC) No 1553/95⁽¹⁾,

Having regard to Council Regulation (EC) No 1554/95 of 29 June 1995⁽²⁾ laying down general rules for the system of aid for cotton and repealing Regulation (EEC) No 2169/81, as amended by Regulation (EC) No 1584/96⁽³⁾, and in particular Articles 3, 4 and 5 thereof,

Whereas Article 3 of Regulation (EC) No 1554/95 requires a world market price for unginned cotton to be periodically determined from the world market price determined for ginned cotton, using the historical relationship between the two prices as specified in Article 1 (2) of Commission Regulation (EEC) No 1201/89 of 3 May 1989 laying down rules for implementing the system of aid for cotton⁽⁴⁾, as last amended by Regulation (EC) No 1645/96⁽⁵⁾; whereas if it cannot be determined in this way it is to be based on the last price determined;

Whereas Article 4 of Regulation (EC) No 1554/95 requires the world market price for ginned cotton to be determined for a product of specific characteristics using the most favourable offers and quotations on the world market of those considered representative of the real market trend; whereas to this end an average is to be calculated of offers and quotations on one or more European exchanges for a cif product to a North European port from the supplier countries considered most representative as regards international trade; whereas these rules for determination of the world market price for ginned cotton provide for adjustments to reflect dif-

ferences in product quality and the nature of offers and quotations; whereas these adjustments are specified in Article 2 of Regulation (EEC) No 1201/89;

Whereas application of the above rules gives the world market price for unginned cotton indicated hereunder;

Whereas Article 5 (3) of Regulation (EC) No 1554/95 stipulates that the advance payment rate for the aid is to be the guide price less the world market price and less a further amount calculated by the formula applicable when the guaranteed maximum quantity is overrun but with a 15 % increase in the estimate for unginned cotton production; whereas Commission Regulation (EC) No 1683/96⁽⁶⁾ determined estimated production for the 1996/97 marketing year; whereas application of these rules gives the advance payment rates for each Member State indicated hereunder,

HAS ADOPTED THIS REGULATION:

Article 1

1. The world market price for unginned cotton as indicated in Article 3 of Regulation (EC) No 1554/95 is set at ECU 32,867 per 100 kilograms.

2. Advance payment of the aid as indicated in Article 5 (3) of Regulation (EC) No 1554/95 shall be at the rate of:

- ECU 61,740 per 100 kilograms in Spain,
- ECU 31,232 per 100 kilograms in Greece,
- ECU 73,433 per 100 kilograms in other Member States.

Article 2

This Regulation shall enter into force on 29 November 1996.

⁽¹⁾ OJ No L 148, 30. 6. 1995, p. 45.

⁽²⁾ OJ No L 148, 30. 6. 1995, p. 48.

⁽³⁾ OJ No L 206, 16. 8. 1996, p. 16.

⁽⁴⁾ OJ No L 123, 4. 5. 1989, p. 23.

⁽⁵⁾ OJ No L 207, 17. 8. 1996, p. 3.

⁽⁶⁾ OJ No L 217, 28. 8. 1996, p. 1.

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

Done at Brussels, 28 November 1996.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 2281/96

of 28 November 1996

fixing the export refunds on cereals and on wheat or rye flour, groats and meal

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⁾, and in particular Article 13 (2) thereof,

Whereas Article 13 of Regulation (EEC) No 1766/92 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products in the Community may be covered by an export refund;

Whereas the refunds must be fixed taking into account the factors referred to in Article 1 of Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under 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⁾;

Whereas, as far as wheat and rye flour, groats and meal are concerned, when the refund on these products is being calculated, account must be taken of the quantities of cereals required for their manufacture; whereas these quantities were fixed in Regulation (EC) No 1501/95;

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

Whereas the refund must be fixed once a month; whereas it may be altered in the intervening period;

Whereas it follows from applying the detailed rules set out above to the present situation on the market in cereals, and in particular to quotations or prices for these

products within the Community and on the world market, that the refunds should be as set out in the Annex hereto;

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

Whereas, in the light of the amendment introduced by Regulation (EC) No 1222/96⁽⁸⁾, the figure 9 after the first eight digits corresponding to the combined nomenclature subheadings should be regarded as forming part of the refund nomenclature code from 1 January 1997;

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

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 (a), (b) and (c) of Regulation (EEC) No 1766/92, excluding malt, exported in the natural state, shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 29 November 1996.

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

Done at Brussels, 28 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 102, 28. 4. 1993, p. 14.

⁽⁶⁾ OJ No L 138, 21. 6. 1995, p. 1.

⁽⁷⁾ OJ No L 65, 15. 3. 1996, p. 1.

⁽⁸⁾ OJ No L 161, 29. 6. 1996, p. 62.

ANNEX

to the Commission Regulation of 28 November 1996 fixing the export refunds on cereals and on wheat or rye flour, groats and meal

(ECU/tonne)			(ECU/tonne)		
Product code	Destination (1)	Amount of refund (2)	Product code	Destination (1)	Amount of refund (2)
0709 90 60 000	—	—	1008 20 00 000	—	—
0712 90 19 000	—	—	1101 00 11 000	—	—
1001 10 00 200	—	—	1101 00 15 100	01	24,50
1001 10 00 400	—	—	1101 00 15 130	01	23,00
1001 90 91 000	—	—	1101 00 15 150	01	21,00
1001 90 99 000	03	8,00	1101 00 15 170	01	19,50
	04	28,00	1101 00 15 180	01	18,50
	02	0	1101 00 15 190	—	—
1002 00 00 000	03	22,00	1101 00 90 000	—	—
	02	0	1102 10 00 500	01	41,00
1003 00 10 000	—	—	1102 10 00 700	—	—
1003 00 90 000	03	21,50	1102 10 00 900	—	—
	02	0	1103 11 10 200	01	24,50 (3)
1004 00 00 200	—	—	1103 11 10 400	—	— (3)
1004 00 00 400	—	—	1103 11 10 900	—	—
1005 10 90 000	—	—	1103 11 90 200	01	24,50 (3)
1005 90 00 000	—	—	1103 11 90 800	—	—
1007 00 90 000	—	—			

(1) The destinations are identified as follows:

01 All third countries,

02 Other third countries,

03 Switzerland, Liechtenstein, Ceuta and Melilla,

04 Mauritania, Mali, Niger, Senegal, Burkina Faso, Gambia, Guinea-Bissau, Guinea, Cape Verde, Sierra Leone, Liberia, Côte d'Ivoire, Ghana, Togo, Chad, Central African Republic, Benin, Cameroon, Equatorial Guinea, Sao Tomé and Príncipe, Gabon, Congo, Zaire, Rwanda, Burundi, Angola, Zambia, Malawi, Mozambique, Namibia, Botswana, Zimbabwe, Lesotho, Swaziland, Seychelles, Comoros, Madagascar, Mauritius, Eritrea, Djibouti and Ethiopia.

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

(3) No refund is granted when this product contains compressed meal.

NB: The zones are those defined in amended Commission Regulation (EEC) No 2145/92 (OJ No L 214, 30. 7. 1992, p. 20).

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 26 June 1996

concerning aid granted by Germany to the Volkswagen Group in Mosel and Chemnitz

(Only the German text is authentic)

(Text with EEA relevance)

(96/666/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having given the parties concerned the opportunity to submit their comments, in accordance with Article 93 (2),

Whereas:

I

By letter dated 14 January 1992⁽¹⁾, the Commission informed the German authorities of its decision of 18 December 1991 to initiate the Article 93 (2) of the Treaty procedure in respect of planned aid by the German authorities for the plants of the Volkswagen (VW) Group in the new *Länder*.

When initiating the procedure, the Commission expressed serious doubts as to the compatibility of the aid with Article 92 of the Treaty, for the following reasons:

1. the State aid had not been notified to the Commission in accordance with the procedure set out in Article

93 (3) of the Treaty and could not yet be entirely quantified;

2. the apparently high aid intensity proposed for a plan involving a significant expansion of capacity on the European car market could give rise to distortions of competition;
3. insufficient evidence had been presented to justify the duplication of regional aids having a comparatively high intensity in relation to the structural and economic problems in the new *Länder*; indeed, the overall aid intensity could be disproportionately high and incompatible with the criteria of the Community framework document on State aid to the motor vehicle industry⁽²⁾.

II

By letters dated 19 September and 14 December 1990 and 14 March 1991, the Commission requested notification, in accordance with the Community framework on State aid to the motor vehicle industry, of the aid measures in support of the new investments of Volkswagen AG in the new *Länder*; it stressed that such aid could not be granted without prior notification and approval by the Commission.

The German Government explained by letter dated 29 May 1991 that, in its view, the Community framework did not apply to the new *Länder* between 1 January and 31 March 1991 since it had been due to expire by the end of 1990 and its renewal by the Commission in December 1990 could become legally binding only upon formal

⁽¹⁾ OJ No C 68, 17. 3. 1992, p. 14.

⁽²⁾ OJ No C 123, 18. 5. 1989, p. 3.

acceptance by the German Government of the extension or upon a formal decision by the Commission in proceedings pursuant to Article 93 (2). Given that the aid measures in question had been approved before 31 March 1991, they could have been scrutinized by the Commission only by reference to the regional aid schemes approved for the new *Länder*.

The legal position taken by the German Government was not accepted by the Commission, on the following grounds:

1. Commission Decision 90/381/EEC⁽³⁾ amending German aid schemes for the motor vehicle industry, which was not challenged by the German Government, was not limited in time so that the renewal of the Community framework by the Commission in December 1990 did not affect the notification obligations;
2. since the German Government neither challenged nor reacted to the renewal of the framework itself, the Commission could legitimately assume that it would abide by the provisions;
3. when approving the extension of existing regional aid schemes to the new *Länder* (SG(91) D/12002 of 9 January 1991), the Commission stipulated that Community frameworks should be observed;
4. that extension means that the provisions of the 19th Outline Plan for the joint Federal Government/*Länder* scheme (notified by the German Government in July 1991 and approved by letter SG(90) D/27707 of 2 October 1991) must also be observed for aid cases in the new *Länder*. Hence, the provision regarding prior notification of aid to the motor vehicle industry applies in these cases too.

Consequently, the Commission considered these cases as non-notified cases given that the aid had been approved by the German authorities prior to any approval by the Commission.

The decision to initiate the Article 93 (2) procedure was based on an initial detailed analysis of the information contained in the German authorities' letters of 16 September and 10 December 1991, on several bilateral contacts between the German authorities and representatives of the Commission, and on a visit to the production site by the Commission in August 1991.

In its letter of 14 January 1992, the Commission requested the German Government not only to comment within one month on the decision to institute the Article 93 (2) procedure in the Volkswagen case but also to confirm within 10 working days that it agreed to suspend all aid payments to Volkswagen for its investments in Mosel, Chemnitz and Eisenach. If such confirmation were not received, the Commission reserved the right to stop payment of any State aid to the projects.

III

By letter dated 29 January 1992, the German Government declared its readiness to suspend further payments of aid until the Article 93 (2) procedure had been terminated. By letter dated 31 March 1992, it gave its observations on the Commission's letter of 14 January 1992.

By letter dated 24 April 1992, the Commission requested the German authorities, the Treuhandanstalt (THA) and Volkswagen to provide further information necessary to complete its analysis of the case.

The questions discussed at a bilateral meeting on 28 April 1992 and examined in greater detail in the Commission's subsequent letters dated 14 May, 5 June, 21 August and 17 November 1992 were gradually answered in the German authorities' letters of 20 May, 3 and 12 June, 20 and 29 July, 8 and 25 September, 2, 16 and 21 October, 4 and 25 November 1992. Volkswagen provided further information in communications to the Commission dated 15 June and 30 October 1992 and 12 and 20 January 1993. The replies were further discussed at several meetings between the Commission, the various German authorities concerned and Volkswagen on 16 June, 9 September, 12 and 16 October and 3 December 1992 and 8 and 11 January 1993.

In early January 1993, at a time when the Commission had completed its analysis of the case and was ready to take a final decision, Volkswagen informed the Commission off the record that it was reviewing its investment plans in the new *Länder* and suggested that the Commission defer its decision until completion of that review. The suggestion was supported by the German authorities.

On 13 January 1993, Volkswagen decided to postpone substantial parts of its proposed investments by up to three years. As the revised timetable for the project affected a number of basic parameters applied by the Commission in its assessment of the compatibility of the proposed aid measures under the Community framework, the Commission agreed to revise its analysis, taking account of the changes to Volkswagen's investment plans.

⁽³⁾ OJ No L 188, 20. 7. 1990, p. 55.

Some details of the modified project were presented to the Commission at a bilateral meeting on 5 May 1993. Written information on the new investment plan was submitted by the German authorities by letter of 6 June 1993 and was added to by Volkswagen in letters dated 24 June and 6 July 1993 and in a fax dated 10 November 1993. The new information was discussed at bilateral meetings on 18 May, 10 June, 2 and 22 July 1993. Further information on the VW Group's overall capacity plans was provided by the German Government in a letter dated 15 February 1994 and in a fax dated 25 February 1994.

During a site visit in early April 1994 new evidence on the projects was collected and had to be included in the analysis, since it pointed to changes in the projects. This evidence was discussed at bilateral meetings on 11 May, 2, 7 and 24 June 1994 and supplemented by further written information provided at those meetings and sent by the German authorities and VW on 10 May, 30 June, 4 and 12 July 1994. Furthermore, by letter to VW dated 24 May 1994, the German authorities revised the aid contracts.

On 27 July 1994 the Commission took a final Decision 94/1068/EC⁽⁴⁾ concerning the aid proposed by the German authorities for the restructuring of the car, engine and cylinder-head plants which had previously formed part of the IFA-Kombinat but had been taken over by VW (Mosel I, Chemnitz I, Eisenach).

IV

By that decision, the aid case was, however, only partially closed since the German authorities had also proposed regional investment aid for the new car and engine plants of the VW Group to be built in Saxony (Mosel II and Chemnitz II). At the time of that decision, the German authorities promised that VW's definitive investment plans for these new plants would be available by the end of 1994, so that the standard analysis could have taken place.

On several subsequent occasions, the German Government informed the Commission orally of delays in finalizing these plans. A Commission letter dated 12 April 1995 and requesting the submission of VW's plans remained unanswered. By letter dated 4 August 1995, the Commission urgently requested the necessary information, threatening an injunction and ultimately a final decision on the basis of available information in the case of non-compliance. In reply to this letter, the German Government informed the Commission by letter dated 22 August 1995 that VW's investment plans were still not finalized. Given that VW had unlawfully received approx-

imately DM 360,8 million in investment grants and DM 10,6 million in investment allowances before the initiation of the Article 93 (2) procedure, the Commission, by Decision 96/179/EC⁽⁵⁾, ordered the German Government to provide all documentation, information and data on the new investment projects of the VW Group in Saxony and on the aid to be granted to them.

In reply to the demand, some information on the project and on production capacity was provided at a meeting on 20 November 1995. This information was supplemented by a letter dated 13 December 1995, which was received on 4 January 1996, and was elaborated on at meetings on 21 and 22 December 1995. Following further questions by the Commission on 15 January 1996 and a meeting on 23 January 1996, most of the missing information was provided by letters dated 1 and 12 February 1996. In reply to a Commission letter dated 23 February 1996 reminding the German authorities of the information which was still lacking, that information was provided at a meeting on 25 March 1996 and discussed at two meetings on 2 and 10 April 1996.

Among the issues concerning the new projects that were considered in the various communications and discussions were:

1. details of Volkswagen's investment plans for the new *Länder* and their relationship to existing Volkswagen activities in the automotive sector;
2. the precise amounts of aid proposed and already paid to Volkswagen;
3. an analysis of the proposed expenditure in order to determine eligibility for aid according to the criteria applied by the Commission in implementing the Community framework on State aid to the motor vehicle industry;
4. a detailed analysis of the net additional costs of the new plants at Mosel and Chemnitz as compared to equivalent plants in a central non-assisted region in the Community to be chosen by Volkswagen as 'comparator plants';
5. capacity, production and cost forecasts for the new plants as well as the planned expansion of annual capacity at all Volkswagen group plants in Europe up to 2002;
6. consideration of any possible adverse effects on the sector as a whole arising from the granting of the proposed aid, in particular with respect to the development of capacities in the sector concerned.

⁽⁴⁾ OJ No L 385, 31. 12. 1994, p. 1.

⁽⁵⁾ OJ No L 53, 2. 3. 1996, p. 50.

V

As to the compatibility of the proposed State aid measures, the German Government in 1993 presented the following arguments:

1. Article 92 (2) (c)

This should be the legal basis for assessing the compatibility of the aid measures. Despite the fact that Germany was unified on 3 October 1990, the new *Länder* still suffered from economic disadvantages stemming from the division of Germany.

Therefore, the Commission should examine whether such economic disadvantages still justified State aid. If so, all other assessment criteria and in particular those set out in the Community framework for the motor vehicle industry, including sectoral considerations and the possible risk of overcapacity, did not apply in these cases;

2. Article 92 (3) (a)

With regard to the permissible level of aid, the German authorities claimed that the new *Länder* now qualified as least-developed areas if the latest statistics were taken into account. They referred to the Delors II package, in which these areas were proposed as Objective 1 areas, making them eligible for regional aid of up to 75 % net grant equivalent;

3. Article 92 (3) (b)

The German authorities argued that this was a further legal basis for the granting of aid in these cases. In their view, the problems of integration and restructuring of the former planned economy into a market economy represented a serious disturbance of Germany's economy.

With regard to the investment aid for the new car plant at Mosel (Mosel II) and the new engine plant at Chemnitz (Chemnitz II), the German Government and Volkswagen presented the following arguments:

1. Volkswagen had postponed large parts of its investment in the new plants by up to three years and had significantly reduced the scale of the project. As a result, the total investment had decreased compared to the amount originally notified (for the reasons see below). This lower level of investment had also led to a decrease in the amount of regional aid envisaged by the German authorities;
2. the high amount of aid was justified because Volkswagen suffered significant cost disadvantages in the new *Länder*, as compared with a greenfield investment in a central, non-assisted area such as Metz (France). Investment cost handicaps arose from infrastructure problems in the area, difficult geological conditions at the construction sites, stricter environmental standards

and generally higher construction costs than in France. There was also an environmental risk created by the dumping sites of the former Wismut uranium and silver ore production plants near the Mosel premises. Volkswagen also faced much higher operating costs in the first years of production of the new plants because of the higher labour costs in the new *Länder* from 1995 onwards and because of the higher costs of materials, transport and energy than at the comparator location. The labour cost disadvantage had increased as a result of the postponement of the investment because production at the new plants would now start at a time when eastern German wages could be expected to be fully adjusted to the western German level;

3. the new capacity created at the new plants would not add to surplus capacity in the Community given that it replaced equivalent capacity in the former German Democratic Republic that had been shut down, while at the same time new markets in eastern Europe, where there were relatively fewer cars per head of population and insufficient capacity to satisfy demand, would be supplied;
4. as part of its investment scheme, Volkswagen actively sought to establish a firm base of local suppliers in the new *Länder*, something which could create significant additional benefits for the region.

The German Government also stressed that the cost-benefit analysis in comparison with a non-assisted area in the EC (such as the site in Metz chosen by Volkswagen) was purely hypothetical given that the only realistic alternative location for each of the new plants would have been another assisted area in the Community or outside the Community (such as the Czech Republic) which offered considerable advantages over eastern Germany; without the political promise of the maximum amount of regional aid, the company would never have chosen any location in the new *Länder*. Moreover, such an analysis ignored the unquantifiable risks which VW has taken by investing in these structurally underdeveloped areas.

VI

The only comment which the Commission received from other Member States following the publication of the decision to initiate the Article 93 (2) procedure in the *Official Journal of the European Communities*⁽⁶⁾ was a note from the French Government dated 7 January 1993, in which it pointed out that, in view of the additional car-making capacities created by Volkswagen's investments and other assisted projects in the new *Länder*, it was being particularly vigilant with regard to the Commission's handling of the case. The French Government further stressed that:

⁽⁶⁾ OJ No C 68, 17. 3. 1992, p. 14.

1. the new *Länder* should not be exempt from the Community rules on State aid by virtue of Article 92 (2)(c) of the EC Treaty;
2. the approval of any aid by the Commission should be based on a detailed analysis of the incremental costs attributable to structural handicaps in the new *Länder* and of any indirect support provided by the THA.

The German Government replied to the remarks of the French Government by a fax addressed to the Commission on 15 October 1993 and stressing again its position concerning the applicability of Article 92 (2) (c) and (3) (a) of the Treaty.

VII

As explained when the Article 93 (2) procedure was initiated, Volkswagen's investment plans in the new *Länder* stemmed from its decision to meet the additional demand for cars in eastern Germany and eastern Europe that now existed following the political and economic changes in the region, by starting production within this new market itself.

The investment project is in several steps. The first stage was the formation in December 1990 of a joint venture with the THA, the Sächsische Automobilbau GmbH (SAB), in which Volkswagen's stake was initially 12,5 % and which it acquired in full from the THA as of 1 January 1994. The joint venture started the small-scale assembly of the VW Polo (SKD) at the former Trabant plant in Mosel (Mosel I) in May 1990 and began to produce the VW Golf (originally CKD production, but later supplied by the press and body shops of Mosel II; see below) in 1991. The second stage, originally planned for 1994, involves the building of an adjacent new plant in Mosel (Mosel II) under the sole responsibility of Volkswagen Sachsen (VWS), a 100 % subsidiary of Volkswagen, set up in December 1990. In mid-1991 VWS took over from Automobilwerke Eisenach the cylinder-head production activities in Eisenach, where it will continue production until the end of 1996. On 1 January 1992 VWS took over Motorenwerke Chemnitz GmbH, the owner of an existing engine plant (Chemnitz I), from the THA. At this location the second stage involves the construction of a new adjacent engine plant (Chemnitz II), also originally planned for 1994.

According to the information obtained from the German authorities in the course of the Article 93 (2) procedure:

1. the timetable for the entire investment project has been substantially revised since the opening of the procedure. On 13 January 1993 Volkswagen decided to

postpone a large part of the investment relating to the new plants. In 1995 it decided to reduce investment in the plants with the result that the planned capacity will be only 750 units per day instead of the 1 200 units originally planned. Consequently, the last shops (paint shop and final assembly) of the new car plant Mosel II, which had originally been scheduled to come on stream in 1994, will now become operational only in 1997;

2. the Mosel II car plant will consist of: a press shop, which came on stream — as originally planned — in 1994 (partly to supply Mosel I); a body shop, which has been operational at reduced capacity to supply Mosel I since late 1992 and will be operating at full capacity by 1997; a paint shop and a trim and final assembly facility, which have yet to be completed. In the first year of production, the plant's paint capacity will be limited to 432 units per day, which is equivalent to the paint capacity of Mosel I (to be closed in the summer of 1997). As of 1998 the plant will have, according to VW, a total annual capacity of 172 000 units (750 cars per day) and will be used for the production of the next-generation Golf cars and the next-generation Passat cars. It will provide approximately 3 000 jobs;
3. the new engine plant Chemnitz II, also originally planned for 1994, will start production in July 1996 and will progressively replace Chemnitz I. After coming on stream in 1996, it will initially produce cylinder heads for the present engine type EA 111 (1,4/1,6 l); in mid-1996 it will start producing cylinder blocks for a new EA 111 aluminium engine (1,0/1,4/1,6 l) and until 1998 will gradually start production of other components for this new engine. The plant will have a total capacity of 376 000 engines per year, would have an assembly line for 202 000 core engines ('Rumpfmotoren') delivered from other plants and to be installed in cars at Mosel. The whole Chemnitz facilities will employ approximately 650 people;
4. total investment in the new plants, Mosel II and Chemnitz II, will be DM 2 940,5 million, of which an amount of DM 2 654,1 million is considered eligible by the Commission for regional aid under the eligibility criteria applied in Germany and approved by the Commission. As a result of the revised timetable and size of the project, the total investment in the new plants is now substantially lower than the DM 4 090,9 million planned at the time the procedure was initiated. This is due mainly to reduced capacity and increased efficiency as well as to the general reduction in the prices of capital goods.

The table below gives the investment in the new plants considered eligible for aid by the Commission:

(million DM)

	Mosel II	Chemnitz II	Total
Total investment	2 314,5	626	2 940,5
Eligible investment	2 169,1	485,1	2 654,2
Of which:			
Buildings and infrastructure	681,4	123,9	805,3
Machinery and equipment	1 487,7	361,2	1 848,9

5. For Mosel II and Chemnitz II, the German authorities proposed regional investment aid under the joint Federal Government/*Länder* scheme for improving regional economic structures ('Gemeinschaftsaufgabe Verbesserung der regionalen Wirtschaftsstruktur'), the Investment Allowance Law ('Investitionszulagengesetz') and the Assisted Areas Law ('Fördergebietsgesetz'). The proposed aid measures for the new plants and their intensity in relation to the eligible investment as defined by the Commission and expressed in discounted terms are set out below:

	Nominal value		Discounted value		Aid intensity (gross grant equivalent)	
	Mosel	Chemnitz	Mosel	Chemnitz	Mosel	Chemnitz
Eligible investment	2 169,1	485	1 812,7	373,5	—	—
Total aid measures	638,8	141,1	553,1	102,05	30,51	27,3
Of which:						
Investment grants	499,0	108,8	448,9	79,6	24,76	21,3
Investment allowances	97,1	23,3	67,6	15,3	3,73	4,1
Accelerated depreciation	42,7	9,0	36,6	7,15	2,02	1,9

Measuring the aid intensity in terms of discounted — as proposed to nominal — value is more meaningful because of the considerable time-lags which will arise between receipt of aid and the actual occurrence of investment and operating cost disadvantages taken into account by the Commission in assessing the compatibility of the aid measures under the Community framework;

6. Volkswagen claimed that it faced cost disadvantages of up to DM 989,7 million and further risks of DM 237 million for its investment in the new car plant in Mosel as well as disadvantages of DM 246,2 million and further risks of DM 55,6 million for its investment in the Chemnitz II engine plant as compared to an equivalent investment at comparator plants in France. These cost disadvantages arise from infrastructural and other investment handicaps of the new *Länder* and of the relevant sites in Mosel and Chemnitz, from higher operating costs during the first five years of operation

of the new plants (including labour, materials, transport and overhead costs) and from certain environmental and labour-cost risks associated with the investment;

7. in connection with Commission Decision 96/257/EC (?) on restructuring aid to SEAT, Volkswagen undertook to reduce its total EC car-making capacity by the end of 1997. This undertaking included an obligation not to increase Mosel's current capacity of 432 cars per day;
8. as a result of Volkswagen's efforts to build a base of local suppliers in the region, by the end of last year there were already 129 newly established enterprises in the new *Länder* supplying the plants at Mosel and Chemnitz with parts and components;

(?) OJ No L 88, 5. 4. 1996, p. 7.

9. the total number of employees at Mosel II and the new Chemnitz plant is forecast at 3 600, excluding trainees. In addition, the establishment of local suppliers for the new plants and other multiplier effects are expected to lead to the creation of around 20 000 jobs in the new *Länder*.

VIII

When the Commission initiated the procedure provided for in Article 93 (2) of the EC Treaty, its questions relating to the aid measures proposed by the German authorities for the new plants Mosel II and Chemnitz II focused on the following main issues:

The information assembled for the analysis that led to the opening of the procedure pointed to the existence of regional and other aid, the intensity of which still had to be calculated precisely.

The information obtained from the German authorities and Volkswagen in the course of the procedure has enabled the Commission to form a fuller picture of all aid elements in this case, as well as a clear quantification of these aids and their time structure.

The direct aid for the investments in the new plants Mosel II and Chemnitz II, as quantified above, was granted by the German authorities under the joint Federal Government/*Länder* scheme for improving regional economic structures, the Investment Allowance Law and the Assisted Areas Law, which had previously been approved by the Commission.

As the aid measures reduce the financial burden on Volkswagen resulting from its investments in the new *Länder*, they threaten to distort competition between motor vehicle manufacturers within the Community. On account of the intensive intra-Community trade in the motor vehicle sector, the proposed measures also affect trade among Member States. They consequently fall within the scope of Article 92 (1) of the EC Treaty and Article 61 (1) of the EEA Agreement.

IX

The German authorities have failed to notify in advance, in accordance with Article 93 (3) of the Treaty, the payment of parts of the regional aid relating to the investments in the plants at Mosel II and Chemnitz II, thereby infringing that Article. Investment grants of DM 360,8 million as well as investment allowances of DM 10,6 million were paid to the company. Special depreciation for the investment was entered by VW in its accounts but has not yet been accepted by the tax authorities. Since the Federal Government did not notify the aid measures in

advance, the Commission was not able to give its comments on the measures before they were implemented. Since part of the aid was thus granted in breach of Article 93 (3), it is unlawful.

Since the procedural provisions of Article 93 (3), which are also of significance for public order, are mandatory and since the Court of Justice confirmed their direct effect in its judgment of 19 June 1973 in Case 77/72, *Capolongo v. Maya*^(*), the unlawful nature of the aid cannot be remedied after the event.

Following initiation of the procedure, the German Government has suspended all further payment of aid until the procedure is terminated.

X

As regards the legal bases on which the Commission should assess the compatibility of the proposed measures, the German Government has stressed that the exemption criteria provided for in Article 92 (2) (c) (certain areas of the Federal Republic of Germany affected by the division of the country), Article 92 (3) (a) (areas where the standard of living is abnormally low or where there is serious underemployment) and Article 92 (3) (b) (serious disturbance in the economy of a Member State) should be applicable to any measures that the Commission might regard as constituting aid.

The derogation in Article 92 (3) (b) can certainly not be applied to Germany. It is true that German unification has had negative effects on the German economy, but these alone are not sufficient to apply that provision to an aid scheme. Recently, the Commission took the view that an aid scheme remedied a serious disturbance in the economy of a Member State when, in 1991, aid was approved for a privatization programme in Greece. In its decision the Commission noted that the privatization programme was an integral part of the undertakings given pursuant to Council Decision 91/306/EEC of 4 March 1991 in connection with the consolidation of the national economy as a whole. The German situation is clearly different.

The exemption criterion pursuant to Article 92 (2) (c) should be interpreted narrowly and should not be applied to regional aid for new investment projects. The Commission considers that not only the conditions for exemption provided for in Article 92 (3) (a) and (c) but also, in view of the sector concerned, the Community framework on State aid to the motor vehicle industry allow it to respond appropriately to the problems which the new *Länder* are facing.

^(*) [1973] ECR, p. 611.

XI

The following will explain which of the aid measures proposed by the German Government for Mosel II and Chemnitz II can, in the light of its analysis, be accepted by the Commission under the Community framework on State aid to the motor vehicle industry. The framework expressly acknowledges the valuable contribution to regional development which can be made by setting up new motor vehicle and component production facilities in disadvantaged areas. This position is in keeping with the Commission's generally positive attitude towards investment aid granted in order to help overcome structural handicaps in disadvantaged areas of the Community.

It has been the constant practice⁽⁹⁾ of the Commission to evaluate regional aid to the motor vehicle industry according to the following steps:

First, it has to be examined whether regional aid can be granted at all. An investigation is carried out into whether the region is eligible for assistance under Community law (normally under an existing aid scheme) and whether the investor has the option of locating the project at another site (mobility of project).

Second, in order to ascertain whether the proposed State aid measure is in proportion to the regional problems it seeks to redress, the Commission uses a standard economic method — a cost-benefit analysis — and compares the costs for the investor of locating the project in that particular assisted area with those in a central, non-assisted region and, in so doing, identifies the handicaps specific to the area. Compensation for such handicaps by way of regional aid is always permissible.

Third, the question of the top-up measures arises. These are increases in aid intensity which should serve as an extra incentive for the investor to invest in the assisted area in question. Such top up is normally approved except in cases where the investment contributes to the creation of capacity problems in the relevant sector. In such cases, the aid will be strictly limited to the net regional disadvantages.

The amounts calculated in the last two steps gives the total amount of aid the Commission can accept. This is normally measured in discounted terms and expressed as a percentage of eligible investment in order to compare it with the gross grant equivalent of the aid.

⁽⁹⁾ See, for example, the following aid cases: Ford/VW (OJ No C 257, 3. 10. 1991, p. 5), Opel Eisenach (OJ No C 43, 16. 2. 1993, p. 14), FIAT Mezzogiorno (OJ No C 37, 11. 2. 1993, p. 15), Jaguar (OJ No C 201, 23. 7. 1994, p. 4), FASA Renault (OJ No C 267, 14. 10. 1995, p. 13) and Ford Genk (OJ No C 5, 10. 1. 1996, p. 5).

XII

The Commission has recognized the new German *Länder* as an area where the standard of living is low and which suffers from underdevelopment. Productivity in the region is far below the Community average, and the level of unemployment is exceptionally high and still rising. In order to contribute to the development of the region, high levels of investment and other aid have been authorized. The regions of Mosel and Chemnitz (Saxony), where the new plants will be located, were eligible for investment aid of up to 33 % (until April 1991) and of up to 35 % (after that date) gross aid intensity.

Against the difficult socio-economic situation in the region, the Commission agrees with the German authorities that the proposed investment will make an important contribution to the economic development of the new *Länder*. The investment plan is expected to create directly, or to safeguard, 3 600 jobs in the new *Länder*. A further 20 000 jobs are expected to stem indirectly from the establishment of local suppliers and from other multiplier effects on the economy of the new *Länder*.

However, as was stressed in the Community framework document, the Commission, in evaluating proposals to grant regional aid in this sector, has to ensure that the aid is proportionate to the problems it seeks to resolve and must assess the benefits for regional development against possible adverse effects on the sector as a whole, such as the creation of substantial overcapacity.

While the Commission appreciates that in practical terms the most realistic alternative option for this investor would have been a project in another assisted area within the Community or eastern Europe, it nevertheless considers that the most meaningful measure of the incremental costs arising from the structural handicaps of the region concerned derives from a comparison of the proposed project with a hypothetical greenfield project in a non-assisted area within the Community.

Consequently, the Commission has, with the help of its outside expert, carried out a detailed cost-benefit analysis designed to evaluate the net incremental costs of the new plants at Mosel and Chemnitz as compared with equivalent plants located in Metz (France), the alternative site selected by Volkswagen. These incremental costs include additional investment costs as well as the additional operating costs during the first years of operation of the new plants. The inclusion of operating cost disadvantages during the start-up years in the calculation of cost handicaps is warranted because of the inevitable problems in the early years of operation arising from underdevelopment, partially completed facilities, longer learning periods, geographical remoteness, extra transport costs, insufficient presence of suppliers in the area, lack of skilled workers, etc., which are attributable to the location of the project in a peripheral area.

The Commission's estimate of cost disadvantages, which draws in large part on data provided by Volkswagen and, in part, by independent sources, differs substantially from the first estimate prepared by Volkswagen and submitted by the German authorities in early 1996. These differences arise from the fact that the Commission did not accept the incremental nature of all the cost disadvantages claimed by Volkswagen.

Among those items recognized by the Commission as genuine investment-cost disadvantages are some additional infrastructure costs and expenditures associated with the difficult geological condition at the Mosel and Chemnitz sites as well as higher land prices and building costs. On the other hand, expenditure attributed by Volkswagen to stricter environmental regulations in Germany, in particular as regards atmospheric pollution, were accepted only in part since experience shows that all car manufacturers in the Community, including Volkswagen, strive to achieve high levels of environmental protection in their new plants throughout the Community, even in the continuing absence of appropriate regulations in some Member States.

In its analysis of operating costs, the Commission generally calculates handicaps for greenfield projects (e.g. Ford/VW and FIAT Mezzogiorno; see footnote 9) over a five-year period and for extension projects (e.g. Sevel Val di Sangro⁽¹⁰⁾, Jaguar, Ford Genk; see footnote 9) over a three-year period. The term 'greenfield project' does not simply mean that the project is situated in a green field somewhere, but that, from the investing company's point of view, the site is a new, as yet undeveloped one. Consequently, the company faces the following typical special problems as compared with the extension of an existing plant: lack of adequate infrastructure, lack of organized logistics, no trained workforce adapted to the needs of the company, and no established supplier structure. If, however, these services can be provided by a nearby plant belonging to the same group, then the project is treated as an extension, even if it is located in a green field. The Community concept differs from the concept of new investments that may be defined in national law. Since, in the case of a greenfield project as defined in this way, more difficulties arise and the time-span for reaching full capacity and thus viability is somewhat longer, there is justification for calculating the operating cost disadvantages over a longer period. This principle was also recognized by the Commission in the Opel Eisenach case. In Eisenach, there was a former German Democratic Republic car plant but, from Opel's point of view, the location was a new one as the typical disadvantages

mentioned above existed. The project was therefore treated as a greenfield project.

In the present case, the Commission had to take into account the fact that the different shops of the investment in Mosel come on stream at different times. Thus, the start-up problems associated with the different subprojects will also occur at different times. Furthermore, the Commission took account of the fact that, through the delay in project implementation, the character of the project has also changed. With the installation of the press and body shops and their link with the modernized paint shop and final assembly halls of the old Mosel I plant, a fully operational car plant was established in Mosel by 1994. This is also demonstrated by the profitability of the VW companies in Saxony since 1994.

The future investment for a new paint and final assembly hall in Mosel II thus no longer constitutes a greenfield investment but represents an extension of existing capacity. Since a supplier structure is already in place (see above), since the infrastructure exists and since most of the workers will be taken over from Mosel I, the typical handicaps associated with greenfield investments will arise to a much lesser degree. This also applies to the Chemnitz II engine plant. As in other cases of capacity extension, the build up of production in these plants is very rapid. Although the German authorities and VW originally suggested an analysis of the period from 1998 to 2002 for all projects in Mosel and Chemnitz, the Commission has analysed the operating handicaps over five years for the proposed greenfield projects, i.e. for 1993 to 1997 (body shop) and for 1994 to 1998 (press shop), and over three years for the extension projects, i.e. 1997 to 1999 (paint shop, final assembly, Chemnitz II). It was also taken into account that the press shop and the body shop will be expanded from a production capacity from 432 cars/day to 750 cars/day during the same period in order to be able to supply fully the new Mosel II paint shop and final assembly. Therefore, the additional operating handicaps for this period (1997 to 1999) that can be attributed to this extension of capacity were also included in the analysis.

The investment handicaps were calculated in great detail and compared with the costs that would arise for similar projects in the comparator plant in Metz. Extra costs claimed by the company for infrastructure, land, buildings, dismantling of existing plant, extra environmental measures due to stricter German rules and other handicaps were examined and either included, in part or in full, in the cost-benefit analysis or disregarded altogether. It was explained in this connection that a comparator plant is meant to represent a realistic and not an ideal location. Many infrastructure measures that were necessary in Saxony would also be necessary in the Metz region but only to a lesser extent (e.g. piling, ground levelling, road access costs).

⁽¹⁰⁾ OJ No C 298, 11. 11. 1995, p. 9.

For the calculation of the operating cost disadvantages, the Commission has taken into account the relatively low level of labour costs until 1994 and the relatively higher level of future labour costs in eastern Germany, higher costs of materials sourced from local suppliers, extra transport costs and certain cost disadvantages relating to overhead and similar charges as compared with the alternative site in Metz. It is important to note that this analysis is based largely on reasonable assumptions about future developments, since more than 60 % of total cost disadvantages are associated with operating cost disadvantages that emerge during the first three or five years of operation.

In evaluating labour costs, the Commission took into consideration the fact that, following the rescheduling of the investment, which means that the new plants will not come on stream until 1997, VW did not fully benefit from the cost advantage arising from the low wage level in the new *Länder* in the early 1990s. However, by 1997 hourly wage rates in the new *Länder* and other working conditions, such as working hours, holiday entitlement and bonus payments, would still not have fully adjusted to western German levels either. As a result, VW will not suffer either from the full labour cost disadvantage of its western German plants compared with the alternative location.

Taking into account a probable reduction in disadvantages as a result of such developments, a realistic estimate of the total investment and operating cost disadvantages is 22,3 % of eligible investment in discounted terms in the case of Mosel II and 20,8 % in the case of Chemnitz II. This calculation was presented to VW and the German authorities for comments and — after a few clarifications — was basically accepted as a fair estimate. Since the proposed aid intensity of 30,5 % (in discounted terms) for Mosel II and 27,3 % for Chemnitz II clearly outweighs the disadvantages, it can no longer be considered to be in proportion to the problems to be resolved. Therefore, the Commission cannot accept the regional aid for both projects in full, even if they did not lead to adverse effects on the sector as a whole.

With regard to the likely repercussions of the aid on the Community motor industry as a whole, it has to be recalled that the Community framework was introduced at a time when no surplus capacity existed in the Community. This changed dramatically in 1993, when demand fell by 15 %. The Commission notes that most of the car producers in the Community have recently undertaken investment programmes which were conceived in the boom period (1989 to 1992) and were designed to increase their capacities by the mid-1990s so as to satisfy the expected growth in demand for new cars in Europe. In some cases the increases in capacity are substantial. Although the weaker development of the

motor vehicle market since 1993 has, to some extent, led to a reassessment of these expansion plans, it has failed to prompt a fundamental revision of the industry's capacity forecasts. Additional capacities from Japanese investments in plants in the Community undertaken in recent years will also come on stream during this period. Capacity-extension schemes in eastern Europe by major European manufacturers, including VW through its Skoda mark, will also have an impact on the Community market, to which these products have relatively free access. Taking the latest estimates, the Commission puts western European car production capacity at some 18 million units in 1995 and at around 20 million units per year by 1999. Assuming that EC demand will continue to increase slowly from the bottom of the downturn and that the Community trade balance in cars will not deteriorate further, the most recent market forecasts expect demand to reach between 13 and 14 million units by the year 2000. This suggests that the present serious overcapacity problems in the Community, where average capacity utilization last year was only some 70 %, will persist during most of the decade unless the industry decides to close down excess capacities over the next few years. Since, in industries suffering from large overcapacity, the distortive effect on competition caused by State aid granted to individual producers is particularly strong, this general prospect adds to the case for the Commission being especially vigilant in assessing proposals for aid to projects which entail new car production capacity.

As to the realization of Volkswagen's investment plan in the new *Länder* and its likely impact on the car industry at Community level, the Commission notes that the Volkswagen group has revised downwards the size of the Mosel II plant, so that it will have a capacity of 750 cars per day when finally operational. However, it should also be borne in mind that the company can at a later stage double its capacity by investing relatively modest amounts, since the buildings and infrastructure facilities are much larger than is necessary for the capacity level planned at the moment.

In order to comply with its obligations under Decision 96/257/EC on restructuring aid to SEAT, VW has to ensure that the capacity of the Mosel plants does not exceed 432 cars per day until the end of 1997. It intends to close the Mosel I plant in the summer of 1997, when the paint shop at Mosel II comes on stream. Furthermore, it will temporarily limit the capacity of this new paint shop to 432 units per day by not installing a second ESTA installation until the end of 1997. This will create an effective temporary bottleneck that limits VW's capacity in Mosel for the period covered by the conditions of the SEAT decision laid down in Decision 96/257/EC. The observance of this capacity limitation will have to be verified through random on-site inspections for which the German authorities have given their consent.

Taking into account the planned closure of Mosel I, Mosel II would still lead to an increase in capacity as from 1998 of 320 cars per day, i.e. 2,6 % of VW's total capacity. At Chemnitz, the new engine plant (capacity of 376 000 units) will replace the old facility (capacity of 280 000 units), resulting in a net increase of 96 000 units or roughly 3,1 % of the Volkswagen group's total western European engine capacity. In its decision on Fiat's Mezzogiorno plan (see footnote 9), however, the Commission had accepted in November 1992 that an increase of 3 % of the group's car capacity was considered to be in line with the development of the Community car market and that the project thus did not have adverse effects on the sector.

However, since the Commission took that decision, the situation and prospects of the European motor vehicle industry have, as shown above, deteriorated. It has to be concluded therefore that the car industry in western Europe currently suffers from overcapacity which is unlikely to disappear in the medium term. The Commission thus considers that the project planned by VW Sachsen will exacerbate sectoral problems. In cases where an investment has adverse effects on the sector as a whole, it has, however, been the Commission's policy under the framework that aid has to be strictly limited to the net incremental costs facing the investor in the disadvantaged region (Opel Eisenach, SEAT Pamplona, Ford Genk). Accordingly, the Commission can approve regional aid to VW Sachsen and VW Sachsen Immobilienverwaltung (the subsidiary of VW Sachsen responsible for the administration of the real estate of the plants) only for an intensity of 22,3 % in the case of Mosel II and for an intensity of 20,8 % in the case of Chemnitz II. Given the notified timetable for the regional aid and the types of aid proposed, this means approval of an amount of DM 418,7 million in the form of investment grants for Mosel II and Chemnitz II and an amount of DM 120,4 million in the form of investment allowances for Mosel II and Chemnitz II.

The Commission considers it necessary that the German authorities should monitor the realization of the eligible project expenditures as defined by the Commission and the precise payment of the proposed aid. It requests the German authorities to send to it, and to discuss with it, an annual report on the outcome of this monitoring before the payment of aid is scheduled to take place. The purpose of this monitoring is to guarantee that the regional aid intensities expressed in gross grant equivalent, as defined by this decision, are complied with by the German authorities. In line with the existing interim report of the Sächsische Aufbaubank, this monitoring exercise is designed not only to verify compliance with the approved aid intensity but also to check that the eligible expenditure has actually gone ahead. In this context, a transfer of capital goods from Mosel I to Mosel II cannot be eligible for regional aid. Furthermore, the

monitoring exercise will have to verify compliance with the capacity plan for the Mosel plants until the end of 1997.

XIII

As was explained above, the Commission has carried out a detailed analysis to establish the net handicaps faced by VW through its investment in Saxony. Given the adverse effect of the project on the sector, the permissible aid has to be limited to compensation for those handicaps. Further aid would no longer be in proportion to the regional problems encountered.

Accordingly, the proposed regional aid to VW Sachsen and VW Sachsen Immobilienverwaltung for the Mosel II and Chemnitz II projects, which exceed the intensities found acceptable in Section XII of this Decision cannot be allowed. Given that the investment allowance is a tax relief which is granted almost automatically, it is approved in its entirety. Since the aid in the form of special depreciation with an estimated nominal value of DM 51,67 million has been identified by the company and the German authorities as a type of aid that can be more easily withdrawn, the Commission agrees that the aid to be withdrawn is to include all the proposed special depreciation. Since the proposed aid exceeds the aid eligible for approval by more than the value of the proposed special depreciation, further proposed regional aid for VW Sachsen and VW Sachsen Immobilienverwaltung for the Mosel II and Chemnitz II projects in the form of investment grants to the tune of DM 189,1 million cannot be allowed either,

HAS ADOPTED THIS DECISION:

Article 1

The following aid proposed by Germany for the various investment projects of Volkswagen AG in Saxony is compatible with Article 92 (3)(c) of the EC Treaty and Article 61 (3)(c) of the EEA Agreement:

- aid granted by Germany to Volkswagen Sachsen GmbH and Volkswagen Sachsen Immobilienverwaltung GmbH for their investment projects in Mosel (Mosel II) and Chemnitz (Chemnitz II) in the form of investment grants (Investitionszuschüsse) of up to DM 418,7 million,
- aid granted by Germany to Volkswagen Sachsen GmbH and Volkswagen Sachsen Immobilienverwaltung GmbH for their investment projects in Mosel (Mosel II) and Chemnitz (Chemnitz II) in the form of investment allowances (Investitionszulagen) of up to DM 120,4 million.

Article 2

The following aid proposed by Germany for the various investment projects of Volkswagen AG in Saxony is incompatible with Article 92 (3) (c) of the EC Treaty and Article 61 (3) (c) of the EEA Agreement and may not be granted:

- the proposed investment aid for Volkswagen Sachsen GmbH and Volkswagen Sachsen Immobilienverwaltung GmbH for their investment projects in Mosel II and Chemnitz II in the form of special depreciation on investment under the Assisted Areas Law ('Fördergebietsgesetz') with a nominal value of DM 51,67 million,
- the proposed investment aid to Volkswagen Sachsen GmbH and Volkswagen Sachsen Immobilienverwaltung GmbH for their investment project in Mosel II in the form of investment grants ('Investitionszuschüsse') in excess of the amount specified in the first indent of Article 1 and constituting an additional DM 189,1 million.

Article 3

Germany shall ensure that the capacity of the Mosel plants in 1997 does not exceed a level of 432 units per day. To that effect, it shall in 1997 send to the Commission monthly reports on the capacity and output of the plants, which should give this information for both Mosel I and Mosel II separately. Germany has also agreed to

random on-site checks by Commission officials and experts employed by the Commission to verify these data.

Furthermore, Germany shall send to, and discuss with, the Commission an annual report on the realization on the DM 2 654,1 million of eligible investments in Mosel II and Chemnitz II and the actual payments of aid so as to ensure that the combined effective aid intensity expressed in gross grant equivalent does not exceed 22,3 % for Mosel II and 20,8 % for Chemnitz II. The Commission expects the report on the years 1994 and 1995 to arrive by the end of 1996 and the report for 1996 to arrive by 1 May 1997.

Article 4

Germany shall inform the Commission within one month of the notification of this Decision of the measures taken to comply herewith.

Article 5

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 26 June 1996.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION

of 20 November 1996

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

(96/667/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 715/90 of 5 March 1990 on the arrangements applicable to agricultural products and certain goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States (ACP) or in the overseas countries and territories (OCT)⁽¹⁾, as last amended by Regulation (EC) No 619/96⁽²⁾, and in particular Article 27 thereof,

Having regard to Commission Regulation (EC) No 589/96 of 2 April 1996 laying down detailed rules for the application in the beef and veal sector of Council Regulation (EEC) No 715/90 on the arrangements applicable to agricultural products and certain goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States or in the overseas countries and territories⁽³⁾, in particular Article 4 thereof,

Whereas Article 1 of Regulation (EC) No 589/96 provides for the possibility of issuing import licences for beef and veal products; whereas, however, imports must take place within the limits of the quantities specified for each of these exporting non-member countries;

Whereas the applications for import licences submitted between 1 and 10 November 1996, expressed in terms of boned meat, in accordance with Regulation (EC) No 589/96, do not exceed, in respect of products originating from Botswana, Kenya, Madagascar, Swaziland, Zimbabwe and Namibia the quantities available from these States; whereas it is therefore possible to issue import licences in respect of the quantities requested;

Whereas the quantities in respect of which licences may be applied for from 1 December 1996, should be fixed within the scope of the total quantity of 52 100 tonnes;

Whereas it seems expedient to recall that this Decision is without prejudice to Council Directive 72/462/EEC of 12 December 1972 on health and veterinary inspection problems on importation of bovine, ovine and caprine animals and swine, fresh meat or meat products from

third countries⁽⁴⁾, as last amended by the Act of Accession of Austria, Finland and Sweden,

HAS ADOPTED THIS DECISION:

Article 1

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

Germany:

- 120,000 tonnes originating in Madagascar,
- 130,000 tonnes originating in Namibia;

United Kingdom:

- 800,000 tonnes originating in Botswana,
- 30,000 tonnes originating in Swaziland,
- 700,000 tonnes originating in Zimbabwe,
- 340,000 tonnes originating in Namibia.

Article 2

Licence applications may be submitted, pursuant to Article 3 (3) of Regulation (EC) No 589/96 during the first 10 days of November 1996 for the following quantities of boned beef and veal:

- | | |
|---------------|-------------------|
| — Botswana: | 7 596,000 tonnes, |
| — Kenya: | 142,000 tonnes, |
| — Madagascar: | 5 868,307 tonnes, |
| — Swaziland: | 2 854,000 tonnes, |
| — Zimbabwe: | 3 067,180 tonnes, |
| — Namibia: | 3 825,006 tonnes. |

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 20 November 1996.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 84, 30. 3. 1990, p. 85.

⁽²⁾ OJ No L 89, 10. 4. 1996, p. 1.

⁽³⁾ OJ No L 84, 3. 4. 1996, p. 22.

⁽⁴⁾ OJ No L 302, 31. 12. 1972, p. 28.

CORRIGENDA

Corrigendum to Commission Directive 95/51/EC of 18 October 1995 amending Directive 90/388/EEC with regard to the abolition of the restrictions on the use of cable television networks for the provision of already liberalized telecommunications services

(Official Journal of the European Communities No L 256 of 26 October 1995)

Page 53, Article 1 (1) point (b):

for: '— "cable TV network" means any wire-based infrastructure approved by a Member State for delivery or distribution of radio or television signals to the public.'

read: '— "cable TV network" means any mainly wire-based infrastructure approved by a Member State for delivery or distribution of radio or television signals to the public.'
