

Official Journal

of the European Communities

ISSN 0378-6978

L 324

Volume 41

2 December 1998

English edition

Legislation

Contents

I *Acts whose publication is obligatory*

- ★ **Council Regulation (EC) No 2584/98 of 27 November 1998 amending Regulation (EC) No 710/95 imposing a definitive anti-dumping duty on imports of colour television receivers originating in Malaysia, the People's Republic of China, the Republic of Korea, Singapore and Thailand and collecting definitively the provisional duty imposed** 1
- ★ **Council Regulation (EC) No 2585/98 of 26 November 1998 on the conclusion of a Protocol setting out the fishing opportunities and financial contribution provided for in the Agreement between the European Economic Community and the Government of the Democratic Republic of Madagascar on fishing off Madagascar for the period from 21 May 1998 to 20 May 2001** 14
- Commission Regulation (EC) No 2586/98 of 1 December 1998 establishing the standard import values for determining the entry price of certain fruit and vegetables 16
- Commission Regulation (EC) No 2587/98 of 1 December 1998 fixing, for November 1998, the specific agricultural conversion rate for the amount of the reimbursement of storage costs in the sugar sector 18
- ★ **Commission Regulation (EC) No 2588/98 of 1 December 1998 fixing the definitive aid on certain grain legumes for the 1998/99 marketing year** 20
- Commission Regulation (EC) No 2589/98 of 1 December 1998 amending Regulation (EC) No 2198/98 increasing to 749 960 tonnes the quantity of barley held by the German intervention agency for which a standing invitation to tender for export has been opened 21
- Commission Regulation (EC) No 2590/98 of 1 December 1998 amending Regulation (EC) No 1667/98 increasing to 189 714 tonnes the quantity of barley held by the Swedish intervention agency for which a standing invitation to tender for export has been opened 23

- ★ **Commission Regulation (EC) No 2591/98 of 1 December 1998 determining the revised estimate of production of unginned cotton for the 1998/99 marketing year and the relevant percentage increase** 25

Commission Regulation (EC) No 2592/98 of 1 December 1998 amending Regulation (EC) No 2544/98 fixing the export refunds on products processed from cereals and rice 26

Commission Regulation (EC) No 2593/98 of 1 December 1998 amending representative prices and additional duties for the import of certain products in the sugar sector 27

II *Acts whose publication is not obligatory*

Council

Information relating to the entry into force of the Protocol for the adaptation of trade aspects of the Europe Agreement between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part, to take into account the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union and the results of the agricultural negotiations of the Uruguay Round, including the improvements of the existing preferential regime 29

Commission

98/687/ECSC:

- ★ **Commission Decision of 10 June 1998 on German aid to the coal industry for 1997 ⁽¹⁾ (notified under document number C(1998) 2046)** 30

98/688/EC:

- ★ **Commission Decision of 19 November 1998 authorising the Member States to provide for derogations from certain provisions of Council Directive 77/93/EEC in respect of potatoes, other than potatoes intended for planting, originating in South Africa (notified under document number C(1998) 3540)** 37

I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 2584/98
of 27 November 1998**

amending Regulation (EC) No 710/95 imposing a definitive anti-dumping duty on imports of colour television receivers originating in Malaysia, the People's Republic of China, the Republic of Korea, Singapore and Thailand and collecting definitively the provisional duty imposed

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁽¹⁾, hereinafter referred to as the 'basic Regulation', and in particular Articles 11(2) and (3) thereof,

Having regard to the proposal of the Commission, submitted after consulting the Advisory Committee,

Whereas:

A. PREVIOUS PROCEDURE

- (1) By Regulation (EEC) No 1048/90⁽²⁾, the Council imposed a definitive anti-dumping duty on imports of small-screen colour television receivers, i.e. those with a diagonal screen size of more than 15,5 cm but no greater than 42 cm, originating in the Republic of Korea (hereinafter referred to as Korea), hereinafter referred to as SCTVs.
- (2) By Regulation (EEC) No 2093/91⁽³⁾, the Council imposed a definitive anti-dumping duty on imports of SCTVs originating *inter alia* in the People's Republic of China (hereinafter referred to as the PRC).
- (3) By Regulation (EC) No 710/95⁽⁴⁾, the Council imposed a definitive anti-dumping duty on imports of colour television receivers with a diagonal screen measurement exceeding 15,5 cm (hereafter referred to as CTVs) and originating in Malaysia, the PRC,

Korea, Singapore and Thailand. Although this proceeding established that there were no longer grounds for differentiating between colour television receivers according to their screen size and was therefore initiated in respect of all CTVs, including SCTVs, since anti-dumping measures were already in force in respect of SCTVs originating in Korea and the PRC, the scope of the investigation and the definitive anti-dumping duties imposed by Regulation (EC) No 710/95 as regards the PRC and Korea were limited to colour televisions with a diagonal screen measurement exceeding 42 cm, i.e. large-screen CTVs.

B. REVIEW INVESTIGATIONS

- (4) Following the publication, in October 1994, of a notice of the impending expiry, of the anti-dumping duty in force with regard to SCTVs originating in Korea⁽⁵⁾, in December 1994 the Commission received a request for a review lodged by the Association of European Consumer Electronics Manufacturers (EACEM) on behalf of Community producers representing a major proportion of the total production of the product concerned in the Community. The request contained evidence of increased dumping, based on a comparison of the prices of the product concerned sold in Korea and the Korean export prices to the Community. Moreover, EACEM submitted that if the measures were allowed to lapse, dumping would continue and increase even further. As regards injury, the request presented evidence of substantial price undercutting by Korean exports and insufficient profitability of the Community industry.

⁽¹⁾ OJ L 56, 6. 3. 1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30. 4. 1998, p. 18).

⁽²⁾ OJ L 107, 27. 4. 1990, p. 56. Regulation as amended by Regulation (EEC) No 2900/91, (OJ L 275, 2. 10. 1991, p. 24).

⁽³⁾ OJ L 195, 18. 7. 1991, p. 1.

⁽⁴⁾ OJ L 73, 1. 4. 1995, p. 3.

⁽⁵⁾ OJ C 303, 29. 10. 1994, p. 3.

- (5) In May 1995, EACEM lodged a request for an interim review pursuant to Article 11(3) of Regulation (EC) No 3283/94⁽¹⁾, since then replaced by the basic Regulation, of the anti-dumping measures applicable to SCTVs originating in the PRC, on behalf of the same Community producers.

The request contained evidence of increased dumping based on a comparison of constructed normal value established in Singapore (which was suggested as an analogue country) with the Chinese export prices of the product concerned to the Community. As regards injury, EACEM presented evidence of substantial price undercutting by the Chinese imports and insufficient profitability of Community producers.

- (6) It should further be noted that Regulation (EC) No 710/95 concluded that both SCTVs and large-screen CTVs should be considered as forming one single product. It was therefore considered that a review should not be restricted to those colour television receivers covered by Regulations (EEC) No 1048/90 and (EEC) No 2043/91, but should also cover colour television receivers falling under Regulation (EC) No 710/95.
- (7) In April and in August 1995, respectively, the Commission announced, by two notices published in the *Official Journal of the European Communities*⁽²⁾, the initiation of the abovementioned review investigations pursuant to Article 11(3) of the basic Regulation.
- (8) As both interim reviews were in progress at the end of the period of application of measures with regard to SCTVs, and following the provisions of Article 11(7) of the basic Regulation, the reviews also covered the circumstances set out in Article 11(2) thereof, i.e. those of an expiry review.
- (9) The Commission officially advised the producers, exporters and importers known to be concerned, the representatives of the exporting country and the complainant Community producers of the initiation of the investigation. Interested parties were given the opportunity to make their views known in writing and to request a hearing within a set time limit.
- (10) The Commission sent questionnaires to parties known to be concerned. It received replies to its questionnaires from two Korean companies (hereinafter referred to as the 'two cooperating Korean producers/exporters'), 10 importers in the

Community related to producers/exporters and four Community producers.

- (11) The Commission sought and verified all information it deemed necessary for the purpose of its determination and carried out investigations at the premises of the following companies:

(a) *Complainant Community producers*

- Bang & Olufsen A/S, Struer, Denmark,
- Grundig AG, Fürth, Germany, and its factories and/or subsidiaries in Germany, Austria, Spain and Italy,
- Philips Industrial Activities, Bruges, Belgium; Philips SpA., Monza, Italy, Philips Electronic Grand Publique, Dreux, France, and Philips sales subsidiaries in Italy, Spain, France and Germany,
- Thomson Multimedia, Courbevoie, France, and its factories and/or subsidiaries in France, Spain, Germany and Italy;

(b) *Exporters/producers*

- LG Electronics Inc., Seoul (Republic of Korea),
- Samsung Electronics Co., Ltd, Seoul (Republic of Korea);

(c) *Importers related to exporters/producers*

- LG Deutschland GmbH, Willich (Germany),
- LG Goldstar France SA, Lognes (France),
- Samsung Electronics GmbH, Sulzbach (Germany),
- Samsung Electronics (UK) Ltd, Surbiton (United Kingdom),
- Samsung Electronics France SA, Roissy (France),
- Samsung Electronics Svenska AB., Uppland (Sweden).

- (12) The period of investigation for the determination of dumping was from 1 January 1994 to 31 March 1995 (hereinafter referred to as 'the investigation period'). The examination of injury covered the period from 1 January 1991 to 31 March 1995.

- (13) Interested parties were informed in writing of the essential facts and considerations on the basis of which it was intended to recommend amending the existing measures. The parties were also granted a reasonable period within which to make representations subsequent to the disclosure. The oral and written comments presented by the parties were considered and, where appropriate, the findings were modified to take account of them.

⁽¹⁾ OJ L 349, 31. 12. 1994, p. 1.

⁽²⁾ OJ C 105, 26. 4. 1995, p. 2, concerning Korea and OJ C 203, 8. 8. 1995, p. 4, concerning the PRC.

C. PRODUCT

1. Product under consideration

- (14) The product covered by these review investigations is colour television receivers, with integral tube, with a diagonal measurement of the screen exceeding 15,5 cm.

The investigation was opened for products falling within CN codes ex 8528 10 52, 8528 10 54, 8528 10 56, 8528 10 58, ex 8528 10 62 and 8528 10 66. Subsequently, the CN codes for the product in question were changed by Commission Regulation (EC) No 2448/95 of 10 October 1995 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff⁽¹⁾. The product for which the proceeding was opened is now covered by CN codes ex 8528 12 52, 8528 12 54, 8528 12 56, 8528 12 58, ex 8528 12 62 and 8528 12 66.

- (15) Regulation (EC) No 710/95 confirmed that all CTVs with integral tube, with a diagonal screen measurement exceeding 15,5 cm, with the exception of those mentioned in recital 16 of this Regulation, should be considered as one product. Thus, SCTVs and large-screen CTVs, regardless of whether the width/height ratio was 1,5:1 or 16:9, are considered as one product.

The present investigation was initiated *inter alia* on the grounds that, as in the case of imports of CTVs originating in Malaysia, Singapore and Thailand, uniform treatment, both with regard to the level as well as to the duration of the measures, should be accorded to all CTVs originating in the PRC and in Korea falling under the abovementioned Regulations, because these CTVs should be considered as forming one single product. During the investigation carried out subsequently no submissions were received to contradict the finding that the CTVs, as defined above and covered by the present investigations, should be considered as one single product. Indeed, the CTVs subject to investigation have similar basic physical and technical characteristics, serve the same function, are interchangeable to a considerable extent, compete directly with each other and cannot be differentiated on the market as distinct products.

- (16) The measures adopted by Regulation (EC) No 710/95 did not cover D2MAC sets and high definition television (HDTV) since these products, which introduced qualitative technical changes in CTVs, were at that time still in the development stage and

were not available to the public except in very limited circumstances. Regulation (EC) No 710/95 confirmed however that the situation of these two products should be re-examined on the basis of information relating to dumping and injury with a view to determining whether such non-application of measures would be justified should a review of measures be carried out. The application for review did not contain a request to include such products in the scope of the review and the notice of initiation consequently excluded them from the scope of this investigation. In addition, no submission was received in the course of the investigation requesting the inclusion of D2MAC sets and HDTV in the scope of the investigation. It was therefore concluded that the circumstances in this respect had not changed in relation to the previous investigation and that the investigation should not cover these two types of CTVs.

- (17) In these circumstances, all CTVs as defined in recitals 14 to 16 should be considered as forming a single product for the purposes of this proceeding.

2. Like product

- (18) The investigation showed that the CTVs manufactured and sold in the Community by the Community industry closely resembled the CTVs exported from the PRC and Korea. They are therefore alike within the meaning of Article 1(4) of the basic Regulation.

The same holds true with regard to CTVs produced and sold in Singapore which served as a reference country for the purpose of establishing normal value for exports originating in the PRC. This conclusion was reached despite differences in broadcasting and reception systems which exist between, on the one hand, some Member States, and, on the other hand, the remaining Member States as well as Singapore.

As far as CTVs produced and sold in Korea as compared to Korean CTVs exported to the Community are concerned, these also were found to be alike within the meaning of Article 1(4) of the basic Regulation since they have an identical use and have the same basic technical characteristics, differing only in broadcasting and reception systems. It was found that CTVs manufactured in Korea, sold domestically and exported to the Community and CTVs manufactured and sold in the Community by Community producers are alike in their physical characteristics and uses. They are therefore considered as a like product in accordance with Article 1(4) of the basic Regulation.

⁽¹⁾ OJ L 259, 30. 10. 1995, p. 1.

D. DUMPING**1. Normal value****(a) Korea**

(19) The investigation confirmed the findings contained in Regulation (EC) No 710/95, as regards the technical differences between CTVs exported to the Community and those sold on the Korean market. The models sold on the Korean domestic market employed different broadcasting and reception systems compared to models exported to the Community. Furthermore, the exported models, on the one hand, and the domestic models, on the other, showed a wide variety of differences and combinations of features. Therefore, it was concluded that the physical differences between CTVs exported from Korea and those sold domestically were such that the use of domestic sales would not permit a proper comparison. In accordance with Article 2(3) of the basic Regulation, it was therefore decided to establish normal values on the basis of constructed values for each model of the product concerned exported to the Community.

(20) Constructed values were calculated by adding to the manufacturing costs incurred by the exporters/producers when producing the model in question, a reasonable amount for selling, general and administrative expenses (hereinafter referred to as SGA expenses) and profit. The amount for SGA expenses and profit was established, pursuant to the first sentence of Article 2(6) of the basic Regulation, on the basis of domestic sales of all types of the like product in the ordinary course of trade, made by each of the two Korean exporters/producers in question.

(b) PRC**(i) Choice of the market economy third country**

(21) Since for the purpose of this investigation the PRC could not be considered as a market economy country, normal value had to be determined on the basis of the price or constructed value in a market economy third country. In the notice of initiation it was stated that the Commission envisaged using Singapore as an appropriate market economy third country and all interested parties were given the opportunity to comment on this. The comments received were, when substantiated, duly taken into account.

(22) Firstly, the Commission found that although Korea was selected as a market economy third country for the purpose of the original investigation concerning Chinese SCTVs, which led to the adoption of Regulation (EEC) No 2093/91, Singapore was chosen as market economy third country in the most recent investigation concluded by Regulation (EC) No 710/95. The vast majority of Chinese imports are not SCTVs but large-screen CTVs which were dealt with by Regulation (EC) No 710/95. Thus, as far as the selection of a reference country was concerned, the selection of Singapore meant that the same methodology was applied for the most significant part of Chinese exports as in the investigation which led to one of the anti-dumping measures under review.

(23) Secondly, the volume of total sales of CTVs in Singapore is higher than the volume of Chinese exports of CTVs to the Community. Moreover, CTV sales destined for local consumption by the only cooperating producer in Singapore, Philips Singapore Pte Ltd, were well above the 5 % threshold compared to Chinese exports to the Community.

(24) Thirdly, it was found that Singapore's CTV market is competitive. There are five CTV producers in Singapore which also sell on their domestic market. Their domestic sales compete with imports from various countries, in particular Japan. Imports of CTVs are not subject to a customs duty and there are no further restrictions on access to the Singapore market. The fact that the cooperating producer in the market economy third country is related to one of the applicant Community producers which requested the initiation of the review does not invalidate the choice of Singapore because the investigation has shown that the relationship did not influence the information on which the findings concerning dumping were based. In this respect, it should be noted that, as explained below, normal value was mostly based on domestic sales prices of the company concerned in Singapore which, given the above, were the result of normal market forces.

(25) Fourthly, the products produced and sold in Singapore and Chinese exports to the Community, with the exception of exports to France and the United Kingdom, have the same broadcasting and reception system. According to the information available, as far as other features are concerned, the CTVs produced and sold in Singapore are also

comparable with those exported from the PRC to the Community. The differences in the broadcasting and reception system do not, in any case, affect the comparability of the products in question as these differences have only an insignificant impact on their cost of production and market value.

- (26) In the light of the foregoing and in accordance with Article 2(7) of the basic Regulation, it is concluded that Singapore is an appropriate market economy third country.

(ii) Calculation of the normal value

- (27) As no Chinese exporters or importers of the product concerned cooperated, for the purpose of establishing normal value, it was not possible to select models in the market economy third country which corresponded exactly to the types of the product concerned imported into the Community. It was therefore decided to establish one normal value for each CN code covered by the review investigation with the exception of CN codes 8528 12 62 and 8528 12 66. As far as CN code 8528 12 62 is concerned, it was found that the volume of imports reported by Eurostat was very small and that the only cooperating producer in the market economy third country did not produce or sell a model falling within this CN code on its domestic market. In view of the fact that the quantity imported and reported under this CN code accounted for only 4,7 % of total imports of the product concerned, it was decided that the investigation of the other models could already be considered to be representative for the Chinese imports concerned. With regard to CTVs falling within CN code 8528 12 66, it was found that these imports represented less than 0,01 % of total imports from the PRC and could therefore have no effect on the calculation of the dumping margin.

- (28) In view of the wide variety of CTV models produced and sold by the cooperating producer in the market economy third country it was decided, on the basis of the information available from EACEM, to select for each of the remaining four CN codes in question one model which corresponded best to the features of the imported product concerned. The information available concerning the features of Chinese imports into the Community was that submitted by EACEM and confirmed by an independent market survey.

- (29) It was then assessed for each model selected whether sufficient sales had been made in the ordinary course of trade in accordance with Article 2(4) of the basic Regulation. For three models, the weighted average selling price was equal to, or higher than, the weighted average unit cost of production and normal value was established on the basis of the weighted average sales prices actually paid for all domestic sales of that model. For one model there were insufficient sales in the ordinary course of trade, and normal value was therefore constructed in accordance with Article 2(3) and (6) of the basic Regulation, i.e. on the basis of the manufacturing costs incurred by this company when producing the model in question plus a reasonable amount for SGA expenses and profit.

- (30) The amount for SGA expenses and profit was based on actual data pertaining to production and sales, in the ordinary course of trade, of representative models of the like product, made by the cooperating producer in the market economy third country.

2. Export price

(a) *Korea*

- (31) In accordance with Article 2(8) of the basic Regulation, where export sales were made directly to unrelated importers, export prices were established on the basis of the prices actually paid or payable for the product sold for export.
- (32) In accordance with Article 2(9) of the basic Regulation, where exports were made to related companies which imported the product concerned into the Community, export prices were constructed on the basis of the prices at which the imported products were first resold to independent buyers. Adjustments were made for all costs incurred between importation and resale, including customs duties, anti-dumping duties, a reasonable margin for SGA expenses as well as for profit.
- (33) It should be noted in this context that related importers received reimbursements from their Korean parent companies for advertising and after sales expenses incurred in relation to sales of CTVs in the Community. As these reimbursements represented expenses which were originally paid by the related importer and were normally incurred

between importation and resale, they were incorporated in the SGA expenses of the related importer. Any other approach would be in conflict with the provisions of the third subparagraph of Article 2(9) of the basic Regulation according to which costs normally borne by an importer but paid by any party, either in or outside the Community, shall be deducted from the resale price.

- (34) The determination of the level of profit was based on reliable and representative information submitted by an exporter/producer concerned, showing the profit or losses achieved or incurred by unrelated importers in the British, Danish, Dutch, French and German markets. Only data concerning unrelated importers whose resales of CTVs were actually profitable have been taken into consideration for the determination of the profit margin.

(b) *PRC*

- (35) Given the lack of cooperation from the Chinese producers and from importers in the Community, the export prices were determined according to facts available in conformity with Article 18 of the basic Regulation. In this respect, it was considered that the best facts available were the data concerning quantities and prices reported by Eurostat and by the customs authorities of the three new Member States with regard to imports of CTVs from the PRC falling within CN codes ex 8528 12 52, 8528 12 54, 8528 12 56 and 8528 12 58. Data for the three new Member States were only available for January, February and March 1995 because before 1995 these countries had a different customs nomenclature from that of the Community.
- (36) It should be noted that the export price was also based on information from Eurostat and the customs authorities of the three new Member States with regard to CN code 8528 12 52, although this CN code also covered imports of CTVs whose screen size had a diagonal measurement of 15,5 cm and less because, according to the information available submitted by the EACEM, the import volumes of such very small CTVs were negligible.

3. Comparison

- (37) Concerning Korea, pursuant to Article 2(11) of the basic Regulation, the constructed normal value by model was compared on an ex-factory basis and at

the same level of trade to the corresponding weighted average export price.

For the purpose of a fair comparison, due allowance in the form of adjustments was made for differences which were claimed and for which it was demonstrated that they affect price comparability. These adjustments were made, in accordance with Article 2(10) of the basic Regulation, in respect of rebates, packing, transport, insurance, handling and ancillary costs, credit costs and warranty.

- (38) Concerning the PRC, in accordance with Article 2(11) of the basic Regulation, the weighted average normal value as calculated above was compared with the weighted average export price. For the purpose of a fair comparison and in accordance with Article 2(10) of the basic Regulation, due allowance in the form of adjustments was made for differences affecting price comparability in respect of transport, insurance, credit costs, indirect taxes and commissions, on the basis of the facts available, as stated above.

4. Dumping margin

(a) *Korea*

- (39) The comparison revealed the existence of dumping, the dumping margin corresponding to the amount by which the normal value for each model exported exceeded the export price.
- (40) The weighted average dumping margins established for the two cooperating Korean exporters/producers, expressed as a percentage of the free-at-Community-frontier price is *de minimis* according to Article 9(3) of the basic Regulation:
- | | |
|----------------------------|-------|
| — LG Electronics Inc.: | 1,4 % |
| — Samsung Electronics Co.: | 1,8 % |
- (41) For any Korean producer/exporter involved in the proceeding which neither replied to the Commission's questionnaire in full nor otherwise made itself known, the dumping margin was determined, on the basis of the facts available in accordance with the provisions of Article 18(1) of the basic Regulation.

A comparison of the data on the volume of exports to the Community provided by the two cooperating Korean exporters/producers with Eurostat statistics showed that there was a high level of non-cooperation. Indeed, the two companies represented around 20 % of total exports of CTVs from Korea during the investigation period.

It was decided that the most reasonable facts available were those established in the investigation. Therefore the highest weighted average dumping margin found for a single representative exported model was considered to be the most appropriate basis for applying Article 18(1) of the basic Regulation in this context.

This approach was considered necessary in order to avoid creating a bonus for non-cooperation and an opportunity for circumvention. In addition, there is no reason to believe that any non-cooperating producer/exporter in Korea would export their CTVs at prices which would be higher than the export price charged for this reference model.

Thus, the dumping margin (expressed as a percentage of the free-at-Community-frontier price), established for Korean exporters other than the two mentioned above is 21,2 %.

(b) *PRC*

- (42) In accordance with Article 2(11) of the basic Regulation, the dumping margin was calculated by comparing the weighted average normal value 'FOB port Singapore' of each model selected with the weighted average export price 'FOB Chinese port', based on the information obtained from Eurostat and duly adjusted at the same level of trade.

The comparison revealed the existence of dumping, the dumping margin corresponding to the amount by which the normal value for each model selected exceeded the export price. The weighted average dumping margin of all models considered, expressed as a percentage of the actual export price free at Community frontier, amounted to 44,6 %.

E. INJURY

1. Community consumption, volume and market share of the dumped imports

- (43) Community consumption in units decreased between 1991 and 1992, from around 25,9 million to around 23 million. From 1992 to the investigation period consumption has remained stable at a level of around 23 million units.
- (44) Between 1991 and the investigation period imports of CTVs originating in Korea decreased from around 1 355 000 units to around 357 000 units in the investigation period. The resulting share of the Community market of imports from Korea

decreased from 5,2 % in 1991 to 1,6 % in the investigation period.

Imports of CTVs originating in the PRC decreased from around 666 000 units in 1991 to around 264 000 units in the investigation period. The resulting share of the Community market of imports from the PRC decreased from 2,6 % in 1991 to 1,1 % in the investigation period.

The decrease in imports of CTVs from Korea and the PRC should be seen in the light of the existence of anti-dumping measures applicable to these imports.

2. Prices of the dumped imports

(a) *Korea*

- (45) The Commission analysed whether imports of Korean CTVs had undercut the prices of the Community producers.
- (46) Concerning the two cooperating Korean exporters/producers, in view of the *de minimis* dumping margin found, it has not been deemed necessary to examine price undercutting.
- (47) For the other Korean exporters/producers, price undercutting has been examined on the basis of Article 18(1) of the basic Regulation. The facts available used correspond to the verified information from the two cooperating Korean exporters/producers.

In order to make a model comparison, the exported CTVs were — as in the anti-dumping proceeding leading to the adoption of Regulation (EC) No 710/95 — categorised according to those features in a CTV considered to have the highest impact on the cost of the manufacture and price of a CTV, that is, the screen size, the audio output (mono or stereo), the type of tube (conventional or flat screen) and the availability of teletext.

The weighted average undercutting margins as calculated on a model basis, expressed as a percentage of the Community producers prices ranged from 7 to 47 %, being 24 % on average, notwithstanding the existence of anti-dumping duties.

(b) *PRC*

- (48) For the examination of price undercutting, in view of the lack of cooperation from Chinese producers and following Article 18 of the basic Regulation, export prices used were those provided by Eurostat. In order to allow a comparison in these circumstances, the exported CTVs were categorised

according to their screen size, which is the only feature according to which CTV imports are classified by Eurostat. The resulting average export prices per category, adjusted to duty paid, including the applicable anti-dumping duty, were compared with the corresponding average Community industry's prices on the Community market.

The weighted average undercutting margins, expressed as a percentage of the Community producers prices ranged from 7,9 to 58,6 %, being 45,7 % on average.

3. Situation of the Community industry

- (49) It should be recalled that in Regulation (EC) No 710/95, the Council concluded that the Community industry had suffered material injury. This conclusion was reached on the basis of data pertaining largely to the same period as the one applicable for the injury analysis in the present review.

(a) *Production*

- (50) The production of the Community industry decreased from 8,9 million units sold in 1991 to 7,52 million units in the investigation period, a decrease of 15 %.

(b) *Sales and market share*

- (51) The sales turnover of the Community industry decreased from around ECU 2 800 million in 1991 to around ECU 2 300 million in the investigation period, i.e. a decrease of 17 %.

Concerning the sales volume, sales in the Community of CTVs manufactured by the Community industry decreased from 7,2 million units in 1991 to 6,6 million units in the investigation period, i.e. by 6 %. Although production fell, the Community industry's market share increased from around 28 % in 1991 to around 30,5 % in 1992, as a result of the contraction of the consumption, but decreased between 1992 and the investigation period from around 30,4 % to around 28,9 % in the investigation period, a period during which Community consumption remained stable.

(c) *Profitability*

- (52) During the period considered, the Community industry has suffered losses, which, as a percentage of turnover, improved from a loss of 5,3 % in 1991 to a loss of 3,8 % in 1992. Profitability fell to a loss

of 6,7 % in 1993 and slightly improved to a loss of 5,3 % during the investigation period.

(d) *Employment*

- (53) Employment of the Community industry has suffered a decrease from 20 015 in 1991 to 11 223 in the investigation period, a decrease of 43 %.

During the same period, a Community manufacturer of CTVs closed down its manufacturing facilities. In view of the closure of these facilities, this Community manufacturer was unable to cooperate in the investigation.

4. Conclusion

- (54) An analysis of the abovementioned injury factors shows that the situation of the Community industry has not improved between 1991 and the investigation period. On the contrary, the Community industry is still in a very weak position.

F. LIKELY EFFECT OF THE REMOVAL OF THE ANTI-DUMPING DUTIES

- (55) The possible effects of the removal of the anti-dumping duties currently applicable to Korea and to the PRC were examined. Pursuant to Article 11(2) and (3) of the basic Regulation, the following factors have been given particular consideration:

- whether the circumstances with regard to dumping and injury have changed significantly since the last investigation,
- the effectiveness of the existing measures, and
- the likelihood of continuation or recurrence of dumping and injury.

(a) *Change in circumstances with regard to dumping and injury*

- (56) The CTV market is characterised by the maturity of the product, its standardisation and considerable transparency. Traders, dealers and consumers are therefore highly price sensitive. Price undercutting by one market participant, even by a relatively small amount and/or with regard to a limited volume of sales can therefore have considerable impact on the price behaviour of the other economic operators with a resulting general downward trend in prices.

(57) As to a change in circumstances with regard to dumping, the dumping margins found have increased in each new investigation carried out. The first investigation concerning SCTVs originating in Korea, which was concluded in 1990, resulted in dumping margins ranging from 10,3 to 19,6 %; the first investigation concerning SCTVs originating in the PRC and concluded in 1991 resulted in dumping margins between 7,5 % to 15,3 %. The dumping margins established for CTV exporters/producers in the investigation concluded in 1995 ranged between 16,8 % and 18,8 % for Korea and amounted to 25,6 % for the PRC. The present investigation found an even higher dumping margin of 21 % for Korea (with the exception of the two Korean exporters/producers with a *de minimis* margin) and 44,6 % for the PRC.

(58) Concerning a change in circumstances with respect to injury, the investigation has shown that significant losses have been suffered by the Community industry between 1991 and the investigation period.

At the same time and notwithstanding the existence of anti-dumping duties, substantial price undercutting by Korean and Chinese exports has taken place which, due to the particular characteristics of the CTV market, contributed to the weak situation of the Community industry.

(59) It is concluded that the current investigations have shown that dumping and injury have continued to take place during the investigation period, within the meaning of Article 11(2) of the basic Regulation.

Despite the low market share of the Korean and the Chinese exports, it should be noted that even in a new investigation (as opposed to the present review investigation) they would not be considered negligible, neither pursuant to Article 5(7) of the basic Regulation, nor pursuant to Article 5(8) of the WTO Anti-dumping Agreement.

(b) *Effectiveness of the measures under review*

(60) During the investigation period, around 72 % of total exports of Korean CTVs and around 80 % of total exports of Chinese CTVs were large-screen CTVs. These were subjected to anti-dumping duties

only as from October 1994, i.e. covering only the latter part of the investigation period used in this review.

(61) Therefore, any benefit to the Community industry of the anti-dumping measures imposed by Regulation (EC) No 710/95 cannot have been fully reflected in the economic situation analysed above since it relates mostly to a period when these measures were not yet in place. Only a limited proportion of total imports of CTVs from Korea and the PRC were effectively covered by the Regulations presently under review.

(62) Moreover, the following should be noted. Between 1991 and the investigation period, total imports of CTVs from all origins to the Community decreased by 52 %, i.e. from around 8,5 million units in 1991 to 4,1 million units in the investigation period. This tendency coincides with an increase in the manufacturing capacity installed in the Community by companies related to exporters/producers in third countries, notably Korea. Indeed, during the same time period, production in the Community by companies related to exporters/producers in Korea increased from around 300 000 units in 1991 to around 1 238 000 units in the investigation period, i.e. by more than 300 %. The increase in production by companies related to exporters/producers in Japan amounted to around 16 %, from around 5 190 000 units in 1991 to around 6 039 000 units in the investigation period.

(63) The decrease in imports and the corresponding increase of Community production by companies related to exporters/producers in third countries appears partly to be due to the existence of anti-dumping measures in place, especially those imposed on large-screen CTVs in September 1994 by Commission Regulation (EC) No 2376/94⁽¹⁾. Indeed, between 1993 and 1994, production of CTVs in the Community by companies related to exporters/producers in Korea increased from around 400 000 units to around 1 200 000 units. Should anti-dumping measures be repealed or allowed to lapse, there is a risk that imports at dumped prices would increase, thereby further injuring the Community industry.

(c) *Likelihood of continuation of dumping and injury*

(64) Concerning Korean exporters/producers other than the two with *de minimis* dumping margins as well as the Chinese exporters/producers, the dumping margins found in the present investigation are higher than those found in previous investigations.

⁽¹⁾ OJ L 255, 1. 10. 1994, p. 50.

Therefore, it is concluded that in the event of reduction or repeal of the current anti-dumping duties, Chinese and Korean exports of CTVs to the Community will continue to be made at considerably dumped prices which significantly undercut those of the Community industry.

(65) Moreover, according to information available, the production capacity for CTVs in the PRC has increased during the period under consideration, while domestic consumption has not been able to absorb production. It is therefore considered most likely that, should measures be repealed or allowed to lapse, dumped exports to the Community and to other third countries of Chinese CTVs will increase significantly.

(66) Concerning the likelihood of a continuation of injury and a recurrence of further injury caused by the dumped imports, account should be taken of the particular characteristics of the CTV market (i.e. the maturity of the product and price sensitivity of the market), the substantial undercutting margins found and the continuous price depression exerted by Chinese and Korean imports. In this context and despite the low Chinese and Korean market share, it is considered that without measures the detrimental impact of the imports in question on the situation of the Community industry will not only continue but even increase.

(67) Indeed, taking account of the further deterioration of the situation of the Community industry between 1991 and the investigation period, a period when anti-dumping measures were in place, it is considered likely that without anti-dumping measures, imports from the countries concerned will increase, negatively affecting the profitability of the Community industry and causing a further decrease in its employment, and thereby material injury.

(68) However, with respect to the two Korean exporters/producers with *de minimis* dumping margins, a comparison of the normal values established in the previous investigations with those established in the current investigation shows that normal values have decreased. There are no indications that this trend in the development of normal values will change in the foreseeable future. In this respect it should be noted that the two cooperating Korean exporters/producers have substantially invested in the CTV sector in the Community in the period

under consideration and supply the Community market mainly with their Community production. These investments represent an amount of around ECU 400 million, including investments in new manufacturing plants and the manufacturing of sub-components. The total volume of imports into the Community of the product concerned from the two cooperating Korean exporters/producers was, therefore, fairly low. Due to the substantial investments made, it is unlikely that, in the absence of anti-dumping measures, this would change to any significant degree and it is therefore also unlikely that the present structure of exports, including the pricing policy, will change to any considerable extent. In these circumstances, it can be concluded that the repeal of the anti-dumping measures with respect to the two cooperating Korean exporters/producers with *de minimis* dumping margins would not be likely to result in a recurrence of dumping above a *de minimis* level.

(d) Conclusion

(69) In view of the above, it is concluded that should anti-dumping measures on CTVs originating in Korea and the PRC be allowed to expire or be repealed, this will lead to a recurrence or continuation of material injury.

G. COMMUNITY INTEREST

(70) No arguments concerning Community interest aspects were put forward by any of the interested parties (importers, traders, consumer organisations) in the present investigation.

(71) In the course of the last investigation concerning CTVs the Council concluded that no compelling reasons existed not to take anti-dumping measures, since it was concluded that unless remedial action was taken, the existence of the Community production of CTVs was at risk, with the consequent risk of negative effects on the upstream and downstream sectors. Furthermore, the impact on consumers was considered to be very limited, since anti-dumping measures would not restrict the range of products or price competition between brands, in view of the numerous competitors in the Community market. Any negative impact on importers of CTVs was considered to be limited. In this respect, the Commission has not found any

Community interest aspect which invalidates the findings with regard to Community interest reached in Regulation (EC) No 710/95. Therefore, it is considered that the facts, figures and arguments given in that Regulation are still applicable and that no compelling reasons can be seen why the existing anti-dumping measures should be repealed or allowed to lapse on grounds of Community interest.

H. LEVEL OF THE DUTY

- (72) Concerning the two cooperating Korean exporters/producers, in view of the *de minimis* dumping found and the lack of likelihood of recurrence/continuation of dumping, it is proposed that measures be repealed and be allowed to expire respectively.
- (73) With regard to Korean and Chinese exporters/producers which either had no exports during the investigation period or which did not cooperate in the investigation, measures in the form of an *ad valorem* anti-dumping duty should be maintained. This approach is considered necessary in view of the high level of non-cooperation found for Korea.
- (74) Since the amount of the anti-dumping duty is not to exceed the margin of dumping established but should be less than the margin if such lesser duty would be adequate to remove the injury to the Community industry, the necessary duty based on an injury elimination level has also been calculated.
- (75) It was considered that the injury elimination level should allow the Community industry to regain a non-injurious situation, covering its cost of production and obtaining a reasonable return on sales.
- (76) For this purpose, the Commission's services took into account the Community industry's weighted average cost of production and a reasonable return on sales. As far as the latter is concerned, based on normal market conditions, the industry's ongoing long-term investment requirements and reflecting the approach taken in Regulation (EC) No 710/95, a return on sales of 10 % was considered reasonable.
- (77) For such Korean exporters/producers, the price of the dumped model used for the calculation of the residual dumping margin was compared with the cost of production of comparable models of the Community producers investigated to which the abovementioned return on sales of 10 % was added.
- The difference expressed on a cif community-frontier basis resulted in an injury margin of 15,1 %.
- (78) Since the injury margin calculated is lower than the dumping margin, and according to Article 9(4) of the basic Regulation, the anti-dumping duty for such Korean producers/exporters calculated on the basis of the cif net, free-at-Community-frontier price, before duty should amount to 15,1 %.
- (79) Regarding the PRC, a comparison was made between the Community's weighted average cost of production plus a reasonable profit margin and the average Chinese export prices at the Community-frontier level for each one of the CN codes used for the calculation of the dumping margin. The resulting difference between the injury elimination level and Chinese export prices being higher than the dumping margin, the latter, i.e. 44,6 % should apply, in accordance with Article 9(4) of the basic Regulation.
- (80) Since Regulation (EC) No 710/95 confirmed that all CTVs, whether SCTVs or large-screen CTVs are one product, the anti-dumping measures imposed by Regulation (EEC) No 2900/91 and Regulation (EEC) No 2093/91 on imports of SCTVs originating in Korea and in the PRC respectively should be allowed to lapse. The anti-dumping measures imposed on large-screen CTVs originating in Korea and the PRC by Regulation (EC) No 710/95 should be amended to cover all CTVs, SCTVs and large-screen CTVs.
- (81) In view of the complexity of a number of aspects of this case, such as the great diversity of models, significant delays were incurred in concluding the review investigations. The original anti-dumping duties on imports of SCTVs and large-screen CTVs from Korea and the PRC remained in force during this entire period. In the light of the delay in completing the review, and furthermore, in view of the new product definition of CTVs resulting from Regulation (EC) No 710/95, which requires the assimilation of the duties under review to the duties imposed by Regulation (EC) No 710/95, it is considered appropriate to treat imports of all CTVs from Korea and the PRC in the same way as imports of CTVs from Malaysia, Singapore and Thailand. Consequently, in these exceptional circumstances, the period of operation of the renewed measures concerning imports of CTVs from Korea and the PRC should be limited, so that their expiry coincides with that of the duties imposed on imports of CTVs from Malaysia, Singapore and Thailand, i.e. 2 April 2000, without prejudice to the applicable provisions on reviews,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 710/95 is hereby amended as follows:

1. Article 1 shall be replaced by the following:

'Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of colour television receivers with a diagonal screen size of more than 15,5 cm, whether or not combined in the same housing with a radio broadcast receiver and/or clock, falling within CN codes ex 8528 12 52 (Taric code: ex 8528 12 52*10), 8528 12 54, 8528 12 56, 8528 12 58, ex 8528 12 62 (Taric code: 8528 12 62*10 and 8528 12 62*91) and 8528 12 66, originating in Malaysia, Singapore, Thailand, the People's Republic of China and the Republic of Korea.

2. The rate of the duty applicable to the net, free-at-Community-frontier price, before duty shall be as follows:

	Rate of duty	Taric additional code
Malaysia	23,4 %	8801
People's Republic of China	44,6 %	—
Republic of Korea	15,1 %	8807
Singapore	23,6 %	8812
Thailand	29,8 %	8816

with the exception of imports which are manufactured by the following companies which shall be subject to the following rate of the duty:

	Rate of duty	Taric additional code
(a) CTVs originating in Malaysia manufactured by:		
— Makonka Electronics SDN BHD, Ehsan, Malaysia	2,3 %	8796
— Orion Electric SDN BHD, Melaka, Malaysia	10,1 %	8797
— Technol Silver (M) SDN BHD, Malaysia	7,5 %	8798
— LGMitr Co. Ltd, Samutsakorn, Thailand	19,6 %	8799
— World Electric (Thailand) Ltd, Chonburi, Thailand	13,5 %	8800
(b) CTVs originating in the Republic of Korea manufactured by:		
— LG Electronics Inc., Seoul, Republic of Korea	0,0 %	8456
— Samsung Electronics Co., Seoul, Republic of Korea	0,0 %	8456
(c) CTVs originating in Singapore manufactured by:		
— Funai Electric (Singapore) Pte Ltd, Singapore	0,0 %	8808
— Hitachi Consumer Products (S.) Pte Ltd, Singapore	0,0 %	8808
— Philips Singapore Pte Ltd, Singapore	2,8 %	8809
— Sanyo Electronics (Singapore) Pte Ltd, Singapore	4,3 %	8810
— Thomson Television Singapore Pte Ltd, Singapore	2,6 %	8811
(d) CTVs originating in Thailand manufactured by:		
— Teletech (Thailand) Ltd, Chonburi, Thailand	29,8 %	8813
— Thai Samsung Electronics Co. Ltd, Chonburi, Thailand	12,1 %	8814
— Thomson Television (Thailand) Co. Ltd, Pathumthani, Thailand	3,0 %	8815

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.;
2. the following subparagraph shall be added to Article 3:
'It shall expire on 2 April 2000, save that should any review of the measures adopted by this Regulation be pending on that date, it shall remain in force until that review is concluded.'

Article 2

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

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

Done at Brussels, 27 November 1998.

For the Council

The President

C. EINEM

COUNCIL REGULATION (EC) No 2585/98
of 26 November 1998

on the conclusion of a Protocol setting out the fishing opportunities and financial contribution provided for in the Agreement between the European Economic Community and the Government of the Democratic Republic of Madagascar on fishing off Madagascar for the period from 21 May 1998 to 20 May 2001

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 in conjunction with the first sentence of Article 228(2) and the first subparagraph of Article 228(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas, pursuant to the Agreement between the European Economic Community and the Government of the Democratic Republic of Madagascar on fishing off Madagascar ⁽²⁾ the two Parties conducted negotiations to determine the amendments or additions to be made to the Agreement at the end of the period of application of the preceding Protocol to the Agreement;

Whereas, as a result of these negotiations, a new Protocol setting out the fishing opportunities and financial compensation provided for in the said Agreement for the period from 21 May 1998 to 20 May 2001 was initialled on 5 March 1998;

Whereas it is in the Community's interest to approve the said Protocol;

Whereas the method for allocating the fishing opportunities among the Member States should be defined on the basis of the traditional allocation of fishing opportunities under the fisheries agreement,

HAS ADOPTED THIS REGULATION:

Article 1

The Protocol setting out the fishing opportunities and financial compensation provided for in the Agreement between the European Economic Community and the

Government of the Democratic Republic of Madagascar on fishing off Madagascar for the period from 21 May 1998 to 20 May 2001 is hereby approved on behalf of the Community.

The text of the Protocol is attached to this Regulation ⁽³⁾.

Article 2

The fishing opportunities fixed in the Protocol shall be allocated among the Member States as follows:

(a) tuna seiners:

- Spain: 22 vessels,
- France: 20 vessels,
- Italy: 3 vessels;

(b) surface longliners:

- Spain: 20 vessels,
- France: 6 vessels,
- Portugal: 4 vessels.

If licence applications from these Member States do not cover all the fishing opportunities fixed by the Protocol, the Commission may take into consideration licence applications from any other Member State.

Article 3

The President of the Council is hereby authorised to designate the persons empowered to sign the Protocol in order to bind the Community ⁽⁴⁾.

Article 4

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

⁽³⁾ For the text of the Protocol, see OJ L 295, 4. 11. 1998, p. 34.

⁽⁴⁾ The date of the entry into force of the Protocol will be published in the *Official Journal of the European Communities* by the General Secretariat of the Council.

⁽¹⁾ OJ C 313, 12. 10. 1998.

⁽²⁾ OJ L 73, 18. 3. 1986, p. 26.

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

Done at Brussels, 26 November 1998.

For the Council

The President

M. BARTENSTEIN

COMMISSION REGULATION (EC) No 2586/98
of 1 December 1998
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 1498/98 ⁽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 2 December 1998.

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

Done at Brussels, 1 December 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ L 198, 15. 7. 1998, p. 4.

⁽³⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 1 December 1998 establishing the standard import values
for determining the entry price of certain fruit and vegetables

(ECU/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	204	50,7
	999	50,7
0709 90 70	052	82,5
	999	82,5
0805 20 10	204	59,9
	999	59,9
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	57,4
	999	57,4
0805 30 10	052	56,5
	388	47,6
	524	37,2
	528	53,4
	600	85,3
	999	56,0
	052	94,1
0808 10 20, 0808 10 50, 0808 10 90	060	14,6
	064	44,9
	400	79,2
	404	62,3
	999	59,0
	052	85,3
0808 20 50	064	60,9
	400	108,3
	720	47,4
	999	75,5

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2317/97 (OJ L 321, 22. 11. 1997, p. 19). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 2587/98**of 1 December 1998****fixing, for November 1998, the specific agricultural conversion rate for the amount of the reimbursement of storage costs 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 organisation of the markets in the sugar sector ⁽¹⁾, as last amended by Regulation (EC) No 1148/98 ⁽²⁾,

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⁾,

Having regard to Commission Regulation (EEC) No 1713/93 of 30 June 1993 establishing special detailed rules for applying the agricultural conversion rate in the sugar sector ⁽⁵⁾, as last amended by Regulation (EC) No 59/97 ⁽⁶⁾, and in particular Article 1(3) thereof,

Whereas Article 1(2) of Regulation (EEC) No 1713/93 provides that the amount of the reimbursement of storage costs referred to in Article 8 of Regulation (EEC) No 1785/81 is to be converted into national currency using a specific agricultural conversion rate equal to the average, calculated *pro rata temporis*, of the agricultural conver-

sion rates applicable during the month of storage; whereas that specific rate must be fixed each month for the previous month;

Whereas application of these provisions will lead to the fixing, for November 1998, of the specific agricultural conversion rate for the amount of the reimbursement of storage costs in the various national currencies as indicated in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The specific agricultural conversion rate to be used to convert the amount of the reimbursement of storage costs referred to in Article 8 of Regulation (EEC) No 1785/81 into each of the national currencies for November 1998 shall be as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 2 December 1998.

It shall apply with effect from 1 November 1998.

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

Done at Brussels, 1 December 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ L 159, 3. 6. 1998, p. 38.

⁽³⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ L 22, 31. 1. 1995, p. 1.

⁽⁵⁾ OJ L 159, 1. 7. 1993, p. 94.

⁽⁶⁾ OJ L 14, 17. 1. 1997, p. 25.

ANNEX

to the Commission Regulation of 1 December 1998 fixing, for November 1998, the specific agricultural conversion rate for the amount of the reimbursement of storage costs in the sugar sector

Agricultural conversion rates		
ECU 1 =	40,9321	Belgian and Luxembourg francs
	7,56225	Danish kroner
	1,98391	German marks
	338,319	Greek drachmas
	168,336	Spanish pesetas
	6,68769	French francs
	0,796521	Irish pound
1 973,93		Italian lire
	2,23593	Dutch guilders
	13,9576	Austrian schillings
	203,183	Portuguese escudos
	6,02811	Finnish marks
	9,35538	Swedish kroner
	0,698159	Pound sterling

COMMISSION REGULATION (EC) No 2588/98**of 1 December 1998****fixing the definitive aid on certain grain legumes for the 1998/99 marketing year**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1577/96 of 30 July 1996 introducing a specific measure in respect of certain grain legumes ⁽¹⁾, as last amended by Commission Regulation (EC) No 1826/97 ⁽²⁾, and in particular Article 6 thereof,

Whereas Article 6(1) of Regulation (EC) No 1577/96 provides that the Commission is to determine the overrun in the maximum guaranteed area and to fix the definitive aid for the marketing year in question;

Whereas the maximum guaranteed area referred to in Article 3 of Regulation (EC) No 1577/96 was exceeded by 10,08 % in 1998/99; whereas the aid provided for in Article 2(2) of Regulation (EC) No 1577/96 should be

reduced proportionately for the marketing year in question;

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

HAS ADOPTED THIS REGULATION:

Article 1

The definitive aid for certain grain legumes for the 1998/99 marketing year shall be ECU 164,42 per hectare.

Article 2

This Regulation shall enter into force on the third 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, 1 December 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 206, 16. 8. 1996, p. 4.

⁽²⁾ OJ L 260, 23. 9. 1997, p. 11.

COMMISSION REGULATION (EC) No 2589/98

of 1 December 1998

amending Regulation (EC) No 2198/98 increasing to 749 960 tonnes the quantity of barley held by the German intervention agency for which a standing invitation to tender for export has been opened

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

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals⁽¹⁾, as last amended by Commission Regulation (EC) No 923/96⁽²⁾, and in particular Article 5 thereof,

Whereas Commission Regulation (EEC) No 2131/93⁽³⁾, as last amended by Regulation (EC) No 2193/96⁽⁴⁾, lays down the procedures and conditions for the disposal of cereals held by the intervention agencies;

Whereas Commission Regulation (EC) No 2198/98⁽⁵⁾, opened a standing invitation to tender for the export of 249 775 tonnes of barley held by the German intervention agency; whereas, Germany informed the Commission of the intention of its intervention agency to increase by 500 185 tonnes the quantity for which a standing invitation to tender for export has been opened; whereas the total quantity of barley held by the German intervention agency for which a standing invitation to tender for export has been opened should be increased to 749 960 tonnes;

Whereas this increase in the quantity put out to tender makes it necessary to alter the list of regions and quantities in store; whereas Annex I to Regulation (EC) No 2198/98 must therefore be amended;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2198/98 is hereby amended as follows:

1. Article 2 is replaced by the following:

'Article 2

1. The invitation to tender shall cover a maximum of 749 960 tonnes of barley for export to third countries, with the exception of the United States, Canada and Mexico.

2. The regions in which the 749 960 tonnes of barley are stored are stated in Annex I to this Regulation.'

2. Annex I is replaced by the Annex hereto.

Article 2

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

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

Done at Brussels, 1 December 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 191, 31. 7. 1993, p. 76.

⁽⁴⁾ OJ L 293, 16. 11. 1996, p. 1.

⁽⁵⁾ OJ L 277, 14. 10. 1998, p. 9.

*ANNEX**'ANNEX I**(tonnes)*

Place of storage	Quantity
Schleswig-Holstein/Hamburg/ Niedersachsen/Bremen/ Nordrhein-Westfalen	263 990
Hessen/Rheinland-Pfalz/ Baden-Württemberg/Saarland/Bayern	34 911
Berlin/Brandenburg/ Mecklenburg-Vorpommern	229 624
Sachsen/Sachsen-Anhalt/Thüringen	221 435'

COMMISSION REGULATION (EC) No 2590/98

of 1 December 1998

amending Regulation (EC) No 1667/98 increasing to 189 714 tonnes the quantity of barley held by the Swedish intervention agency for which a standing invitation to tender for export has been opened

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals⁽¹⁾, as last amended by Commission Regulation (EC) No 923/96⁽²⁾, and in particular Article 5 thereof,

Whereas Commission Regulation (EEC) No 2131/93⁽³⁾, as last amended by Regulation (EC) No 2193/96⁽⁴⁾, lays down the procedures and conditions for the disposal of cereals held by the intervention agencies;

Whereas Commission Regulation (EC) No 1667/98⁽⁵⁾, as last amended by Regulation (EC) No 2317/98⁽⁶⁾, opened a standing invitation to tender for the export of 126 559 tonnes of barley held by the Swedish intervention agency; whereas, Sweden informed the Commission of the intention of its intervention agency to increase by 63 155 tonnes the quantity for which a standing invitation to tender for export has been opened; whereas the total quantity of barley held by the Swedish intervention agency for which a standing invitation to tender for export has been opened should be increased to 189 714 tonnes;

Whereas this increase in the quantity put out to tender makes it necessary to alter the list of regions and quantities in store; whereas Annex I to Regulation (EC) No 1667/98 must therefore be amended;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1667/98 is hereby amended as follows:

1. Article 2 is replaced by the following:

'Article 2

1. The invitation to tender shall cover a maximum of 189 714 tonnes of barley to be exported to all third countries, with the exception of the United States, Canada and Mexico.

2. The regions in which the 189 714 tonnes of barley are stored are stated in Annex I to this Regulation.'

2. Annex I is replaced by the Annex hereto.

Article 2

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

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

Done at Brussels, 1 December 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 191, 31. 7. 1993, p. 76.

⁽⁴⁾ OJ L 293, 16. 11. 1996, p. 1.

⁽⁵⁾ OJ L 211, 29. 7. 1998, p. 17.

⁽⁶⁾ OJ L 289, 28. 10. 1998, p. 16.

ANNEX

ANNEX I

<i>(tonnes)</i>	
Place of storage	Quantity
Stallarholmen	2 062
Motala	2 807
Rök	4 994
Gamleby	2 835
Ättersta	7 584
Broddbo 1	5 997
Velanda	7 645
Hova	12 981
Brännarp	2 624
Helsingborg	37 526
Djurön	39 504
Söråker	13 053
Gävle	10 847
Kalmar	15 738
Halmstad (Engströms)	4 659
Ormesta	5 077
Ervalla	934
Hästholmen	5 089
Vimmerby	3 997
Gistad	3 761'

COMMISSION REGULATION (EC) No 2591/98**of 1 December 1998****determining the revised estimate of production of unginned cotton for the
1998/99 marketing year and the relevant percentage increase**

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

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

Having regard to Council Regulation (EC) No 1554/95 of 29 June 1995 laying down general rules for the system of aid for cotton and repealing Regulation (EEC) No 2169/81⁽²⁾, as last amended by Regulation (EC) No 1419/98⁽³⁾, and in particular Article 8(2) thereof,

Whereas in accordance with Article 8(1) of Regulation (EC) No 1554/95, Commission Regulation (EC) No 1844/98⁽⁴⁾ lays down the estimated production of unginned cotton for the 1998/99 marketing year;

Whereas Article 8(2) of Regulation (EC) No 1554/95 lays down that the revised estimate of production of unginned cotton and the percentage increase used in calculating the advance applicable from 16 December of the current marketing year must be determined by 1 December of each marketing year, account being taken of the progress of the harvest; whereas, those figures should be fixed for the 1998/99 marketing year as indicated below on the basis of the information available; whereas, in order to ensure that the new level of advance may be applied from

the deadline laid down, this Regulation should enter into force on the day following its publication;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. For the 1998/99 marketing year, the revised estimate of production of unginned cotton is:

- 1 170 000 tonnes for Greece,
- 328 000 tonnes for Spain,
- 120 tonnes for other Member States.

2. For the 1998/99 marketing year, the percentage increase referred to in the second subparagraph of Article 5(3a) of Regulation (EC) No 1554/95 shall be 7,5 %.

Article 2

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

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

Done at Brussels, 1 December 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 148, 30. 6. 1995, p. 45.

⁽²⁾ OJ L 148, 30. 6. 1995, p. 48.

⁽³⁾ OJ L 190, 4. 7. 1998, p. 4.

⁽⁴⁾ OJ L 240, 28. 8. 1998, p. 3.

COMMISSION REGULATION (EC) No 2592/98
of 1 December 1998
amending Regulation (EC) No 2544/98 fixing the export refunds on products
processed from cereals and rice

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

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals⁽¹⁾, as last amended by Commission Regulation (EC) No 923/96⁽²⁾, and in particular Article 13(3) thereof,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice⁽³⁾, as last amended by Regulation (EC) No 2072/98⁽⁴⁾, and in particular Article 13(3) thereof,

Whereas Commission Regulation (EC) No 2544/98⁽⁵⁾ fixed the refunds applicable on exports of products processed from cereals and rice;

Whereas a check has shown that the published version does not correspond to the measures presented for an opinion to the Management Committee; whereas the Regulation in question should therefore be corrected,

HAS ADOPTED THIS REGULATION:

Article 1

In the Annex to Regulation (EC) No 2544/98 for the products covered by Product Code 1702 90 79 9000 the amount 74,32 is replaced by 70,32.

Article 2

This Regulation shall enter into force on 2 December 1998.

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

Done at Brussels, 1 December 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 329, 30. 12. 1995, p. 18.

⁽⁴⁾ OJ L 265, 30. 9. 1998, p. 4.

⁽⁵⁾ OJ L 318, 27. 11. 1998, p. 36.

COMMISSION REGULATION (EC) No 2593/98
of 1 December 1998
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 Commission Regulation (EC) No 1148/98⁽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 624/98⁽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 1379/98⁽⁵⁾, as last amended by Regulation (EC) No 2442/98⁽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 2 December 1998.

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

Done at Brussels, 1 December 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ L 159, 3. 6. 1998, p. 38.

⁽³⁾ OJ L 141, 24. 6. 1995, p. 16.

⁽⁴⁾ OJ L 85, 20. 3. 1998, p. 5.

⁽⁵⁾ OJ L 187, 1. 7. 1998, p. 6.

⁽⁶⁾ OJ L 303, 13. 11. 1998, p. 37.

ANNEX

to the Commission Regulation of 1 December 1998 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⁾	17,69	7,46
1701 11 90 ⁽¹⁾	17,69	13,56
1701 12 10 ⁽¹⁾	17,69	7,27
1701 12 90 ⁽¹⁾	17,69	13,05
1701 91 00 ⁽²⁾	20,48	16,07
1701 99 10 ⁽²⁾	20,48	10,62
1701 99 90 ⁽²⁾	20,48	10,62
1702 90 99 ⁽³⁾	0,20	0,44

⁽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)

COUNCIL

Information relating to the entry into force of the Protocol for the adaptation of trade aspects of the Europe Agreement between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part, to take into account the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union and the results of the agricultural negotiations of the Uruguay Round, including the improvements of the existing preferential regime

The Protocol for the adaptation of the Europe Agreement with the Slovak Republic further to enlargement and the Uruguay Round, which the Council decided to conclude on 5 October 1998 ⁽¹⁾, entered into force on 1 November 1998 since notification of the accomplishment of the procedures stipulated in Article 7 of that Protocol was completed on 22 October 1998.

⁽¹⁾ OJ L 306, 16. 11. 1998.

COMMISSION

COMMISSION DECISION
of 10 June 1998
on German aid to the coal industry for 1997
(notified under document number C(1998) 2046)
(Only the German text is authentic)
(Text with EEA relevance)
(98/687/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to Commission Decision No 3632/93/ECSC of 28 December 1993 establishing Community rules for State aid to the coal industry ⁽¹⁾, and in particular Article 2(1) and Article 9 thereof,

Whereas:

I

By letter of 30 September 1996, Germany notified the Commission, in accordance with Article 9(1) of Decision No 3632/93/ECSC, of the aid it intended to grant to the coal industry in 1997. By letters of 15 October 1996, 5 June 1997, 22 October 1997, 27 January 1998 and 4 March 1998, Germany submitted the additional information requested by the Commission.

In accordance with Decision No 3632/93/ECSC, the Commission gives its opinion on the following financial measures:

- (a) operating aid within the meaning of Article 3 of the Decision totalling DEM 6 364 million;
- (b) for the reduction of activity within the meaning of Article 4 of the Decision totalling DEM 3 217 million;
- (c) within the meaning of Article 3 of the Decision totalling DEM 87 million to maintain an underground labour force ("Bergmannsprämie");

(d) within the meaning of Article 5 of the Decision totalling DEM 200 million to assist the undertakings Ruhrkohle AG, Saarbergwerke AG, Preussag Anthrazit GmbH and Sophia Jacoba GmbH to cover exceptional costs;

(e) within the meaning of Article 5 of the Decision totalling DEM 609,2 million to assist the undertakings Ruhrkohle AG, Saarbergwerke AG and Sophia Jacoba GmbH to cover exceptional costs to enable the undertakings to cover the costs arising from or having arisen from the restructuring of the coal industry which are not related to current production.

The financial measures proposed by Germany for the coal industry comply with the provisions of Article 1(1) of Decision No 3632/93/ECSC. In accordance with Article 9(4), the Commission is therefore required to give an opinion on those measures. For this purpose, it checks whether those measures conform to the general objectives and criteria defined in Article 2 and the specific criteria defined in Articles 3 and 4 of the Decision and whether they are compatible with the functioning of the common market. Furthermore, in accordance with Article 9(6) of the Decision, the Commission has to decide whether the measures are compatible with the modernisation, rationalisation and restructuring plan which the Commission approved by Decision No 94/1070/ECSC ⁽²⁾ on aid to the coal industry in 1994.

By letter of 5 May 1998, the coal producer RJB Mining plc, an undertaking within the meaning of Article 80 of

⁽¹⁾ OJ L 329, 30. 12. 1993, p. 12.

⁽²⁾ OJ L 385, 31. 12. 1994, p. 18.

the ECSC Treaty, lodged a complaint with the Commission against the aid to the coal industry planned by Germany in 1997 and 1998. In the complainant's view, the aid can be expected to impair the normal functioning of the market and of competition and is therefore incompatible with the Treaty, in particular Articles 2 and 4 thereof.

II

As the German notification indicates, the financial measures totalling DEM 9 581 million indicated in section I(a) and (b) are aid for the sale of coal and coke to the Community steel industry totalling DEM 2 581 million and aid for coal for power stations totalling DEM 7 000 million. This aid is defined by Germany as sales aid.

The aid for the sale of coal and coke to the Community steel industry will be granted, as explained in the German notification of 5 October 1995, as part of a limited three-year payment. For the period 1995 to 1997, this amounted to DEM 8 065 million, of which DEM 5 010 million was provided from the Federal budget and DEM 2 700 million from the budget of the State of North Rhine-Westphalia. The Federal Government's annual contribution will be reduced from DEM 1 760 million for the 1995 financial year to DEM 1 650 million for the 1996 financial year and then to DEM 1 600 million for the 1997 financial year. The contribution from the State of North Rhine-Westphalia is to be reduced from DEM 948,5 million for 1995 to DEM 889,2 million for 1996 and then to DEM 862,3 million for 1997. The contribution from the Saar is to be replaced by a debt-register entry totalling DEM 355 million to be charged to the Federal budget to assist the undertaking Saarbergwerke AG, of which DEM 118,4 million is to offset losses for 1995 and the same amounts are to offset losses for 1996 and 1997. Those sums will be paid out as from the 1996 financial year and will be the subject of a final settlement in 1998.

The payment on the basis of these aid rules is to be regarded as a maximum amount. At the end of the three-year period, the exact difference between the agreed price and the production costs per tonne for the entire sale will be determined by means of a final settlement. Unlike under the earlier rules, no more advance estimates of the

annual sales volume covered by the aid are to be given. Only the volumes actually supplied may be the subject of aid. Any amount of aid overpaid will be recovered.

The aid for the sale of coal for power stations falls under the fifth electricity from coal Law of 12 December 1995⁽¹⁾.

Under that Law, the coal companies must submit proof of the use made of the flat-rate amounts paid to them by providing notification of the volumes supplied to thermal power stations in 1997. According to the Law, the average aid contribution per tonne may not be greater than the difference between the average production costs and the price of coal imported from third countries and delivered to a thermal power plant. This rule excludes the possibility of exceeding the maximum amount due to an increase in sales.

The aid was limited in 1996 to a maximum of DEM 7 500 million and then in 1997 to DEM 7 000 million.

The Commission finds, after consideration of the information provided by Germany, that the planned amounts of aid per tonne notified in the framework of the rules on sales aid do not exceed the difference between the production costs and the revenue to be expected on the basis of prices freely agreed between the contracting parties and, for coal produced in the Community, do not lead to prices for delivery to plants which are lower than those for coal of similar quality from third countries.

For the aid actually paid, an annual settlement is to be made, if necessary, before the end of 1998 on the basis of the actual costs and revenue and the volume actually sold.

In its assessment of the two measures described, the Commission assumes that, whatever principles Germany has laid down for the award of aid to coal undertakings within the meaning of the ECSC Treaty — in this case sales aid — the measures, since they cover a large part of these undertakings' production costs, are, whatever market the products concerned are intended for, *de facto* aid to current production, which falls under Articles 3 and 4 of Decision No 3632/93/ECSC.

III

The operating aid proposed pursuant to Article 3 of Decision No 3632/93/ECSC is intended to assist the mines of the undertakings Ruhrkohle AG, Saarbergwerke AG and Preussag Anthrazit GmbH. In the case of Ruhrkohle AG, the aid is to assist the Friedrich Heinrich/Rheinland, Niederberg, Walsum, Lohberg/Osterfeld, Prosper/Haniel, Westerholt, Auguste Victoria, Blumenthal/Haard and Heinrich Robert mines. In the case of Saarbergwerke AG, the measure is intended to assist the

⁽¹⁾ BGBl. I, p. 1638.

Ensdorf and Warndt/Luisenthal mines. In the case of Preussag Anthrazit GmbH, the aid is planned for the Ibbenbüren mine. This aid totalling DEM 6 364 million is intended to cover the difference between production costs and the selling price freely agreed between the contracting parties on the basis of the conditions prevailing on the world market for coal of similar quality from third countries.

On the basis of the information provided by Germany and pursuant to Article 3(3) of the abovementioned Decision, the Commission notes that the costs at constant prices fell by 15 % between 1996 and 1992. There is a significant difference between the average production costs, which were DEM 269 per tonne of coal equivalent (tce) in 1996, and the world market prices of DEM 80 per tonne of coal equivalent for similar qualities. This difference may, however, be reduced to a certain extent over the next few years as production concentrates on the most productive pits.

The cost reduction recorded exceeds the cost reduction notified by Germany in the framework of the modernisation, restructuring and rationalisation plan which the Commission approved by Decision 94/1070/ECSC.

The Commission furthermore believes that the principle of reducing the aid which Germany has included in legislation and budgetary provisions following the approval of the abovementioned plan will help to boost this trend.

The aim is to minimise the aid. Pursuing the principle applied by Germany that aid is only to be paid for production which is supplied for electricity generation and to the Community iron and steel industry, Germany undertakes to sell the production intended for use by industry and as domestic coal at prices which cover the production costs.

The Commission does not have any objections to the aid which Germany proposes granting for 1,28 million tonnes of sized anthracite produced by the undertaking Preussag Anthrazit GmbH which is intended for the generation of electricity. However, it is not yet able to take a decision pursuant to Article 3 of Decision No 3632/93/ECSC on the sum of DEM 65 million which Germany proposes granting to this undertaking, as the

Commission was informed, for 1997. This sum covers the difference between the production costs and the average selling price for 647 000 tonnes of sized anthracite which that undertaking has sold to industry and as domestic coal.

The Commission will take its decision following the current examination of the sale of sized anthracite by that undertaking in the United Kingdom. On the basis of complaints and its own subsequent investigations, the Commission sent a letter of formal notice to the German Government on 2 August 1997 notifying it officially of the contents of the complaints and asking it to comment on the behaviour of the undertakings referred to and to state the position of the German Government⁽¹⁾.

Germany gives its assurance pursuant to the provisions of Article 86 of the ECSC Treaty that the aid will be limited to what is absolutely essential, taking account of social and regional considerations relating to the decline of coal mining in the Community, and that it will not provide an economic advantage, either directly or indirectly, for any activity other than coal mining, e.g. for industrial activities relating to the mining or processing of coal from the Community.

In its assessment of the operating aid pursuant to Article 3 thereof, the Commission has taken account of the urgent need, as indicated in the second indent of Article 2(1) of Decision No 3632/93/ECSC, to minimise the social and regional impact of the restructuring of coal mining. It also takes note, in accordance with the second subparagraph of Article 3(2), of the trend towards a reduction in production costs at constant prices. It must also be added that the restructuring policy announced by Germany in the Agreement of 13 March 1997 between the coal-producing States of North Rhine-Westphalia and the Saar, the German coal industry, workers' representatives and the Federal Government should enable the production costs and aid to be further reduced.

Having examined the information provided by Germany, the Commission finds that the proposed amounts of aid per tonne notified in the context of these rules on sales aid do not exceed the difference between production costs and the revenue to be expected on the basis of the prices freely agreed between the contractual partners and will not lead to prices for delivery to plants of coal produced in the Community which are below those for coal of similar quality from third countries.

Subject to a decision on the sum of DEM 65 million on the basis of the information provided by Germany and the undertakings given (see section VIII), the aid proposed for 1997 is compatible with Decision No 3632/93/ECSC, in particular Articles 2 and 3 thereof.

⁽¹⁾ OJ C 258, 23. 8. 1997, p. 2.

IV

The aid totalling DEM 3 217 million proposed for the reduction of activity pursuant to Article 4 of Decision No 3632/93/ECSC is intended to cover the difference between production costs and the sales price freely agreed on the basis of the conditions prevailing on the world market for coal of similar quality from third countries and to assist the mines of the undertaking Ruhrkohle AG, in particular the Sophia-Jacoba, Fürst Leopold/Wulfen, Ewald/Huo, Haus Aden/Monopol and Westfalen mines. In the case of the undertaking Saarbergwerke AG, the measure is intended for the Göttelborn/Reden mine.

This aid is part of a programme for the complete or partial closure of the abovementioned mines.

Apart from the closure of the Sophia-Jacoba mine, which is part of the German modernisation, rationalisation and restructuring plan which the Commission approved on 13 December 1994, the abovementioned closures are part of the Agreement of 13 March 1997 which will reduce production capacity by 16 million tonnes (34 % of total production capacity) and lead to the shedding of 33 000 jobs between 1997 and 2002.

In accordance with the provisions of Article 4 of Decision No 3632/93/ECSC, the Sophia-Jacoba mine was completely closed down in 1997. The Göttelborn/Reden, Ewald/Hugo and Westfalen mines will be completely closed down before the abovementioned Decision expires. The amalgamation of mines will result in partial closures that will provide a persistent and presumably significant reduction in mining activity before the Decision expires. In accordance with the second indent of Article 2(1) of Decision No 3632/93/ECSC, this aid will help to solve the social and regional problems associated with the complete or partial reduction of activity.

The fall in production of 17 % in 1996 compared with 1992 is in conformity with the objectives notified in the modernisation, rationalisation and restructuring plan which the Commission approved by Decision 94/1070/ECSC.

The aim is to minimise the aid. Pursuing the principle applied by Germany that aid is only to be paid for production which is supplied for electricity generation

and to the Community iron and steel industry, Germany undertakes to sell the production intended for use by industry and as domestic coal at prices which cover the production costs.

The Commission does not have any objections to the aid which Germany proposes granting for 125 000 million tonnes of sized anthracite produced by the undertaking Sophia-Jacoba GmbH which is intended for the generation of electricity. However, it is not yet able to take a decision pursuant to Article 4 of Decision No 3632/93/ECSC on the sum of DEM 12 million which Germany proposes granting to that undertaking, as the Commission was informed, as part of the aid to the undertaking Ruhrkohle AG for 1997. This sum covers the difference between the production costs and the average selling price for 120 000 tonnes of sized anthracite which that undertaking has sold to industry and as domestic coal.

The Commission will take its decision following the current examination of the sale of sized anthracite by that undertaking in the United Kingdom. On the basis of complaints and its own subsequent investigations, the Commission sent a letter of formal notice to the German Government on 2 August 1997 notifying it officially of the contents of the complaints and asking it to comment on the behaviour of the undertakings referred to and to state the position of the German Government⁽¹⁾.

Subject to a decision on the sum of DEM 12 million on the basis of the information provided by Germany and the undertakings given (see section VIII), the aid proposed for 1997 is compatible with Decision No 3632/93/ECSC, in particular Articles 2 and 3 thereof.

V

The aid totalling DEM 87 million to cover extra payments to German miners ('Bergmannsprämien'), which amount to DEM 10 per underground shift, is intended to provide an incentive for qualified staff to work underground and to help rationalise production. According to the German notification, this aid to miners is a pecuniary benefit and therefore helps to reduce the production costs of the mining undertakings accordingly. It is therefore aid which must be examined on the basis of Article 3 of Decision No 3632/93/ECSC.

The proposed aid helps to maximise productivity and therefore facilitates the restructuring and rationalisation of mining. It therefore also helps to achieve the objective

⁽¹⁾ See previous footnote.

referred to in the first indent of Article 2(1) of Decision No 3632/93/ECSC, i.e. to make, in the light of coal prices on international markets, further progress towards economic viability with the aim of achieving digression of aids.

In its assessment of the aid, the Commission has taken account, in accordance with the second indent of Article 2(1) of Decision No 3632/93/ECSC, of the urgent need to minimise the social and regional impact of restructuring.

The aid helps, in accordance with the provisions of Article 3 of the abovementioned Decision, to achieve a slight improvement in the viability of the undertakings concerned since the increase in productivity as a result of the maintenance of a qualified underground labour force reduces production costs.

In the light of the above and on the basis of the information provided by Germany and the undertakings given by Germany as indicated in section VIII, the aid proposed for 1997 is compatible with the objectives of Decision No 3632/93/ECSC, in particular Articles 2 and 3 thereof.

VI

The aid totalling DEM 200 million to assist the undertakings Ruhrkohle AG, Saarbergwerke AG, Preussag Anthrazit GmbH and Sophia Jacoba GmbH to cover exceptional costs is intended to cover additional drainage costs in mines closed down as part of restructuring and near to working pits. Since little or no water is pumped out of the closed-down mines, some of the water which has nothing to do with the existing production flows into the working pit nearby, thereby giving rise to additional costs.

This aid, which is specifically provided for in II(b) of the Annex to Decision No 3632/93/ECSC, covers expenditure, resulting from restructuring, on the supply of water and the removal of waste water. To meet the requirements of Article 5 of the Decision, the special aid may not exceed the expenditure.

The Commission has examined the agreements between the public authorities and the undertakings concerned and, as part of an audit, the information given with regard to costs and has ascertained that the aid does not exceed the earmarked resources.

This will make it possible to reduce the pressure on the undertakings concerned, which will reduce their financial imbalance and enable them to continue their activities.

The aid therefore complies with the objectives given in Article 2(1) of Decision No 3632/93/ECSC.

VII

The aid totalling DEM 609,2 million to assist the undertakings Ruhrkohle AG, Saarbergwerke AG and Sophia Jacoba GmbH to cover exceptional costs is intended to cover the costs arising from or having arisen from the restructuring of the coal industry which are not related to current production (inherited liabilities).

This aid is the result of agreements reached between the mining undertakings, the Federal Government, the State Governments of North Rhine-Westphalia and the Saar, the trade unions representing the mining industry and the electricity generators during the negotiations ('Kohlerunde') held on 11 November 1991.

It is intended to cover the following costs: the costs of paying social-welfare benefits resulting from the pensioning-off of workers before they reach statutory retirement age, other exceptional expenditure on workers who lose their jobs as a result of restructuring and rationalisation, the payment of pensions and allowances outside the statutory system to workers who lose their jobs as a result of restructuring and rationalisation and to workers entitled to such payments before the restructuring, supply of free coal to workers who lost their jobs as a result of restructuring and rationalisation and to workers entitled to such supply before the restructuring. From a technical and financial viewpoint, it is intended to cover additional underground safety work resulting from restructuring and exceptional intrinsic depreciation provided that it results from the restructuring of the industry.

This aid to cover the costs expressly referred to in I(a), (b), (c), (d), (f) and (k) of the Annex to Decision No 3632/93/ECSC may not exceed the said costs if it is to be in conformity with the provisions of Article 5 of the abovementioned Decision.

The Commission has examined the information regarding the costs as part of an audit and has ascertained that the aid does not exceed the earmarked resources.

This will make it possible to reduce the pressure on the undertakings concerned, which will reduce their financial imbalance and enable them to continue their activities. The aid therefore complies with the objectives given in Article 2(1) of Decision No 3632/93/ECSC.

VIII

HAS ADOPTED THIS DECISION:

The Commission notes that Germany has inserted into regulations the measures needed to ensure that the aid granted under this Decision does not exceed the difference between production costs and selling price (no charge being made for delivery) freely agreed between the contracting parties in the light of the conditions prevailing on the world market in any undertaking or production unit. The aid per tonne of current production may not cause prices for Community coal to be lower than those of coal of a similar quality from third countries. Germany will also take care to ensure that the aid does not distort competition or produce discrimination between coal producers or between coal buyers and users in the Community.

This Decision does not pre-empt the Commission's opinion on the restructuring plan for the period from 1998 to 2002, which will be the subject of a later Decision by the Commission pursuant to Article 8 of Decision No 3632/93/ECSC.

To enable the Commission to examine whether the production units which receive operating aid under Article 3 of Decision No 3632/93/ECSC actually generate a trend towards a reduction in production costs at world prices, Germany undertakes to notify the Commission no later than 30 September of each year of the production costs for the production units concerned during the previous year and of all information pursuant to Article 9 of Decision No 3632/93/ECSC. If any of these production units do not meet the conditions laid down in Article 3(2) of Decision No 3632/93/ECSC, Germany will propose to the Commission pursuant to Article 4 of the Decision to include them either in a plan for closure by 23 July 2002 or, on exceptional social and regional grounds, in a plan entailing a gradual, significant reduction in capacity.

The Commission is required, in accordance with the second indent of Article 3(1) and Article 9(2) and (3) of Decision No 3632/93/ECSC, to verify whether the aid granted for current production achieves the objectives set out in Articles 3 and 4 of the Decision. Germany must therefore provide notification no later than 30 September 1998 of the level of aid actually paid in 1997 and of any changes to the sums originally notified. In this annual list, Germany will provide all information required for verifying compliance with the criteria laid down in the above-mentioned Articles,

Article 1

Germany is hereby authorised to take the following measures to assist the coal industry:

- (a) operating aid as defined in Article 3 of Decision No 3632/93/ECSC totalling DEM 6 299 million. The Commission will take a decision at a later date on the remaining sum of DEM 65 million to assist the undertaking Preussag Anthrazit GmbH;
- (b) aid for the reduction of activity as defined in Article 4 of Decision No 3932/93/ECSC totalling DEM 3 205 million. The Commission will take a decision at a later date on the remaining sum of DEM 12 million to assist the undertaking Sophia Jacoba GmbH;
- (c) aid as defined in Article 3 of Decision No 3632/93/ECSC totalling DEM 87 million to maintain an underground labour force ('Bergmannsprämie');
- (d) aid as defined in Article 5 of Decision No 3632/93/ECSC totalling DEM 200 million to assist the undertakings Ruhrkohle AG, Saarbergwerke AG, Preussag Anthrazit GmbH and Sophia Jacoba GmbH to cover exceptional costs;
- (e) aid as defined in Article 5 of Decision No 3632/93/ECSC totalling DEM 609,2 million to assist the undertakings Ruhrkohle AG, Saarbergwerke AG and Sophia Jacoba GmbH to cover exceptional costs to enable the undertakings to cover the costs arising from or having arisen from the restructuring of the coal industry which are not related to current production.

Article 2

In accordance with Article 86 of the ECSC Treaty, Germany undertakes to take all appropriate measures, whether general or particular, to ensure fulfilment of its obligations arising from this Decision. Germany shall ensure that the aid granted is used only for the specified purposes and that, if the expenditure is cancelled, has been overestimated or is incorrect, it shall recover payment of any items referred to in this Decision.

Article 3

Germany shall provide information no later than 30 September 1998 about payments actually made during the 1997 financial year and shall forward the information pursuant to Article 9 of Decision No 3632/93/ECSC.

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 10 June 1998.

For the Commission

Christos PAPOUTSIS

Member of the Commission

COMMISSION DECISION

of 19 November 1998

authorising the Member States to provide for derogations from certain provisions of Council Directive 77/93/EEC in respect of potatoes, other than potatoes intended for planting, originating in South Africa

(notified under document number C(1998) 3540)

(98/688/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community⁽¹⁾, as last amended by Commission Directive 98/2/EC⁽²⁾, and in particular Article 14(1) thereof,

Having regard to the request made by the United Kingdom,

Whereas, under the provisions of Directive 77/93/EEC, potatoes, other than potatoes intended for planting, originating in South Africa may in principle not be introduced into the Community because of the risk of introducing exotic potato diseases unknown in the Community;

Whereas by Decisions 93/159/EEC⁽³⁾, 95/95/EC⁽⁴⁾ and 96/112/EC⁽⁵⁾ the Commission authorised certain Member States to provide for derogations in respect of potatoes for human consumption originating in South Africa, under specified conditions in the 1993, 1995 and 1996 seasons respectively;

Whereas there were no confirmed findings of diseases and pests on samples drawn from potatoes imported pursuant to Decisions 93/159/EEC and 96/112/EC and whereas due to technical reasons there were no imports made under Decision 95/95/EC;

Whereas it is expected that South Africa makes available all technical information necessary to assess in the future, the phytosanitary status of potato production in South Africa, in particular details on the regular monitoring of seed and ware potatoes imported into, and marketed within, South Africa by means of examination and testing of representative samples by scientifically recognised methods for *Clavibacter michiganensis* (Smith) Davis et al. ssp. *sapedomus* (Spieckermann et Kotthoff) Davis et al., *Ralstonia solanacearum* (Smith) Smith and potato

spindle tuber viroid, as well as the results of the said examination and testing;

Whereas the circumstances justifying the authorisation still obtain;

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

HAS ADOPTED THIS DECISION:

Article 1

1. The Member States are hereby authorised to provide, under the conditions laid down in paragraph 2, for exceptions from Article 4(1) of Directive 77/93/EEC, with regard to the prohibitions referred to in part A, point 12 of Annex III thereto for potatoes, other than potatoes intended for planting, originating in South Africa.

2. In addition to the requirements laid down in Annexes I, II and IV to Directive 77/93/EEC in relation to potatoes other than potatoes intended for planting, the following specific conditions shall be satisfied:

- (a) the potatoes shall be potatoes other than potatoes intended for planting;
- (b) they shall have been grown in South Africa directly from seed potatoes certified in the South African seed potato certification scheme or from seed potatoes certified in one of the Member States and imported into South Africa exclusively from the Member States, or from seed potatoes certified in any other country for which the entry into the Community of potatoes intended for planting is not prohibited pursuant to Annex III of Directive 77/93/EEC;
- (c) they shall have been grown in areas where *Ralstonia solanacearum* (Smith) Yabuuchi et al. is known not to occur;
- (d) they shall have been handled by machinery which is reserved for them or which has been disinfected in an appropriate manner after each use for other purposes;

⁽¹⁾ OJ L 26, 31. 1. 1977, p. 20.

⁽²⁾ OJ L 15, 21. 1. 1998, p. 34.

⁽³⁾ OJ L 67, 19. 3. 1993, p. 24.

⁽⁴⁾ OJ L 79, 4. 4. 1995, p. 19.

⁽⁵⁾ OJ L 27, 3. 2. 1996, p. 26.

- (e) they shall be packed either in new bags or in containers which have been disinfected in an appropriate manner; and an official label shall be applied to each bag or container, bearing the information specified in the Annex;
- (f) prior to export the potatoes shall have been cleaned free from soil, leaves and other plant debris;
- (g) the potatoes intended for the Community shall be accompanied by a phytosanitary certificate issued in South Africa in accordance with Articles 7 and 12 of Directive 77/93/EEC, on the basis of the examination laid down therein, in particular freedom from the harmful organism mentioned in (c).

The certificate shall state:

— under 'Additional declaration', the indication 'This consignment meets the conditions laid down in Decision 98/688/EC';

- (h) the potatoes shall be introduced through points of entry situated within the territory of a Member State and designated for the purpose of this derogation by that Member State; these points of entry and the name and address of the responsible official body referred to in Directive 77/93/EEC in charge of each point shall be notified sufficiently in advance by the Member States to the Commission and shall be held available on request to other Member States. In those cases where the introduction into the Community takes place in a Member State other than the Member State making use of this derogation, the said responsible official bodies of the Member State of introduction shall inform and cooperate with the said responsible official bodies of the Member States making use of this derogation to ensure that the provisions of this Decision are complied with;
 - (i) prior to introduction into the Community, the importer shall be officially informed of the conditions laid down in (a) to (l); the said importer shall notify details of each introduction sufficiently in advance to the responsible official bodies in the Member State of introduction and that Member State, without delay, shall convey the details of the notification to the Commission, indicating:
 - the type of material,
 - the quantity,
 - the declared date of introduction and confirmation of the point of entry.
- The importer shall provide details of any changes to the aforementioned advance notification, to the responsible official bodies of their own Member State, preferably as soon as they are known and in any case prior to the time of import, and that Member State, without delay, shall convey the details of the changes to the Commission;
- (j) the inspections including testing, as appropriate, required pursuant to Article 12 of Directive 77/93/EEC and in accordance with provisions laid down in the present Decision shall be made by the responsible official bodies, referred to in the said Directive; of these inspections, the plant health checks shall be carried out by the Member State making use of this derogation. Furthermore during the said plant health check that Member State shall also inspect for all other harmful organisms. Without prejudice to the monitoring referred to in Article 19a(3), second indent, first possibility of the said Directive, the Commission shall determine to which extent the inspections referred to in Article 19a(3), second indent, second possibility of the said Directive shall be integrated into the inspection programme in accordance with Article 19a(5)(c) of that Directive;
 - (k) the potatoes shall be packed and repacked only at premises which have been authorised and registered by the said responsible official bodies;
 - (l) the potatoes shall be packed or repacked in closed packages that are ready for direct delivery to retailers or to final consumers, and that do not exceed a weight common in the Member State of introduction for that purpose, up to a maximum of 25 kilograms; the packaging shall bear the number of the registered premises referred to in (k), as well as the South African origin;
 - (m) Member States making use of this derogation shall, where appropriate, in cooperation with the Member State of introduction ensure that at least two samples of 200 tubers shall be drawn from each consignment of 50 tonnes or part thereof, of imported potatoes pursuant to this Decision, for official examination in respect of *Ralstonia solanacearum* in accordance with the Community interim test scheme as laid down in Decision 97/647/EC⁽¹⁾, and in the case of *Clavibacter michiganensis* ssp. *sepedonicus*, in accordance with the Community established method for the detection and diagnosis of *Clavibacter michiganensis* ssp. *sepedonicus*; in the case of suspicion the lots shall remain separate under official control and may not be marketed or used until it has been established that the presence of *Clavibacter michiganensis* ssp. *sepedonicus* or *Ralstonia solanacearum* was not confirmed in those examinations.

Article 2

Member States shall inform the other Member States and the Commission by means of the notification referred to in Article 1(2)(i) of any use made of the authorisation. They shall provide the Commission and the other Member States, before 1 September 1999, with the information on amounts imported pursuant to this Decision

⁽¹⁾ OJ L 273, 6. 10. 1997, p. 1.

and with a detailed technical report of the official examination referred to in Article 1(2)(m); copies of each phytosanitary certificate shall be transmitted to the Commission.

Article 3

1. Article 1 shall apply during the period between 15 January 1999 and 30 June 1999.
2. The present Decision shall be revoked if it is established that the conditions laid down in Article 1(2) have been insufficient to prevent the introduction of harmful organisms or have not been complied with.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 19 November 1998.

For the Commission

Franz FISCHLER

Member of the Commission

*ANNEX***Information required on the label***(referred to in Article 1(2)(e))*

1. Name of the authority issuing the label
 2. Name of the exporters' organisation
 3. Indication 'South African potatoes other than potatoes intended for planting'
 4. Variety
 5. Area and/or place of production
 6. Size
 7. Declared net weight
 8. Indication 'In accordance with EC conditions laid down in Decision 98/688/EC'
 9. A mark printed or stamped on behalf of the South African plant protection organisation.
-