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Contents

I *Acts whose publication is obligatory*

- * **Commission Regulation (EC) No 1753/97 of 10 September 1997 revising the maximum amount for the B production levy and amending the minimum price for B beet in the sugar sector for the 1997/98 marketing year** 1
- * **Commission Regulation (EC) No 1754/97 of 10 September 1997 amending Regulation (EEC) No 2347/91 on the collection of samples of wine products for the purposes of cooperation between Member States and for analysis by nuclear magnetic resonance, including analysis for the purposes of the Community databank** 3
- Commission Regulation (EC) No 1755/97 of 10 September 1997 fixing the representative prices and the additional import duties for molasses in the sugar sector 6
- Commission Regulation (EC) No 1756/97 of 10 September 1997 fixing the export refunds on white sugar and raw sugar exported in its unaltered state 8
- Commission Regulation (EC) No 1757/97 of 10 September 1997 fixing the maximum export refund for white sugar for the sixth partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1408/97 10
- Commission Regulation (EC) No 1758/97 of 10 September 1997 on the issuing of A1 export licences for fruit and vegetables 11
- Commission Regulation (EC) No 1759/97 of 10 September 1997 establishing the standard import values for determining the entry price of certain fruit and vegetables 12
- Commission Regulation (EC) No 1760/97 of 10 September 1997 fixing the export refunds on olive oil 14
- Commission Regulation (EC) No 1761/97 of 10 September 1997 fixing the maximum export refunds for olive oil for the 19th partial invitation to tender under the standing invitation to tender issued by Regulation (EC) No 2081/96 16

Commission Regulation (EC) No 1762/97 of 10 September 1997 amending representative prices and additional duties for the import of certain products in the sugar sector	18
--	----

II *Acts whose publication is not obligatory*

Commission

97/611/EC:

- ★ **Commission Decision of 2 April 1997 on aid to the sheepmeat industry (promotional aid) ⁽¹⁾**..... 20

97/612/EC:

- ★ **Commission Decision of 16 April 1997 on aid granted by the Region of Sardinia, Italy, in the agriculture sector** 27

97/613/EC:

- ★ **Commission Decision of 8 September 1997 on the temporary suspension of imports of pistachios and certain products derived from pistachios originating in or consigned from Iran ⁽¹⁾** 33

⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 1753/97**of 10 September 1997****revising the maximum amount for the B production levy and amending the minimum price for B beet in the sugar sector for the 1997/98 marketing year**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector ⁽¹⁾, as last amended by Regulation (EC) No 1599/96 ⁽²⁾, and in particular the second and third indents of Article 28 (8) thereof,

Whereas Article 28 (3) and (4) of Regulation (EEC) No 1785/81 provides that the losses resulting from the obligation to export surpluses of Community sugar are to be covered by production levies on the production of A and B sugar, of A and B isoglucose and of inulin syrup A and B within certain limits;

Whereas Article 28 (5) of Regulation (EEC) No 1785/81 provides that, where the receipts expected from the basic production levy and the B levy, which must not exceed 2 % and 30 % respectively of the intervention price for white sugar for that marketing year, may well fail to cover the foreseeable total loss for the current marketing year, the maximum percentage of the B levy is to be adjusted to the extent necessary to cover the said total loss but without exceeding 37,5 %;

Whereas the foreseeable receipts, prior to adjustment, of the levies to be collected in respect of the 1997/98 marketing year are below the equivalent of the average loss multiplied by the exportable surplus; whereas accordingly, in the light of the data at present available, the maximum amount of the B levy for 1997/98 should be raised to 37,5 % of the intervention price for the white sugar concerned;

Whereas the second subparagraph of Article 5 (2) of Regulation (EEC) No 1785/81 provides that, subject to Article 28 of that Regulation, the minimum price for B

beet is 68 % of the basic price for beet; whereas Article 28 (5) of the said Regulation provides that the revised maximum percentage for the B levy should be fixed for the current marketing year before 15 September of that marketing year, together with the corresponding adjustment of the minimum price for B beet set for the 1997/98 marketing year by way of Council Regulation (EC) No 1188/97 ⁽³⁾;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. For the 1997/98 marketing year the maximum amount referred to in the first indent of Article 28 (4) of Regulation (EEC) No 1785/81 shall be increased to 37,5 % of the intervention price for white sugar for that marketing year.

2. For the 1997/98 marketing year, the minimum price for B beet referred to in the second subparagraph of Article 5 (2) of Regulation (EEC) No 1785/81 shall be 60,5 % of the basic price for beet for that marketing year.

Article 2

For the 1997/98 marketing year the minimum price for B beet shall, pursuant to Article 28 (5) of Regulation (EEC) No 1785/81, be amended to ECU 28,84 per tonne.

Article 3

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

⁽¹⁾ OJ L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ L 170, 28. 6. 1997, p. 3.

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

Done at Brussels, 10 September 1997.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 1754/97**of 10 September 1997****amending Regulation (EEC) No 2347/91 on the collection of samples of wine products for the purposes of cooperation between Member States and for analysis by nuclear magnetic resonance, including analysis for the purposes of the Community databank**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine ⁽¹⁾, as last amended by Regulation (EC) No 1417/97 ⁽²⁾, and in particular Article 79 (3) thereof,

Whereas Commission Regulation (EEC) No 2347/91 of 29 July 1991 on the collection of samples of wine products for the purposes of cooperation between Member States and for analysis by nuclear magnetic resonance, including analysis for the purposes of the Community databank ⁽³⁾, lays down common rules on the collection of samples for analysis by nuclear magnetic resonance of deuterium in an official laboratory of a Member State or the JRC; whereas Commission Regulation (EEC) No 2676/90 of 17 September 1990 determining Community methods for the analysis of wines ⁽⁴⁾, as last amended by Regulation (EC) No 822/97 ⁽⁵⁾, describes a method for determining the isotopic ratio $^{18}\text{O}/^{16}\text{O}$ of oxygen in water in wine, which can be applied to the same samples; whereas samples collected pursuant to Regulation (EEC) No 2347/91 will also be analysed by that isotopic method to provide data for the databank set up at the JRC; whereas those rules should accordingly be amended and supplemented so that the isotopic ratio $^{18}\text{O}/^{16}\text{O}$ of water in the wine samples can be determined;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2347/91 is hereby amended as follows:

1. In the title, the words 'for analysis by nuclear magnetic resonance' are replaced by 'for analysis by isotopic methods'.
2. In Articles 1, 3 and 4, the words 'by nuclear resonance (of deuterium)' are replaced by 'by isotopic methods'.
3. In the title of Annex II, the words 'by nuclear magnetic resonance of deuterium' are replaced by 'by isotopic methods'.

⁽¹⁾ OJ L 84, 27. 3. 1987, p. 1.⁽²⁾ OJ L 196, 24. 7. 1997, p. 10.⁽³⁾ OJ L 214, 2. 8. 1991, p. 32.⁽⁴⁾ OJ L 272, 3. 10. 1990, p. 1.⁽⁵⁾ OJ L 117, 7. 5. 1997, p. 10.

4. Annex III is amended as follows:

a) In the title, the words 'by nuclear magnetic resonance' are replaced by 'by isotopic methods';

b) Part I is amended as follows:

— in paragraph 3, point 3.2, the following indent is inserted:

‘— latitude, longitude:’;

— the following paragraphs are added:

‘5. Weather conditions prior to harvest

5.1 Rainfall observed during the ten days prior to harvest: yes/no

5.2 Breakdown of daily rainfall and average temperature over the ten days prior to harvest (if available):

		mm water:	°C:
date of harvest	— 1 day:	.....	.....
date of harvest	— 2 days:	.....	.....
date of harvest	— 3 days:	.....	.....
date of harvest	— 4 days:	.....	.....
date of harvest	— 5 days:	.....	.....
date of harvest	— 6 days:	.....	.....
date of harvest	— 7 days:	.....	.....
date of harvest	— 8 days:	.....	.....
date of harvest	— 9 days:	.....	.....
date of harvest	— 10 days:	.....	.....

5.3 Total rainfall and average temperatures in the five ten-day periods prior to harvest (if available):

— rainfall: mm

— average temperatures: °C

5.4 Sources of information concerning weather conditions:

— local measurements: yes/no

— information from nearest weather station located km away

— name, telephone and fax no. of nearest weather station:
.....
.....

6. Irrigated vineyards. If the crop is irrigated:

6.1 Date of last irrigation:

6.2 Quantity of water used during the last 50 days preceding harvest:
mm water.’

Article 2

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

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

Done at Brussels, 10 September 1997.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 1755/97

of 10 September 1997

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

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

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

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

Whereas the information must be disregarded if the goods concerned are not of sound and fair marketable quality or if the price quoted in the offer relates only to a small quantity that is not representative of the market; whereas offer prices which can be regarded as not rep-

resentative of actual market trends must also be disregarded;

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

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

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 11 September 1997.

⁽¹⁾ OJ L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ L 141, 24. 6. 1995, p. 12.

⁽⁴⁾ OJ L 145, 27. 6. 1968, p. 12.

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

Done at Brussels, 10 September 1997.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

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

CN code	Amount of the representative price in ECU per 100 kg net of the product in question	Amount of the additional duty in ECU per 100 kg net of the product in question	Amount of the duty to be applied to imports in ECU per 100 kg net of the product in question because of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 ⁽²⁾
1703 10 00 ⁽¹⁾	8,27	—	0,00
1703 90 00 ⁽¹⁾	11,88	—	0,00

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

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

COMMISSION REGULATION (EC) No 1756/97

of 10 September 1997

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 1 June 1981 on the common organization of the markets in the sugar sector⁽¹⁾, as last amended by Regulation (EC) No 1599/96⁽²⁾, and in particular point (a) of the first subparagraph of Article 19 (4) thereof,

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

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

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

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

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

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92⁽⁶⁾, as last amended by Regulation (EC) No 150/95⁽⁷⁾, 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⁽⁸⁾, as last amended by Regulation (EC) No 1482/96⁽⁹⁾;

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 11 September 1997.

⁽¹⁾ OJ L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ L 89, 10. 4. 1968, p. 3.

⁽⁴⁾ OJ L 349, 31. 12. 1994, p. 105.

⁽⁵⁾ OJ L 214, 8. 9. 1995, p. 16.

⁽⁶⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁷⁾ OJ L 22, 31. 1. 1995, p. 1.

⁽⁸⁾ OJ L 108, 1. 5. 1993, p. 106.

⁽⁹⁾ OJ 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, 10 September 1997.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

to the Commission Regulation of 10 September 1997 fixing the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Amount of refund
	— ECU/100 kg —
1701 11 90 9100	34,40 ⁽¹⁾
1701 11 90 9910	33,34 ⁽¹⁾
1701 11 90 9950	⁽²⁾
1701 12 90 9100	34,40 ⁽¹⁾
1701 12 90 9910	33,34 ⁽¹⁾
1701 12 90 9950	⁽²⁾
	— ECU/1 % of sucrose × 100 kg —
1701 91 00 9000	0,3740
	— ECU/100 kg —
1701 99 10 9100	37,40
1701 99 10 9910	37,55
1701 99 10 9950	37,55
	— ECU/1 % of sucrose × 100 kg —
1701 99 90 9100	0,3740

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

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

COMMISSION REGULATION (EC) No 1757/97
of 10 September 1997

fixing the maximum export refund for white sugar for the sixth partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1408/97

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

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector ⁽¹⁾, as last amended by Regulation (EC) No 1599/96 ⁽²⁾, and in particular the second subparagraph of Article 17 (5) (b) thereof,

Whereas Commission Regulation (EC) No 1408/97 of 22 July 1997 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar ⁽³⁾, requires partial invitations to tender to be issued for the export of this sugar;

Whereas, pursuant to Article 9 (1) of Regulation (EC) No 1408/97 a maximum export refund shall be fixed, as the case may be, account being taken in particular of the state and foreseeable development of the Community and world markets in sugar, for the partial invitation to tender in question;

Whereas, following an examination of the tenders submitted in response to the sixth partial invitation to

tender, the provisions set out in Article 1 should be adopted;

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

HAS ADOPTED THIS REGULATION:

Article 1

For the sixth partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1408/97 the maximum amount of the export refund is fixed at ECU 40,563 per 100 kilograms.

Article 2

This Regulation shall enter into force on 11 September 1997.

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

Done at Brussels, 10 September 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ L 194, 23. 7. 1997, p. 16.

COMMISSION REGULATION (EC) No 1758/97
of 10 September 1997
on the issuing of A1 export licences for 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 2190/96 of 14 November 1996 on detailed rules for implementing Council Regulation (EEC) No 1035/72 as regards export refunds on fruit and vegetables⁽¹⁾, as last amended by Regulation (EC) No 610/97⁽²⁾, and in particular Article 2 (3) thereof,

Whereas Commission Regulation (EC) No 1120/97⁽³⁾ sets the quantities for which A1 export licences, other than those requested in the context of food aid, may be issued;

Whereas Article 2 of Regulation (EC) No 2190/96 sets the conditions under which special measures may be taken by the Commission with a view to avoiding an overrun of the quantities for which A1 licences may be issued;

Whereas the Commission has received information which indicates that those quantities, reduced or increased by the quantities referred to in Article 2 (3) of Regulation (EC) No 2190/96, would be exceeded if A1 licences were issued without restriction for shelled hazelnuts in response to applications submitted since 5 September

1997; whereas, therefore, a percentage should be fixed for the issuing of licences for quantities applied for on 5 September 1997 and applications for A1 licences submitted later in that application period should be rejected,

HAS ADOPTED THIS REGULATION:

Article 1

A1 export licences for shelled hazelnuts for which applications were submitted on 5 September 1997 pursuant to Article 1 of Regulation (EC) No 1120/97 shall be issued for 24,5 % of the quantities applied for.

Applications for A1 export licences submitted after 5 September 1997 and before 10 September 1997 for those products shall be rejected.

Article 2

This Regulation shall enter into force on 11 September 1997.

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

Done at Brussels, 10 September 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 292, 15. 11. 1996, p. 12.

⁽²⁾ OJ L 93, 8. 4. 1997, p. 11.

⁽³⁾ OJ L 163, 20. 6. 1997, p. 12.

COMMISSION REGULATION (EC) No 1759/97

of 10 September 1997

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 2375/96 ⁽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 11 September 1997.

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

Done at Brussels, 10 September 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ L 325, 14. 12. 1996, p. 5.

⁽³⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 10 September 1997 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
0709 90 79	052	74,1
	999	74,1
0805 30 30	388	60,5
	524	70,4
	528	58,3
	999	63,1
0806 10 40	052	80,1
	064	68,7
	400	196,8
	999	115,2
0808 10 92, 0808 10 94, 0808 10 98	388	79,2
	400	58,8
	512	13,9
	528	56,8
	804	82,0
	999	58,1
0808 20 57	052	74,3
	064	86,5
	388	36,3
	512	8,9
	528	64,8
	999	54,2
0809 40 30	052	50,0
	064	54,7
	066	54,1
	068	64,4
	400	110,5
	624	146,4
	999	80,0

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

COMMISSION REGULATION (EC) No 1760/97
of 10 September 1997
fixing the export refunds on olive oil

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by Regulation (EC) No 1581/96⁽²⁾, and in particular Article 3 (3) thereof,

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

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

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

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

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

refund and may be limited to certain countries of destination, quantities, qualities and presentations;

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

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

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

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92⁽⁵⁾, as last amended by Regulation (EC) No 150/95⁽⁶⁾, are used to convert amounts expressed in third country currencies and are used as the basis for determining the agricultural conversion rates of the Member States' currencies; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93⁽⁷⁾, as last amended by Regulation (EC) No 1482/96⁽⁸⁾;

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 11 September 1997.

⁽¹⁾ OJ L 172, 30. 9. 1966, p. 3025/66.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 11.

⁽³⁾ OJ L 78, 31. 3. 1972, p. 1.

⁽⁴⁾ OJ L 348, 30. 12. 1977, p. 53.

⁽⁵⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁶⁾ OJ L 22, 31. 1. 1995, p. 1.

⁽⁷⁾ OJ L 108, 1. 5. 1993, p. 106.

⁽⁸⁾ OJ 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, 10 September 1997.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX

to the Commission Regulation of 10 September 1997 fixing the export refunds on olive oil
(ECU/100 kg)

Product code	Amount of refund (1)
1509 10 90 9100	20,00
1509 10 90 9900	0,00
1509 90 00 9100	20,00
1509 90 00 9900	0,00
1510 00 90 9100	0,00
1510 00 90 9900	0,00

(1) For destinations mentioned in Article 34 of amended Commission Regulation (EEC) No 3665/87 (OJ L 351, 14. 12. 1987, p 1), as well as for exports to third countries.

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

COMMISSION REGULATION (EC) No 1761/97

of 10 September 1997

fixing the maximum export refunds for olive oil for the 19th partial invitation to tender under the standing invitation to tender issued by Regulation (EC) No 2081/96

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats ⁽¹⁾, as last amended by Regulation (EC) No 1581/96 ⁽²⁾, and in particular Article 3 thereof,

Whereas Commission Regulation (EC) No 2081/96 ⁽³⁾ issued a standing invitation to tender with a view to determining the export refunds on olive oil;

Whereas Article 6 of Regulation (EC) No 2081/96 provides that maximum amounts are to be fixed for the export refunds in the light in particular of the current situation and foreseeable developments on the Community and world olive-oil markets and on the basis of the tenders received; whereas contracts are awarded to any tenderer who submits a tender at the level of the maximum refund or at a lower level;

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

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refunds for olive oil for the 19th partial invitation to tender under the standing invitation to tender issued by Regulation (EC) No 2081/96 are hereby fixed in the Annex, on the basis of the tenders submitted by 9 September 1997.

Article 2

This Regulation shall enter into force on 11 September 1997.

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

Done at Brussels, 10 September 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ 172, 30. 9. 1966, p. 3025/66.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 11.

⁽³⁾ OJ L 279, 31. 10. 1996, p. 17.

ANNEX

to the Commission Regulation of 10 September 1997 fixing the maximum export refunds for olive oil for the 19th partial invitation to tender under the standing invitation to tender issued by Regulation (EC) No 2081/96

(ECU/100 kg)

Product code	Amount of refund
1509 10 90 9100	24,50
1509 10 90 9900	—
1509 90 00 9100	24,50
1509 90 00 9900	—
1510 00 90 9100	—
1510 00 90 9900	—

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

COMMISSION REGULATION (EC) No 1762/97**of 10 September 1997****amending representative prices and additional duties for the import of certain products in the sugar sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Commission Regulation (EC) No 1423/95 of 23 June 1995 laying down detailed implementing rules for the import of products in the sugar sector other than molasses ⁽³⁾, as last amended by Regulation (EC) No 1143/97 ⁽⁴⁾, and in particular the second subparagraph of Article 1 (2), and Article 3 (1) thereof,

Whereas the amounts of the representative prices and additional duties applicable to the import of white sugar, raw sugar and certain syrups are fixed by Commission Regulation (EC) No 1222/97 ⁽⁵⁾, as last amended by Regulation (EC) No 1665/97 ⁽⁶⁾;

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 11 September 1997.

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

Done at Brussels, 10 September 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ L 141, 24. 6. 1995, p. 16.

⁽⁴⁾ OJ L 165, 24. 6. 1997, p. 11.

⁽⁵⁾ OJ L 173, 1. 7. 1997, p. 3.

⁽⁶⁾ OJ L 234, 26. 8. 1997, p. 5.

ANNEX

to the Commission Regulation of 10 September 1997 amending representative prices and the amounts of additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 99

(ECU)

CN code	Amount of representative prices per 100 kg net of product concerned	Amount of additional duty per 100 kg net of product concerned
1701 11 10 ⁽¹⁾	26,03	3,48
1701 11 90 ⁽¹⁾	26,03	8,52
1701 12 10 ⁽¹⁾	26,03	3,34
1701 12 90 ⁽¹⁾	26,03	8,09
1701 91 00 ⁽²⁾	28,56	10,95
1701 99 10 ⁽²⁾	28,56	6,43
1701 99 90 ⁽²⁾	28,56	6,43
1702 90 99 ⁽³⁾	0,29	0,36

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

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

⁽³⁾ By 1 % sucrose content.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 2 April 1997

on aid to the sheepmeat industry (promotional aid)

(Only the French text is authentic)

(Text with EEA relevance)

(97/611/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 Council Regulation (EEC) No 3013/89 of 25 September 1989 on the common organization of the market in sheepmeat and goatmeat⁽¹⁾, as last amended by Regulation (EC) No 1589/96⁽²⁾, and in particular Article 27 thereof,

Having given the interested parties notice, pursuant to the first subparagraph of Article 93 (2) of the Treaty, to submit their comments⁽³⁾ and having regard to those comments,

Whereas:

I

By letter of 12 August 1994, recorded as received on 16 August 1994, the French Permanent Representative to the European Union notified the Commission of the measures under discussion, in response to the Commission's request of 27 June 1994 for such notification. By letter of 22 February 1995, recorded as received on 23 February 1995, the French authorities provided additional

information in response to the Commission's request of 25 August 1994.

On the basis of the information in its possession, the Commission therefore undertook a preliminary examination of three sets of measures for the sheepmeat industry, namely two 'production guidance' programmes entailing technical support and investment aid, and some promotional measures.

The Commission had no objections to raise pursuant to Articles 92 and 93 of the EC Treaty with regard to the aid for technical support and investment in the sheepmeat industry.

However, the Commission initiated the procedure provided for in Article 93 (2) of the Treaty in respect of the promotional measures by letter No SG(95) D/3878 of 29 March 1995, giving the French Government notice to submit its comments. The other Member States and interested parties were given notice to submit their comments in a notice published in *Official Journal of the European Communities* C 289 of 31 October 1995.

By letter of 14 July 1995 the French authorities provided the information requested in the course of the said procedure.

Third parties also submitted comments by letter of 18 December 1995. These were forwarded to the French authorities by letter of 28 January 1997.

They have not dispelled the Commission's doubts as to the compatibility of the measures in question, for the reasons set out in the recitals of the draft decision.

⁽¹⁾ OJ L 289, 7. 10. 1989, p. 1.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 25.

⁽³⁾ OJ C 289, 31. 10. 1995, p. 12.

II

The measures in respect of which the Commission has initiated the procedure provided for in Article 93 (2) of the Treaty consist of promotional measures for sheep-meat. At least 50 % of the cost of the measures is financed by the industry and the rest by the public authorities (Ministry of Agriculture and Fisheries, Ofival).

The details of the measures are as follows:

- assistance for measures undertaken by farmers as part of the operation and by the structure responsible for exploiting a quality mark (designation of origin, label, certification of conformity of the products),
- organization of promotional campaigns for the disposal of such products coming from specific regions, with public awareness campaigns in hypermarkets, supermarkets and retail butchers' shops and a radio publicity campaign promoting the advantages of these products (nearness, quality, authenticity, local or regional origin, etc.).

On the basis of the information available to it, the Commission has decided to initiate the abovementioned procedure because of probable infringement of Article 30 of the Treaty.

The measures in question were published in the French Ministry of Agriculture's Bulletin d'Information of 25 June 1994.

As that publication states, the 'quality marks' selected by the French authorities refer to the national origin of the products by displaying the French flag and the expressions 'agneau français, qualité bouchère' and 'agneau des bergers de France'.

By letter of 22 February 1995 the French authorities indicated that the campaigns had mainly been undertaken through the mass-communication media. According to the letter of 17 July 1995 the campaign in question ran from January to March 1995 and received a State contribution of FF 5 million.

III

The Commission may regard promotional measures as compatible with the common market under the following conditions⁽¹⁾:

⁽¹⁾ See the framework for national aids for the advertising of agricultural products and certain products not listed in Annex II to the EEC Treaty, excluding fishery products, OJ C 302, 12. 11. 1987, p. 6.

- the granting of aid for promotional measures contravening Article 30 of the Treaty or for advertising to promote particular enterprises is prohibited,
- promotion must cover surplus agricultural production, new or non-surplus replacement products, the development of certain regions, the development of small and medium-sized enterprises, or quality and health-food products,
- the aid may not, as a general rule, exceed 50 % of the expenditure.

The guidelines for Member States' involvement in promotion of the abovementioned agricultural and fisheries products (point 2.2.1 of the Annex to the Commission Communication published in *Official Journal of the European Communities* C 272 of 28 October 1986) cite promotional campaigns advising consumers to buy national products solely on account of their national origin among the promotional actions which clearly infringe Article 30 of the Treaty.

In its communication initiating the procedure, the Commission took the view that in the case in point, on the basis of the information available to it, only compliance with the condition set out in the third indent above could be verified; compliance with the condition set out in the second indent above could not be verified and in any case Article 30 of the Treaty referred to in the first indent above was likely not to be complied with.

IV

Following the initiation of the procedure, the Commission has received comments from France and from an interested party, both of whom deny any infringement of Article 30. They argue, first, that consumers in France are in no case encouraged to buy the product in question 'solely on account of its national origin'. They advance several pieces of information in support of this argument:

- the publicity does not refer 'solely' to the national origin of the product,
- it promotes quality meat (with strict quality control),
- only products meeting specific quality criteria are eligible for promotion,
- the national logo is merely a support for regional promotion campaigns (regional labels, etc.).

- the national reference should be understood only as the signature of the promoter of the measure,
- it does not aim at giving undue weight to the national origin,
- the purpose is to inform (not incite) the consumer by stating *inter alia* the geographical origin of the product,
- Articles 2 (1) (a) (i) and 3 (1) (7) of Directive 79/112/EEC, dealing with the labelling of foodstuffs.

With regard to the second condition referred to above, the interested party argued that only lambs produced under certain conditions were eligible for the promotional aid. These conditions presupposed artisanal production in small undertakings, almost all of the lambs in question being reared in less favoured regions and having to meet quality criteria laid down in accordance with detailed and rigorous specifications.

The purpose of the promotion campaign was to introduce consumers to the value of superior quality products. Standard quality products could in no circumstances qualify for promotion aid, nor could they benefit, therefore, from the promotional materials made available only to those who complied with the rules laid down in the specifications.

V

Article 27 of Regulation (EEC) No 3013/89 provides that Articles 92, 93 and 94 of the Treaty apply to the production of, and trade in, the products listed in Article 1, save as otherwise provided in that Regulation.

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

The measures in question constitute aid granted within the meaning of Article 92 (1) of the Treaty.

They improve the financial situation of the beneficiary firms as compared with their competitors who do not receive the aid. They therefore distort or threaten to distort competition for the above purposes.

Taking into consideration the value, on the one hand, of the trade in sheepmeat concerned (for 1995: exports from

France to the EC: ECU 32,7 million; imports from the EC into France: ECU 354,9 million⁽¹⁾) and, on the other hand, of French production (ECU 461,48 million) as compared with the production of the other Member States (ECU 3 739,27 million)⁽²⁾, it is clear that this aid is likely to affect trade between Member States if it benefits national production to the detriment of imports from other Member States.

In this respect, it should be stressed that, even where aid covers a relatively small amount or where the beneficiary undertaking is of relatively modest size, there is still a possibility that trade between Member States may be affected.

In view of the above, the aid in question is State aid which fulfils the criteria of Article 92 (1) of the Treaty.

There are, however, exceptions to the principle of incompatibility laid down in Article 92 (1).

VI

The derogations from this incompatibility provided for in Article 92 (2) clearly do not apply. Nor, indeed, have they been pleaded by the French authorities.

The derogations under Article 92 (3) of the Treaty must be construed restrictively for the purposes of examining regional or sectoral aid programmes or any individual case of the application of general aid schemes.

In particular, a derogation may be granted only where the Commission is able to establish that the aid is necessary for the attainment of one of the objectives in question. To grant the benefit of such derogations to aid which is not necessary for that purpose would be tantamount to allowing trade between Member States to be affected and competition to be distorted without any justification in the light of the Community interest and thereby bestowing an unwarranted advantage on operators in certain Member States.

In the case in point the aid does not contribute to attaining any of the objectives in question. The French Government has provided no valid justification, nor has the Commission been able to find any, showing that the aid in question meets the requisite conditions for application of one of the derogations provided for in Article 92 (3).

⁽¹⁾ Comext 2.

⁽²⁾ Comext 2.

These are not measures to promote the execution of an important project of common European interest within the meaning of Article 92 (3) (b) since, in view of the effect they could have on trade, these aids are counter to the common interest. Nor are they measures to remedy a serious disturbance in the economy of the Member State concerned within the meaning of that same provision. Nor was the aid notified as a regional aid under Article 92 (3) (a).

The comments of the French Government and the interested party lead the Commission to make the following observations and draw the following conclusions.

The Commission could consider aid to facilitate the development of certain economic activities or of certain economic areas to be compatible, where such aid does not adversely affect trading conditions to an extent contrary to the common interest (Article 92 (3) (c)).

In order for such aid to be considered compatible with the common market under Article 92 (3) (c) of the Treaty, aid for a specific publicity campaign:

- must not adversely affect trading conditions to an extent contrary to the common interest, and
- must facilitate the development of certain economic activities or certain regions by promoting disposal of their specific products.

By definition, aids within the meaning of Article 92 (1) are those which distort or threaten to distort competition, but under Article 92 (3) (c) such aids are considered incompatible only if they do so to an extent contrary to the common interest, the requirements of which are specified in the framework for national aids for the advertising of agricultural products and certain products not listed in Annex II to the EEC Treaty, excluding fishery products⁽¹⁾, account being taken of the objectives referred to in Article 39 of the Treaty.

The compatibility of each case of advertising aid should be scrutinized in the above order; consequently, according to the abovementioned framework, where there is exclusion from compatibility by one of the negative criteria below, the question as to whether the aid can be justified under one of the positive criteria referred to at point 3 no longer arises and need not be raised. According to the abovementioned framework, the granting of the aids concerned is against the common interest in the following cases:

Aid for advertising related directly to the products of one or more firms (point 2.2) and aid for campaigns contrary to Article 30 of the Treaty (point 2.1).

National aid for an advertising campaign which, by virtue of its content, infringes Article 30 of the Treaty cannot be

considered compatible with the common market within the meaning of Article 92 (3).

The Commission has not been able to establish that the advertising aid was intended directly to benefit the products of one or more firms.

However, the Commission considers that the advertising aids in respect of which the procedure has been initiated are contrary to Article 30 of the Treaty.

Article 30 provides that quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States, without prejudice to Articles 31 to 37 of the Treaty.

For the purposes of this prohibition it is sufficient that the measures in question be capable of hindering trade between Member States, directly or indirectly, actually or potentially (see *Dassonville* case⁽²⁾).

The measures in question are capable of hindering trade between Member States for the following reasons.

The Commission established its policy with regard to the interpretation of Article 30 in the area of State aids in its communication concerning State involvement in the promotion of agricultural and fisheries products⁽³⁾.

The third party contested the force in law of the said communication. The Commission cannot follow this line of reasoning. The Commission's role under Articles 92 to 94 of the Treaty includes the task of ensuring compliance with Article 30 of the Treaty in line with the case law of the Court of Justice⁽⁴⁾, the principles of which are set out in the abovementioned framework⁽⁵⁾.

Point 2.2.1 of the guidelines for the Member States annexed to the communication provides that promotional campaigns which encourage consumers to buy national products solely because of their national origin infringe Article 30.

This is clearly the case with the 'agneau des bergers de France' campaign. From the consumer's point of view the only point of reference is that this is a national product. The addition of 'berger' in no way alters that assessment.

However, the Commission finds that the other measure in question ('agneau français, qualité bouchère') also infringes Article 30, because it attributes excessive importance to the national origin of the product.

⁽²⁾ Case 8/74, [1974] ECR 837, at p. 852.

⁽³⁾ OJ C 272, 28. 10. 1986, p. 3.

⁽⁴⁾ Cases 249/81 ('Buy Irish') and 222/82 ('Apple and Pear Development Council').

⁽⁵⁾ See the Framework for national aids for the advertising of agricultural products and certain products not listed in Annex II to the EEC Treaty, excluding fishery products, OJ C 302, 12. 11. 1987, p. 6.

⁽¹⁾ OJ C 302, 12. 11. 1987, p. 6.

In 2.3.1 of the abovementioned guidelines, the Commission expressly invites Member States to ensure particularly that the following guideline is strictly respected:

'Identification of the producing country by word or symbol may be made providing that a reasonable balance between references, on the one hand to the qualities and varieties of the product and, on the other hand, to its national origin is kept. The references to national origin should be subsidiary to the main message put over to consumers by the campaign.'

This requirement has not been met either. The reference to the national origin is certainly not subsidiary, as can be seen from the specimens provided, which show that the words 'Agneau français' are printed twice the size of 'qualité bouchère', with 'Agneau français' appearing in red and superimposed on 'qualité bouchère', which is printed in blue.

The effect is reinforced by the use of the French flag.

In these circumstances there is no question of a reasonable balance between references, on the one hand to the qualities of the product and, on the other hand, to its national origin.

The signs in question bear no further reference.

The matter of quality criteria and quality control is therefore irrelevant, as it does not prevent the measure from hindering free trade.

This conclusion has been confirmed by the case law of the Court of Justice⁽¹⁾, according to which in a market which, as far as possible, must present the features of a single market, entitlement to a designation of quality for a product can — except in the case of the rules applicable to designations of origin and geographical indications — only depend upon the intrinsic objective characteristics governing the quality of the product compared with a similar product of inferior quality, and not on the geographical locality where a particular production stage took place.

This also holds true for the claim that the national logo is merely a support for regional promotion campaigns or simply informs the consumer of the geographical origin of the product, on the one hand, and the argument that the national reference should be understood only as the signature of the promoter of the measure, on the other.

With regard to these arguments, it should be recalled that, in the Commission's view, mere reference to national

origin or to the promoter of the measure does not infringe Article 30 provided that the reference is not excessive.

The objective 'sought' by the campaign in question, defined by the French authorities in negative terms (the aid does not 'seek' to place undue emphasis on national origin), does nothing to alter its effect and is thus in any case irrelevant for the purposes of Article 30 of the Treaty. What is important is that the national reference is understood as the signature of the promoter of the measure who is openly and emphatically declared to be French (cf. 'French' lamb, 'bergers de France'). Moreover, indeed, the reply of the French authorities actually bears out the Commission's complaint, particularly since it refers to the decline in the competitiveness of the French sheepmeat sector, the need to target campaigns on the 'quality guaranteed by your butcher or on lambs from our shepherds, with the objective of dealing with the stagnation of lamb sales on our territory'.

The interested party claimed that the prohibition on mentioning the French origin of the lamb ran counter to Community law.

This argument seems quite irrelevant in view of the fact that the Commission has never proposed that mention of the origin should be prohibited, as is quite clear, on the one hand, from the guidelines attached to the abovementioned communication of 28 October 1986 and, on the other hand, from the communication initiating the procedure pursuant to Article 93 (2) of the Treaty.

Lastly, the obligatory indication of origin under the labelling directive⁽²⁾ concerns only cases where failure to give such particulars is likely to mislead the consumer as to the material qualities of the product. A reference to origin which contains no other explicit information as to the intrinsic qualities of the product certainly does not prevent such error. In other words, no explanation is given as to how the reference to French origin enlightens the consumer as to the qualities of the product.

It is still necessary to determine whether measures of the type scrutinized under Article 30 might, while constituting measures having an effect equivalent to quantitative restrictions, be permissible by virtue of Article 36 of the Treaty.

⁽¹⁾ Case 13/78, 'Eggers', [1978] ECR 1935, point 24 et seq.

⁽²⁾ Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer, OJ L 33, 8. 2. 1979, p. 1.

Article 36 stands as an exception to the basic principle of free movement of goods and must therefore be construed in such a way that its effects do not extend beyond that which is necessary to protect the interests which it seeks to guarantee.

However, none of the comments submitted sought the application of Article 36, nor has the Commission found any evidence likely to call for its application.

The Commission has therefore concluded that the planned aid measures do not meet the Community criteria which would enable them to be regarded as facilitating the development of the sectors concerned.

Consequently, the Commission finds that these measures cannot qualify for the derogations provided for in Article 92 (3) (a) and (c) with regard to aid to encourage or facilitate the economic development of certain regions or the development of certain activities referred to in the above-mentioned point (c).

In view of the above, the Commission cannot accept the justifications put forward by the French Government and the interested party.

The aid measures cannot, therefore, qualify for any of the derogations provided for in Article 92 of the Treaty and are to be considered incompatible with the common market.

VII

Since initiation of the procedure under Article 93 (2), the Commission has received information indicating that the aid in question was granted before the said procedure had resulted in a final decision. The sum paid amounts to FF 5 million. Since the aid was not notified and was implemented without awaiting the Commission's final decision, it should be noted that, in view of the binding nature of the rules of procedure laid down in Article 93 (3) of the Treaty, the direct effect of which was recognized by the Court of Justice in its judgments of 19 June 1973 (Case 77/72, *Carminio Capolongo v. Azienda Agricola Maya*)⁽¹⁾, 11 December 1973 (Case 120/73, *Gebr. Lorenz GmbH v. Federal Republic of Germany*)⁽²⁾ and 22 March 1977 (Case 78/76, *Steinike & Weinlig v. Federal Republic of Germany*)⁽³⁾, the illegality of the aid in question cannot be rectified after the event (judgment of 21 November 1991 in Case C-354/90, *Fédération nationale du commerce extérieur des produits alimentaires and Others v. France*)⁽⁴⁾.

Where aids are incompatible with the common market, the Commission should make use of the option given it

by the judgments of the Court of Justice of 24 February 1987 in Case 310/85⁽⁵⁾ and 20 September 1990 in Case C-5/89⁽⁶⁾, and require the Member State to recover from the beneficiaries the full amount of aid illegally granted.

Such a refund is necessary in order to re-establish the prior situation by removing all the financial advantages which the beneficiary (*Interbev*) of the illegally granted aid has unduly enjoyed since the date on which the aid was granted.

Reimbursement must therefore be carried out in accordance with the procedures and provisions of French law, with interest running from the date on which the aid in question was granted. The interest must be calculated on the basis of the commercial rate, with reference to the rate used for the calculation of the subsidy equivalent in regional aids⁽⁷⁾.

This Decision is without prejudice to any inferences which the Commission may draw in relation to the financing of the common agricultural policy by the European Agricultural Guidance and Guarantee Fund (EAGGF),

HAS ADOPTED THIS DECISION:

Article 1

The promotional aid measures notified by letter of 12 August 1994 from the French Permanent Representation to the European Union are illegal under Article 93 (3) of the Treaty in the case where they have been applied; the aid is incompatible with the common market under Article 92 of the EC Treaty and may not be granted.

Article 2

France is required to abolish the aid referred to in Article 1 within two months of the date of notification of this Decision.

Article 3

France is required to demand reimbursement of the aid referred to in Article 1 by means of recovery from the direct beneficiary (*Interbev*) within six months of the date of notification of this Decision.

Reimbursement shall be carried out in accordance with the procedures and provisions of French law. The sums to be recovered shall attract interest from the date on which

⁽¹⁾ [1973] ECR 611.

⁽²⁾ [1973] ECR 1471.

⁽³⁾ [1977] ECR 595.

⁽⁴⁾ [1991] ECR I-5505.

⁽⁵⁾ [1987] ECR 901.

⁽⁶⁾ [1990] ECR I-3437.

⁽⁷⁾ Commission communication to the Member States (OJ C 156, 22. 6. 1995, p. 5).

the aid in question was granted. The interest shall be calculated on the basis of the commercial rate, with reference to the rate used for the calculation of the subsidy equivalent in the context of regional aids.

Article 4

France shall inform the Commission, on the one hand, within two months from the date of notification of this Decision, of the measures it intends to take to comply with this Decision and, on the other hand, within the

time limit provided for in Article 3, of the measures it has taken to comply with this Decision.

Article 5

This Decision is addressed to the French Republic.

Done at Brussels, 2 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION DECISION

of 16 April 1997

on aid granted by the Region of Sardinia, Italy, in the agriculture sector

(Only the Italian text is authentic)

(97/612/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

After giving notice to the parties concerned to submit their comments⁽¹⁾, in accordance with Article 93 (2),

Whereas:

I

By letter of 1 September 1992, Italy notified to the Commission, under Article 93 (3) of the Treaty, Regional Law No 17 of 27 August 1992 of the Region of Sardinia (hereinafter referred to as 'Law No 17/92').

Article 12 of Law No 17/92 amends Article 5 of Regional Law No 44 of 13 December 1988 of the Region of Sardinia (hereinafter referred to as 'Law No 44/88') which had never been examined under Articles 92 and 93 of the Treaty. Neither had the provisions adopted by the Giunta Regionale (Regional Executive) for implementing that Article undergone such an examination.

Article 5 of Law No 44/88 introduces aid, in the form of subsidized loans, to assist in restoring the liquidity of farms whose financial situation has been affected by adverse circumstances. These loans, which have a maximum term of 15 years (including a three-year pre-redemption period), must be used to consolidate current liabilities.

It is for the Regional Executive to determine, by means of an appropriate decision in each case, the practical arrangements for granting the loans and in particular the adverse circumstances which justify the measure, the sector or sectors involved, the amount of the aid in relation to the degree of indebtedness, and the term of the loan.

According to the information supplied by the Italian authorities, Article 5 of Law No 44/88 has been applied four times since 1988.

(1) *Decision of the Regional Executive of 30 December 1988 (market crisis in the glasshouse sector)*

The adverse circumstance which produced the crisis was the collapse in the prices of glasshouse products, which meant that growers were unable to cover their production costs.

In this first instance in which Article 5 was applied, the only condition laid down by the regional authorities was that the holding's short-term indebtedness should be more than 75 % of the value of its gross output in the year under consideration.

(2) *Decision of the Regional Executive of 27 June 1990 (forestry holdings)*

In 1990 the regional authorities decided to grant the aid provided for in Article 5 of Law No 44/88 to forestry holdings which had plantations which were not yet ready for commercial felling, for the purpose of paying off and/or consolidating debts falling due before 30 June 1990 and contracted in order to make investments and for management purposes, the overdrafts existing on that date, and debts owing to employees (for the payment of wages), to landowners (for rent) and to suppliers (for the purchase of goods).

In this case too, the total short-term debt had to amount to 75 % or more of gross output. The term of the loans was set at 13 years (with a three-year pre-redemption period).

(3) *Decision of the Regional Executive of 20 November 1990 (rabbit farmers)*

In this case the aid was paid to rabbit farmers who had lost at least 20 % of their animals as the result of a disease which had seriously affected the Region in the spring of 1990.

The 15-year subsidized loans (with a three-year pre-redemption period) could cover two annual (or four half-yearly) repayments on long-term loans already contracted, plus an amount equal to the holding's financial requirements for one year.

⁽¹⁾ OJ C 271, 29. 9. 1994, p. 14.

(4) *Decision of the Regional Executive of 26 June 1992 (indebted agricultural holdings)*

In 1992 the aid was extended to all farmers because of the increasingly unfavourable market conditions and the problems caused by bad weather.

In this case the holdings' short-term indebtedness had to be at least equal to 51 % of gross production in the year in question (1991); the duration of the financing operation was the maximum permitted by the basic law (15 years including a three-year pre-redemption period).

The amount of the short-term debt was calculated on the basis of the loans with a term of less than 12 months in existence in 1991 (subsidized or at the market rate, and even if repaid) and the repayment instalments on multiannual financing (subsidized or at the market rate) falling due or paid in 1991 or else falling due in previous years and not paid.

The funding granted could be used to cover the following: subsidized operating loans, debts on medium-term loans (except those taken out for the purchase of agricultural machinery) and the non-paid instalments on subsidized multiannual loans granted by the Region following natural disasters.

The expenditure ceiling for the funding provided for in Article 5 of Law No 44/88 was Lit 5 000 million for 1988; for the three years 1992, 1993 and 1994 it amounted to Lit 40 000 million.

Article 12 of Law No 17/92 lays down technical rules for implementation of the financial operations carried out under Article 5 of Law No 44/88 and the abovementioned decisions.

II

By letter of 1 August 1994, the Commission informed Italy of its decision to initiate the procedure laid down in Article 93 (2) of the Treaty in respect of the aid provided for in Article 5 of Law No 44/88 and the four decisions of the Regional Executive referred to above.

In that letter the Commission informed the Italian Government that the measures in question appeared incompatible with the common market in that they did not fulfil the criteria listed below, which it applied generally to national aid for farms in difficulty:

- (a) the aid must cover the financial charges on loans taken out to finance investments already made;

- (b) the total subsidy equivalent of any aid granted when the loans were taken out and the aid in question may not exceed the rates generally allowed by the Commission (that is 55 % (75 % in Objective 1 regions) for the processing and marketing of agricultural products and 35 % (75 % in less-favoured areas within the meaning of Council Directive 75/268/EEC⁽¹⁾, as last amended by Regulation (EEC) No 797/85⁽²⁾) for the primary sector);

- (c) the aid must be consequent upon a readjustment of the rate of new loans, designed to offset variations in the cost of money (the amount of the aid must not exceed the variation in the rate of the new loans), or must be granted to farms which offer sufficient guarantees of economic recovery, especially where the financial charges resulting from the loans contracted are such as to endanger the holding and perhaps cause its bankruptcy.

(These criteria are hereinafter referred to as 'specific Commission practice for aid to farms in difficulty').

The Commission, having found not only that the text of Article 5 of Law No 44/88 does not take account of these three conditions but also that they are not met in any of the four cases in which Article 5 was applied, considered that the aid in question was liable to distort competition and affect trade between Member States and that it met the conditions in Article 92 (1) of the Treaty without qualifying for any of the derogations provided for in paragraphs 2 and 3 of that Article.

The Commission invited Italy to submit its comments; it also invited the other Member States and other interested parties to do the same.

III

Italy submitted comments in letters of 30 January, 25 August and 1 December 1995.

In its letters, Italy puts forward the following arguments:

1. In general terms, Italy stresses the extremely precarious nature of the social and economic conditions which underlie Sardinia's agriculture and its economy as a whole. In the second half of 1992 the overall indebtedness of Sardinian holdings amounted to Lit 1 613 000 million, equal to 91 % of the value of regional gross production of agricultural products, against a national average of 19 % (of this total, around Lit 350 000 million comprised subsidized loans granted following natural catastrophes).

⁽¹⁾ OJ L 128, 19. 5. 1975, p. 1.

⁽²⁾ OJ L 93, 30. 3. 1985, p. 1.

According to Italy, in these circumstances a refusal to grant the consolidation loans on the part of the regional authorities would have had very serious social repercussions and would have posed a threat to public safety.

2. The regional authorities' decision to grant an interest rebate on the consolidation loans (adopted on the basis of the criteria laid down in each of the four ad hoc decisions) did not affect the banks' examination of each financing application submitted. The banks could refuse the application for consolidation of liabilities if, even with assistance from the Region, there were insufficient guarantees that the loan would be reimbursed. This shows, according to Italy, that the beneficiary holdings offered the prospect of economic recovery.

3. The form of aid (loans for liability consolidation) does not provide for the grant of new financing, but consists in the rescheduling of liabilities over a longer period.

4. As regards the aid in 1988 and 1992 (for glasshouse crops and all indebted agricultural holdings respectively), Italy points out that it was decided on by the Region in view of the crisis affecting Sardinian holdings, which had undertaken investments by contracting financial obligations which they were unable to meet because of various unfavourable factors (prolonged drought, market crisis, lack of organization at the produce marketing stage, high interest rates).

The fact that the Region of Sardinia received 7 500 funding applications shows the extent of the crisis. According to the Italian authorities, in all the cases involved such a widespread phenomenon cannot be due to poor management on the part of the beneficiary holdings but, on the contrary, must have objective causes which led to excessive farm indebtedness.

5. As for the aid granted in 1990 to holdings in the forestry sector, Italy considers that this must be considered separately for several reasons.

First, at the time the consolidation loan was granted the holdings in question had already made some investments and were in the process of making others. Secondly, trees planted in the past were not ready for commercial felling, which made it difficult for the holdings to repay their debts.

Commercial felling entails a waiting period of several years (as many as 18-20). According to the Italian authorities, all financial operations on such holdings in

the period prior to felling should be regarded as being for investment purposes.

6. As regards the aid to rabbit farmers, Italy points out that some of the beneficiary holdings had lost all their animals.

IV

Italy has failed to meet the obligation laid down in Article 93 (3) of the Treaty, firstly by omitting to notify the aid measures at the draft stage and, secondly, by applying them without giving the Commission the opportunity to comment on them. Such non-compliance gives rise to a particularly serious situation in that the aid in question is, because of its nature and for the reasons set out below, incompatible with the common market under Article 92 of the Treaty.

When the procedure pursuant to Article 93 (3) of the Treaty was begun, the Community guidelines on State aid for rescuing and restructuring firms in difficulty⁽¹⁾ (hereinafter called 'Guidelines') had not yet entered into force. Therefore only the rules comprising the specific Commission practice for aid to farms in difficulty applied to the case in question. The Guidelines made it possible for Member States to apply, as an alternative to the specific practice, the assessment criteria laid down for other production sectors (point 2.2 of the Guidelines).

When the Guidelines entered into force, Italy did not ask for the criteria in them to be applied.

Neither did it present arguments designed to contest the applicability of the specific Commission practice for aid to farms in difficulty on which the Commission based its decision to initiate the procedure laid down in Article 93 (2) of the Treaty, or arguments to show that the cases under consideration satisfy the conditions set by the said practice for deciding that aid for financial reorganization is compatible with the common market.

The Commission finds, however, that the conditions laid down in the 1994 Guidelines are not met. The aid in question cannot be regarded as rescue aid within the meaning of those rules since measures of that type must consist of loans at the market rate (or guarantees) whose term and amount are limited to what is strictly necessary for the firm's recovery (see point 3.1 of the Guidelines).

⁽¹⁾ OJ C 368, 23. 12. 1994, p. 12.

The aid in question also does not satisfy the conditions laid down in the Guidelines for restructuring aid. The regional authorities granted the aid for financial reorganization solely on the basis of the existence of liabilities in excess of a certain percentage of the holding's gross output, and not on the basis of a restructuring plan intended to restore the firm's profitability without affecting competition to an extent contrary to the common interest (see point 3.2 of the Guidelines).

The examination carried out by the financial institutions prior to granting the consolidation loan cannot replace the examination to check the firm's economic and financial efficiency within the meaning of the Guidelines or the specific Commission practice for aid to farms in difficulty. The examination conducted by the banks after the Region's contribution towards the interest on loans had been authorized was in fact, as the Italian authorities have admitted, designed solely to check that the holding's financial situation was such as to suggest that the loan would be properly repaid.

Italy's comment to the effect that the Commission should take account of the fact that no new financing was granted but that existing liabilities were simply rescheduled over a longer period (with the Region bearing part of the cost of the debt restructuring operation) is not relevant for determining whether the aid is compatible with the common market.

According to the Italian authorities, some of the beneficiary holdings had made investments in the period prior to the granting of the aid in question. In these specific cases, therefore, the first of the three criteria applied by the Commission for assessing aid to agricultural holdings in difficulty would be satisfied. That criterion, however, has to be combined with the other two laid down in the abovementioned specific provisions. The fact that a holding qualifying for aid for financial reorganization has made investments in the past is not in itself sufficient for determining that the aid is compatible. The Commission notes, moreover, that in none of the cases in which Article 5 of Law No 44/88 was applied was the fact of having made investments a condition for the grant of aid.

Italy invokes a number of other 'objective causes' for the excessive indebtedness of the beneficiary holdings: drought, market crisis, high interest rates, lack of organization at the marketing stage. Apart from the last factor, which cannot be regarded as external to the holding, some of these causes, although they are without doubt 'external' to the holding considered individually (market

crisis), are nevertheless expressions of the market forces which confront any entrepreneur.

As regards the climatic factors (drought) which may have contributed to the state of financial crisis in which some beneficiary holdings found themselves, it should first of all be pointed out that the conditions for the grant of the aid in question contain no reference to phenomena of this type (in other words, climatic occurrences are not the reason — or one of the reasons — for the aid granted).

Occurrences of this type, furthermore, can be legitimately regarded as a reason for State aid intended to compensate firms for damage suffered only if certain specific conditions are met, demonstrating that the climatic occurrence has reached a minimum level of intensity below which its effects are part of the normal risks connected with the activity of an agricultural holding.

The specific Commission practice for aid to farms in difficulty takes account of increases in the rates of interest on loans intended to finance investments made in the past by holdings in difficulty. In such cases the aid must be confined to what is strictly necessary to make up the difference between the rate negotiated and the current, higher rate.

As regards the specific arguments put forward by Italy concerning forestry holdings, it is true that the return on investment in the form of planting in this sector is, for obvious reasons, obtained much later than in the case of other crops. The Commission, however, does not share the view of the Italian authorities that all expenditure on a forestry holding in the period between planting and felling should be regarded as investment expenditure. The aid granted to such holdings by the Region of Sardinia served, among other things, to cover debts relating to the normal operation of the holding, social charges and staff remuneration, rent and supplies.

As regards the debts deriving from investments, Italy has also not shown that it respected the other criteria laid down in the specific Commission practice for aid to farms in difficulty, or in the Guidelines, for determining whether national aid can be regarded as compatible with the common market.

As regards the aid granted to rabbit farmers in 1990, Italy maintains that some beneficiary holdings lost all their animals as the result of a virus disease. The measure in question, however, was not confined to such producers (the decision in which the Regional Executive authorized the grant of the aid laid down, as the criterion of eligibility for the measure, the loss of at least 20 % of the holding's stock due to the disease).

Moreover, the Commission's consistent practice as regards damage caused by animal diseases requires that, in order to be declared compatible with the common market, compensatory aid must satisfy certain conditions. They are, in particular, that the disease must be the subject of an eradication programme ordered by the public authorities in the public interest and that the aid must not exceed the amount of the losses caused by the disease (compensation).

The Italian authorities have supplied no information to show that those conditions were met.

In view of the foregoing, the Commission cannot accept the arguments put forward by Italy.

It is always theoretically possible that a legislative provision which has been applied without the Commission being given the opportunity in advance to check whether it complies with the rules on competition, and has been drafted in general terms which do not guarantee compliance with the conditions laid down in Community rules for determining whether State aid can be declared compatible with the common market, may nevertheless, when applied in practice, satisfy those conditions. In such a case, if the information available made this possible, the Commission would be able after the event to establish that the specific cases in which the legislation was applied were compatible.

In the case in point, however, the justifications put forward subsequently by Italy (natural disasters, animal diseases, investments), which seem to indicate such a possibility, are not supported by precise data which make it possible to confirm the existence of concrete instances which could be declared compatible.

V

The aid in question meets the conditions in Article 92 (1) of the Treaty, without qualifying for any of the derogations provided for in paragraphs 2 and 3 of that Article.

It has a direct effect on the production costs of beneficiaries, who have thus been given an advantage over other agricultural producers, both in Italy and in other Member States, who have not received similar aid.

Such measures are liable to distort the terms of intra-Community trade in agricultural products, which is affected by any aid to national production.

Article 92 (1) of the Treaty provides that aid which meets the conditions set out therein is in principle incompatible with the common market. Possible derogations are provided for in paragraphs 2 and 3 of that Article.

The derogations in Article 92 (2) (a) and (c) are manifestly inapplicable. Italy has not supplied any information to show that the derogation in paragraph 2 (b) of that Article is applicable in the case in point.

In order for the derogation in Article 92 (3) to apply, there have to be objectives pursued in the common interest rather than in the sole interest of particular sectors of the national economy. Such derogations, which must be interpreted restrictively, may in particular be applied only where the Commission can establish that the aid is necessary in order to achieve one of the objectives envisaged by those provisions. To apply such derogations to aid which does not meet that requirement would serve to support disturbances of trade between Member States and distortions of competition not justified on the grounds of Community interest, with consequent undue advantages to traders in some Member States.

In the case in point, the conditions for the grant of the aid do not indicate that this requirement is met. Italy has not provided, nor has the Commission found, anything to indicate that the aid in question meets the conditions for the application of one of the derogations provided for in Article 92 (3) of the Treaty (').

The measures in question are not intended to promote the execution of an important project of common European interest within the meaning of Article 92 (3) (b). On the contrary, because of the effects they may have on trade, they run counter to the common interest.

Neither are they intended to remedy a serious disturbance in the economy of a Member State, within the meaning of the same provision, nor is the aid designed to promote culture and heritage conservation within the meaning of Article 93 (3) (d).

As regards the derogations referred to in Article 92 (3) (a) and (c) in respect of aid to promote or facilitate the economic development of certain areas or activities, the Commission considers, in the light of the foregoing and the applicable Community rules, that, because they take the form of operating aid, the measures in question are not likely to bring about a lasting improvement in conditions in the sector and region involved.

The aid thus does not qualify for any of the derogations provided for in Article 92 (3) of the Treaty.

It is therefore incompatible with the common market.

(¹) Judgment of the Court of First Instance of the European Communities of 8. 6. 1995 in Case T-459 *Siemens v. Commission of the European Communities* [1995] ECR II-1675.

VI

The aid in question should have been notified to the Commission under Article 93 (3) of the Treaty. Since Italy did not observe this requirement the Commission was unable to give its opinion on the aid before the measures entered into force and the aid was granted.

Given the mandatory nature of the procedural rules laid down in Article 93 (3) of the Treaty, whose direct effect has been recognized by the Court of Justice of the European Communities *inter alia* in its judgments of 19 June 1973 (Case 77/72)⁽¹⁾ and 21 November 1991 (Case 354/90)⁽²⁾, it is not possible to remedy the unlawfulness of the aid after the event.

Where aid is incompatible with the common market the Commission must make use of its power, recognized in the judgment of the Court of Justice of 12 July 1973 in Case 70/72⁽³⁾ and confirmed in the judgments of 24 February 1987 (Case 310/85)⁽⁴⁾ and 20 September 1990 (Case C-5/89)⁽⁵⁾, to oblige the Member State to recover from the beneficiaries the amount of the aid granted illegally.

In the case in point, reimbursement is necessary in order to restore as far as possible the situation which existed previously, removing all the financial advantages which the holdings which received the aid granted illegally have enjoyed unduly since the date on which the aid was paid.

In view of the foregoing, the aid granted by the Region of Sardinia under Article 5 of Law No 44/88 (decisions of the Regional Executive of 30 December 1988, 27 June 1990, 20 November 1990 and 26 June 1992) must be repaid.

Since the aid is granted in the form of interest rebates, the financial advantage unduly received consists in the difference between the market cost of bank loans to consolidate liabilities and the financial cost borne by the beneficiaries of the consolidation loans which received the regional assistance provided for in Article 5 of Law No 44/88.

Reimbursement, to be made in accordance with the procedures laid down in Italian law, must include the aid granted illegally and interest thereon from the date on which the aid was paid. The interest rate applicable is the reference rate used to determine subsidy equivalent in the context of regional aid⁽⁶⁾,

HAS ADOPTED THIS DECISION:

Article 1

The aid granted by the Region of Sardinia under Article 5 of Regional Law No 44/88 and the decisions of the Re-

gional Executive of 30 December 1988, 27 June 1990, 20 November 1990 and 26 June 1992 is illegal in that it was granted without the Commission having been able to give its opinion on the measures at the draft stage. The aid is also incompatible with the common market under Article 92 (1) of the Treaty and does not meet the conditions for a derogation laid down in paragraphs 2 and 3 of that Article.

Article 2

1. Italy shall be required to abolish the aid referred to in Article 1 within two months from the date of notification of this Decision.

2. Within six months from the date of notification of this Decision Italy shall be required to adopt the measures necessary to recover, by means of reimbursement, the aid referred to in Article 1.

3. Reimbursement shall be in accordance with the procedures laid down in Italian law; interest shall accrue from the date on which the aid was paid. The interest rate applicable shall be the reference rate used to determine subsidy equivalent in the context of regional aid.

Article 3

1. Italy shall regularly inform the Commission of the measures adopted to comply with this Decision. The first communication shall be made within two months of the notification of this Decision.

2. Within two months after the expiry of the time-limit in Article 2 (2) Italy shall communicate to the Commission the information enabling it to check, without further investigation, that the requirement to recover the aid has been met.

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels, 16 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ [1973] ECR 611.

⁽²⁾ [1991] ECR I-5505.

⁽³⁾ [1973] ECR 813.

⁽⁴⁾ [1987] ECR 901.

⁽⁵⁾ [1990] ECR I-3437.

⁽⁶⁾ OJ C 232, 10. 8. 1996, p. 10.

COMMISSION DECISION**of 8 September 1997****on the temporary suspension of imports of pistachios and certain products
derived from pistachios originating in or consigned from Iran**

(Text with EEA relevance)

(97/613/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 93/43/EEC of 14 June 1993 on the hygiene of foodstuffs⁽¹⁾, and in particular Article 10 thereof,

Whereas pistachios originating in or consigned from Iran are in many cases contaminated with excessive levels of Aflatoxin B1;

Whereas the Scientific Committee for Food has noted that Aflatoxin B1, even at extremely low doses, causes cancer of the liver and in addition it is genotoxic;

Whereas this constitutes a serious threat to public health within the Community and it is imperative to adopt urgently protective measures at Community level;

Whereas, in the absence, at this time, of sanitary guarantees from the Iranian authorities, it is necessary to suspend imports of pistachios and certain products derived from pistachios originating in or consigned from Iran;

Whereas this measure has to be limited initially to a short period, and shall be reexamined during this period, in order to verify with the Iranian authorities, whether they are in a position to offer, in the future, guarantees permitting the replacement of the suspension of imports with the establishment of special conditions, in accordance with Article 10, paragraph 1, second indent of Directive 93/43/EEC;

Whereas it is necessary to submit for systematic analyses lots of pistachios originating in or consigned from third countries other than Iran, in order to determine if these are also contaminated with Aflatoxin B1 and require safeguard measures; whereas co-ordinated official control programmes for foodstuffs shall be completed to this end;

Whereas Member States have been consulted,

HAS ADOPTED THIS DECISION:

Article 1

Member States shall suspend imports of:

- pistachios falling within CN code 0802 50 00,
- roasted pistachios falling within CN codes 2008 19 13 and 2008 19 93

originating in or consigned from Iran.

Article 2

The present decision shall be re-examined:

- within one month,
- and, if necessary, again after two months

from the adoption of the present decision, in order to verify whether special conditions for imports of the goods referred to in Article 1, can replace the temporary suspension of imports maintaining the protection of public health within the Community.

Article 3

Member States shall amend the measures concerning imports necessary to comply with this Decision. They shall inform the Commission thereof.

Article 4

This Decision is applicable until 15 December 1997.

Article 5

This Decision is addressed to the Member States.

Done at Brussels, 8 September 1997.

For the Commission

Martin BANGEMANN

Member of the Commission

⁽¹⁾ OJ L 175, 19. 7. 1993, p. 1.