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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 390/87**of 9 February 1987****fixing the import levies on cereals and on wheat or rye flour, groats and meal**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 1579/86⁽²⁾, and in particular Article 13 (5) thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy⁽³⁾, and in particular Article 3 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas the import levies on cereals, wheat and rye flour, and wheat groats and meal were fixed by Commission Regulation (EEC) No 135/87⁽⁴⁾ and subsequent amending Regulations;

Whereas, if the levy system is to operate normally, levies should be calculated on the following basis:

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central

rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Regulation (EEC) No 1676/85,

- for other currencies, an exchange rate based on the arithmetic mean of the spot market rates of each of these currencies recorded for a given period in relation to the Community currencies referred to in the previous indent, and the aforesaid coefficient;

Whereas these exchange rates being those recorded on 6 February 1987;

Whereas the aforesaid corrective factor affects the entire calculation basis for the levies, including the equivalence coefficients;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 135/87 to today's offer prices and quotations known to the Commission that the levies at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies to be charged on products listed in Article 1 (a), (b) and (c) of Regulation (EEC) No 2727/75 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 10 February 1987.

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 139, 24. 5. 1986, p. 29.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 17, 20. 1. 1987, p. 1.

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

Done at Brussels, 9 February 1987.

For the Commission

Frans ANDRIESEN

Vice-President

ANNEX

to the Commission Regulation of 9 February 1987 fixing the import levies on cereals and on wheat or rye flour, groats and meal

(ECU/tonne)

CCT heading No	Description	Levies	
		Portugal	Third country
10.01 B I	Common wheat, and meslin	9,23	195,78
10.01 B II	Durum wheat	43,91	262,97 ⁽¹⁾ ⁽²⁾
10.02	Rye	38,30	174,31 ⁽³⁾
10.03	Barley	36,57	189,40
10.04	Oats	94,86	157,21
10.05 B	Maize, other than hybrid maize for sowing	—	180,52 ⁽³⁾ ⁽⁴⁾ ⁽⁵⁾
10.07 A	Buckwheat	36,57	127,38
10.07 B	Millet	36,57	153,46 ⁽⁶⁾
10.07 C II	Grain sorghum, other than hybrid sorghum for sowing	22,48	181,32 ⁽⁶⁾ ⁽⁷⁾
10.07 D I	Triticale	⁽⁷⁾	⁽⁷⁾
10.07 D II	Canary seed; other cereals	36,57	61,26 ⁽⁸⁾
11.01 A	Wheat or meslin flour	27,81	288,98
11.01 B	Rye flour	68,51	258,92
11.02 A I a)	Durum wheat groats and meal	81,64	421,19
11.02 A I b)	Common wheat groats and meal	27,96	310,03

⁽¹⁾ Where durum wheat originating in Morocco is transported directly from that country to the Community, the levy is reduced by 0,60 ECU/tonne.

⁽²⁾ In accordance with Regulation (EEC) No 486/85 the levies are not applied to imports into the French overseas departments of products originating in the African, Caribbean and Pacific States or in the 'overseas countries and territories'.

⁽³⁾ Where maize originating in the ACP or OCT is imported into the Community the levy is reduced by 1,81 ECU/tonne.

⁽⁴⁾ Where millet and sorghum originating in the ACP or OCT is imported into the Community the levy is reduced by 50 %.

⁽⁵⁾ Where durum wheat and canary seed produced in Turkey are transported directly from that country to the Community, the levy is reduced by 0,60 ECU/tonne.

⁽⁶⁾ The import levy charged on rye produced in Turkey and transported directly from that country to the Community is laid down in Council Regulation (EEC) No 1180/77 and Commission Regulation (EEC) No 2622/71.

⁽⁷⁾ The levy applicable to rye shall be charged on imports of the product falling within subheading 10.07 D I (triticale).

⁽⁸⁾ The levy referred to in Article 1 of Council Regulation (EEC) No 2913/86 shall be fixed on the basis of an invitation to tender in accordance with Commission Regulation (EEC) No 3140/86.

COMMISSION REGULATION (EEC) No 391/87

of 9 February 1987

fixing the premiums to be added to the import levies on cereals, flour and malt

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EEC) No 1579/86 ⁽²⁾, and in particular Article 15 (6) thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy ⁽³⁾, and in particular Article 3 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas the premiums to be added to the levies on cereals and malt were fixed by Commission Regulation (EEC) No 2011/86 ⁽⁴⁾ and subsequent amending Regulations;

Whereas, if the levy system is to operate normally, levies should be calculated on the following basis:

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Regulation (EEC) No 1676/85,
- for other currencies, an exchange rate based on the arithmetic mean of the spot market rates of each of

these currencies recorded for a given period in relation to the Community currencies referred to in the previous indent, and the aforesaid coefficient;

Whereas these exchange rates being those recorded on 6 February 1987;

Whereas, on the basis of today's cif prices and cif forward delivery prices, the premiums at present in force, which are to be added to the levies, should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

1. The premiums referred to in Article 15 of Regulation (EEC) No 2727/75 to be added to the import levies fixed in advance in respect of cereals and malt originating in Portugal shall be zero.
2. The premiums referred to in Article 15 of Regulation (EEC) No 2727/75 to be added to the import levies fixed in advance in respect of cereals and malt originating in third countries shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 10 February 1987.

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

Done at Brussels, 9 February 1987.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 139, 24. 5. 1986, p. 29.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 173, 1. 7. 1986, p. 4.

ANNEX

to the Commission Regulation of 9 February 1987 fixing the premiums to be added to the import levies on cereals, flour and malt from third countries

A. Cereals and flour

(ECU/tonne)

CCT heading No	Description	Current 2	1st period 3	2nd period 4	3rd period 5
10.01 B I	Common wheat, and meslin	0	0	0	0
10.01 B II	Durum wheat	0	0	0	0
10.02	Rye	0	0	0	0
10.03	Barley	0	2,18	2,18	2,18
10.04	Oats	0	0	0	0
10.05 B	Maize, other than hybrid maize for sowing	0	0	0	0
10.07 A	Buckwheat	0	0	0	0
10.07 B	Millet	0	0	0	0
10.07 C II	Grain sorghum, other than hybrid sorghum for sowing	0	0	0	0
10.07 D	Other cereals	0	0	0	0
11.01 A	Wheat or meslin flour	0	0	0	0

B. Malt

(ECU/tonne)

CCT heading No	Description	Current 2	1st period 3	2nd period 4	3rd period 5	4th period 6
11.07 A I a)	Unroasted malt, obtained from wheat, in the form of flour	0	0	0	0	0
11.07 A I b)	Unroasted malt, obtained from wheat, other than in the form of flour	0	0	0	0	0
11.07 A II a)	Unroasted malt, other than that obtained from wheat, in the form of flour	0	3,88	3,88	3,88	3,88
11.07 A II b)	Unroasted malt, other than that obtained from wheat, other than in the form of flour	0	2,90	2,90	2,90	2,90
11.07 B	Roasted malt	0	3,38	3,38	3,38	3,38

COMMISSION REGULATION (EEC) No 392/87**of 9 February 1987****laying down detailed rules for the application of Council Regulation (EEC) No 230/87 on the free supply of intervention stocks of processed cereals to charitable organizations**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EEC) No 1579/86 ⁽²⁾, and in particular Article 7 (4) thereof,

Having regard to Council Regulation (EEC) No 230/87 of 26 January 1987 on the free supply of intervention stocks of processed cereals to charitable organizations ⁽³⁾, and in particular Article 1 (3) thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy ⁽⁴⁾, as last amended by Regulation (EEC) No 3772/85 ⁽⁵⁾, and in particular Article 3 (4) thereof,

Whereas the best way of achieving the object of Regulation (EEC) No 230/87 is to issue an invitation to tender for the supply of common wheat flour or durum wheat groats and meal; whereas to simplify the procedure, tenders should be expressed in quantities of basic cereals to be disposed of by the intervention agency to the tenderer; whereas, however, it may be more efficient administratively to use the direct-agreement procedure; whereas provision should therefore also be made for such a procedure;

Whereas provision should be made for a Member State, where insufficient intervention stocks are available for the purposes of Regulation (EEC) No 230/87, to draw supplies from the intervention stocks of other Member States; whereas it should be specified that in such cases, as provided for in Article 21 of Commission Regulation (EEC) No 3154/85 of 11 November 1985 laying down detailed rules for the administrative application of monetary compensatory amounts ⁽⁶⁾, the system of monetary compensatory amounts shall not apply;

Whereas, in view of the non-commercial nature of transactions covered by this Regulation, neither accession compensatory amounts nor the supplementary trade mechanism should be applied; whereas, moreover, in order to prevent any distortions of competition provision should be made for the processing of basic cereals to be carried out by the successful tenderer in the Member State in which the processed product is to be used;

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

HAS ADOPTED THIS REGULATION:

Article 1

The quantities of common wheat flour falling within Common Customs Tariff subheading 11.01 A and/or of durum wheat groats and meal falling within Common Customs Tariff subheading 11.02 A I a) to be supplied by the intervention agencies to charitable organizations, as provided for in Article 1 of Regulation (EEC) No 230/87, shall be as listed in Annex I hereto.

Article 2

1. Member States with sufficient quantities of cereals available in intervention storage for purposes of the operation referred to in Article 1, the intervention agencies shall specify the most suitable storage locations.

2. For Member States with insufficient intervention stocks of a suitable quality within their territory for the purposes of the operation provided for in Article 1, the storage locations shall be as listed in Annex II. In such cases:

— neither monetary compensatory amounts nor accession compensatory amounts apply to the transfer of the basic cereals nor shall the supplementary trade mechanism apply;

— the intervention agency of the Member State in the territory in which the cereals are stored shall supply the intervention agency concerned with all necessary information, in particular regarding the quality of the wheat in question.

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 139, 24. 5. 1986, p. 29.

⁽³⁾ OJ No L 25, 28. 1. 1987, p. 2.

⁽⁴⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁵⁾ OJ No L 362, 31. 12. 1985, p. 24.

⁽⁶⁾ OJ No L 310, 21. 11. 1985, p. 9.

Article 3

1. The intervention agencies shall issue invitations to tender for the supply of the processed basic cereals concerned, delivered to the destination specified by the charitable organizations in accordance with Article 1 (2).

2. Tenderers shall undertake to take over the basic cereals loaded at the intervention store, to process them into common wheat flour falling within Common Customs Tariff subheading 11.01 A or durum wheat groats and meal falling within Common Customs Tariff subheading 11.02 A I a) by 30 April 1987 at the latest and to deliver to the destination specified, within the time limit indicated in the notice of invitation to tender, the quantity of processed product for which has been awarded to them.

Processing of the cereals disposed of by the intervention agency must be carried out in the country in which the processed product is to be used.

3. Tenders must be lodged with the intervention agencies of the Member State in which the processed products are to be delivered and must be for a quantity of basic cereals to be disposed of by the intervention agency to the tenderer. Tenders shall not be valid unless accompanied by a written undertaking, countersigned by a credit establishment, to lodge within two working days at the latest of the day on which the notice of award is received, a security amounting to 10 %, of the intervention price expressed in Deutschmarks applying on the final date for the submission of tenders.

To that end the intervention expressed in Deutschmarks price shall be converted into the currency of the Member State of delivery using the latest exchange rate for sales recorded on the currency market of the Member State of delivery on the day on which the invitation to tender is opened.

The successful tenderers shall be those offering to take over the smallest quantities of basic cereal.

Article 4

1. The commitments that tenderers are required to enter into under Article 3 (2) shall be considered as primary requirements in accordance with Article 20 of Commission Regulation (EEC) No 2220/85⁽¹⁾. They shall not be considered as having been discharged until the tenderer provides evidence that the cereals have been processed and supporting documents that the products of this processing or equivalent products have been delivered. This evidence must be provided by 30 June 1987 at the latest.

2. Evidence that the cereals removed from intervention have been processed shall be provided in accordance with Commission Regulation (EEC) No 1687/76 of 30 June 1976 laying down common detailed rules for verifying the

use and/or destination of products from intervention⁽²⁾, as last amended by Regulation (EEC) No 181/87⁽³⁾.

Regulation (EEC) No 1687/76 is amended as follows:

In Part II of the Annex, entitled 'Products subject to a use and/or destination other than that mentioned under I' the following point 40 and footnote are added:

'40. Commission Regulation (EEC) No 392/87 of 9 February 1987, laying down detailed rules for the application of Council Regulation (EEC) No 230/87 on the free supply of intervention stocks of processed cereals to charitable organization⁽⁴⁰⁾.

— Section 104:

— Montantes Compensatorios Monetarios, Montantes Compensatorios « adhesión » y Mecanismo Complementario de los Inter-cambios No Aplicables — a la transformación — Reglamento (CEE) n° 392/87

— monetære udligningsbeløb, tiltrædelsesudligningsbeløb og den supplerende mekanisme for samhandelen finder ikke anvendelse — til forarbejdning — forordning (EØF) nr. 392/87

— Währungsausgleichsbeträge Beitrittsausgleichsbeträge und der ergänzende Handelsmechanismus sind nicht anwendbar — zur Verordnung (EWG) Nr. 392/87

— Δεν εφαρμόζονται νομισματικά εξισωτικά ποσά, εξισωτικά ποσά προσχωρήσεως και συμπληρωματικός μηχανισμός στις συναλλαγές — για μεταποίηση — κανονισμός (ΕΟΚ) αριθ. 392/87

— monetary and accession compensatory amounts and supplementary trade mechanism not applicable — for processing — Regulation (EEC) No 392/87

— montants compensatoires monétaires, montants compensatoires « adhésion » et mécanisme complémentaire des échanges non applicables — pour transformation — règlement (CEE) n° 392/87

— importi compensativi monetari, importi compensativi adesione e meccanismo complementare applicabile agli scambi non applicabili — per trasformazione — regolamento (CEE) n. 392/87

— Monetaire compenserende bedragen, compenserende bedragen toetreding en aanvullende regeling voor het handelsverkeer niet van toepassing — voor verwerking — Verordening (EEG) nr. 392/87

— os montantes compensatórios monetários, os montantes compensatórios de adesão e o mecanismo complementar às trocas comerciais não são aplicáveis — para transformação — Regulamento (CEE) n° 392/87

⁽⁴⁰⁾ OJ No L 40, 10. 2. 1987, p. 5.

⁽¹⁾ OJ No L 190, 14. 7. 1976, p. 1.

⁽²⁾ OJ No L 21, 23. 1. 1987, p. 38.

⁽³⁾ OJ No L 205, 3. 8. 1985, p. 5.

Article 5

The intervention agencies shall draw up notices of invitation to tender covering at least the points listed in Annex III to this Regulation.

They shall take all steps necessary to ensure a satisfactory outcome to the operation, including in particular any supervisory measures they deem appropriate.

Article 6

The operations provided for in this Regulation may also be carried out by direct-agreement procedure. In that case the provisions of Articles 3, 4, and 5 shall apply *mutatis mutandis*.

Article 7

At the end of every week Member States shall notify the Commission of the quantities removed from storage under this Regulation and the quantities supplied to charitable organizations during the previous week.

Article 8

For the purposes of this Regulation, the competent Portuguese authority is the I. R. O. M. A., Rua Padre Antonio Vieira, 1, 1 000 Lisboa.

Article 9

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, 9 February 1987.

For the Commission

Frans ANDRIESEN

Vice-President

ANNEX I

Member State	(in tonnes)	
	Total quantity	
	Common wheat flour	Durum wheat groats and meal
Belgium	3 000	—
Denmark	100	—
Germany	10 000	—
Greece	3 000	436
Spain	1 000	600
France	1 300	2 400
Ireland	1 800	—
Italy	—	972
Luxembourg	25	—
Netherlands	2 000	—
Portugal	1 500	—

*ANNEX II***Locations of intervention stocks available to intervention agencies in other Member States**

(in tonnes)

Member State of destination	Member State of storage	Basic cereal	Storage location	Quantity (for guidance) of processed product
Greece	France	Common wheat	Barcelonne du Gers	3 000
	Italy	Durum wheat	Siracusa	436
Spain	France	Common wheat	Sainte-Christie	1 000
	Italy	Durum wheat	Siracusa	600
Ireland	France	Common wheat	Fiac	1 800
Portugal	France	Common wheat	Sainte-Christie	1 500

*ANNEX III***Minimum details to be given in notices of invitation to tender**

1. Recipient
 2. Delivery point
 3. Product to be taken over
 4. Total quantity/number of lots
 5. Characteristics of processed product to be delivered
 6. Quality of basic cereal to be taken over
 7. Packaging
 - bags
 - sacks
 - bulk
 - quality of sacks
 - net weight of sacks
 8. Final date for the submission of tenders
 9. Delivery period for processed product (latest date 31 March 1987)
 10. Amount of security per tonne.
-

COMMISSION REGULATION (EEC) No 393/87

of 9 February 1987

amending Regulation (EEC) No 1963/79 laying down detailed rules for the application of the production refund on olive oil used in the manufacture of certain preserved foods

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

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by Regulation (EEC) No 1454/86⁽²⁾,

Having regard to Council Regulation (EEC) No 591/79 of 26 March 1979 laying down general rules concerning the production refund for olive oils used in the manufacture of certain preserved foods⁽³⁾, as last amended by Regulation (EEC) No 3788/85⁽⁴⁾, and in particular Article 9 thereof,

Whereas Article 2 (3) of Commission Regulation (EEC) No 1963/79⁽⁵⁾ provides that the request for verification is to be valid only for a manufacturing process to be completed before the end of the third month following that in which the application was submitted; whereas experience has shown that this period is inadequate from a technical point of view for certain processed food manufacturing processes in which olive oil is used not only as a preservative but also as an active ingredient in the preparation of the finished product; whereas, to enable such preserved food also to benefit from the production refund, provision should be made to enable Member States to fix

a period of up to eight months for those products in respect of whose preparation the three month period laid down is inadequate thereof;

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

HAS ADOPTED THIS REGULATION:

Article 1

The following is hereby inserted in Article 2 (3) of Regulation (EEC) No 1963/79 as the second subparagraph:

'However, Member States may provide for a longer period not exceeding eight months where for the purposes of the preserved food manufacturing process it is necessary that the oil remains in contact with the fish or vegetables for a longer period than that provided for in the first subparagraph.'

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, 9 February 1987.

For the Commission

Frans ANDRIESEN

Vice-President

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

⁽²⁾ OJ No L 133, 21. 5. 1986, p. 8.

⁽³⁾ OJ No L 78, 30. 3. 1979, p. 2.

⁽⁴⁾ OJ No L 367, 31. 12. 1985, p. 1.

⁽⁵⁾ OJ No L 227, 7. 9. 1979, p. 10.

COMMISSION REGULATION (EEC) No 394/87
of 9 February 1987
amending Regulation (EEC) No 1767/82 as regards imports of certain cheeses
from Norway

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

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EEC) No 231/87 ⁽²⁾, and in particular Article 14 (7) thereof,

Whereas Annex II to Council Regulation (EEC) No 2915/79 of 18 December 1979 determining the groups of products and the special provisions for calculating levies on milk and milk products and amending Regulation (EEC) No 950/68 of the Common Customs Tariff ⁽³⁾, as last amended by Regulation (EEC) No 169/87 ⁽⁴⁾, establishes the annual tariff quotas for cheeses which may be imported from Norway;

Whereas in accordance with the new arrangements between the Community and the EFTA countries following the accession of Spain and Portugal, the annual tariff quota granted by the Community for cheese originating and coming from Norway was increased as from 1 March 1986; whereas Regulation (EEC) No 2915/79 was amended to take account thereof; whereas Annex I to

Commission Regulation (EEC) No 1767/82 of 1 July 1982 laying down detailed rules for applying specific import levies on certain milk products ⁽⁵⁾, as last amended by Regulation (EEC) No 778/86 ⁽⁶⁾, should therefore be adjusted accordingly;

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

HAS ADOPTED THIS REGULATION:

Article 1

Point (r) in Annex I to Regulation (EEC) No 1767/82 is hereby replaced by the text in 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*.

It shall apply from 1 March 1986.

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

Done at Brussels, 9 February 1987.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 25, 28. 1. 1987, p. 3.

⁽³⁾ OJ No L 329, 24. 12. 1979, p. 1.

⁽⁴⁾ OJ No L 21, 23. 1. 1987, p. 9.

⁽⁵⁾ OJ No L 196, 5. 7. 1982, p. 1.

⁽⁶⁾ OJ No L 73, 18. 3. 1986, p. 21.

ANNEX

'r) ex 04.04 E I b) 2	— Jarlsberg, of a minimum fat content of 45 % by weight, in the dry matter, and of a dry matter, content by weight of not less than 56 %, matured for at least three months : — whole cheeses with rind, of between 8 kg and 12 kg, — rectangular blocks of a net weight not exceeding 7 kg ⁽³⁾, — pieces packed in vacuum or in inert gas, of a net weight of not less than 150 grams but not exceeding 1 kg ⁽³⁾, — Ridder, of a minimum fat content of 60 % by weight, in the dry matter, matured for at least four weeks : — whole cheeses with rind, of between 1 kg and 2 kg, — pieces packed in vacuum or in inert gas, with rind on at least one side, of a net weight of not less than 150 grams ⁽³⁾, originating in Norway, within the limit of an annual tariff quota of : — 1 820 tonnes for 1986, — 1 920 tonnes for 1987, — 2 020 tonnes for 1988.	Norway	55,00
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COMMISSION REGULATION (EEC) No 395/87

of 9 February 1987

on the conclusion of processing contracts in Spain for certain varieties of oranges

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

Having regard to Council Regulation (EEC) No 2601/69 of 18 December 1969 laying down special measures to encourage the processing of certain varieties of oranges ⁽¹⁾, as last amended by Regulation (EEC) No 987/84 ⁽²⁾ and in particular Article 3 (2) thereof,

Whereas Article 7 (1) of Commission Regulation (EEC) No 1562/85 of 7 June 1985 laying down detailed rules for the application of measures to encourage the processing of oranges and the marketing of products processed from lemons ⁽³⁾, as last amended by Regulation (EEC) No 1715/86 ⁽⁴⁾, provides that processing contracts for oranges for industrial use are to be concluded before 20 January;

Whereas by 20 January 1987 Spanish producers and processors had been able to conclude contracts for only 40 % of the quantity of oranges of the 'bianca comune' variety and for only 25 % of the quantity of blood oranges specified in Article 119 (4) of the Act of Accession of Spain and Portugal as the maximum quantities for which aid for processing can be given;

Whereas the Spanish authorities should, as they have requested, be authorized to set a later time limit for the

conclusion of processing contracts for the varieties of oranges in question;

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

HAS ADOPTED THIS REGULATION:

Article 1

Spain is hereby authorized to fix 28 February 1987, for oranges of the 'bianca comune' variety, and 31 March 1987, for blood oranges, as the latest dates for the conclusion of contracts between producers and processors of oranges.

Article 2

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

It shall apply with effect from 21 January 1987.

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

Done at Brussels, 9 February 1987.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 324, 27. 12. 1969, p. 1.

⁽²⁾ OJ No L 103, 16. 4. 1984, p. 10.

⁽³⁾ OJ No L 152, 11. 6. 1985, p. 5.

⁽⁴⁾ OJ No L 149, 3. 6. 1986, p. 19.

COMMISSION REGULATION (EEC) No 396/87

of 9 February 1987

amending Regulation (EEC) No 3024/86 laying down, for the 1986/87 wine year,
detailed implementing rules for distillation as provided for in Article 11 of
Council Regulation (EEC) No 337/79

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

Having regard to Council Regulation (EEC) No 337/79 of
5 February 1979 on the common organization of the
market in wine ⁽¹⁾, as last amended by Regulation (EEC)
No 3805/85 ⁽²⁾, and in particular Article 11 (5) thereof,

Whereas delays in the submission of contracts and of
declarations of delivery for fortification have occurred
because of communication difficulties resulting from
severe weather and disruption of rail services in areas
where production of fortified wines is of importance;
whereas in order to enable the objects of the preventive
distillation operation to be fully attained the latest date for
the submission of contracts given in Article 10 (1) of
Commission Regulation (EEC) No 3024/86 ⁽³⁾, as
amended by Regulation (EEC) No 3253/86 ⁽⁴⁾, should be
put back and so also should the latest date for notification
of the outcome of the approval procedure given in the
same paragraph;

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

HAS ADOPTED THIS REGULATION:

Article 1

In Article 10 (1) of Regulation (EEC) No 3024/86:

- the date of 15 January 1987 in the first subparagraph
is replaced by 15 February 1987,
- the date of 15 February 1987 in the second subpara-
graph is replaced by 16 March 1987.

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, 9 February 1987.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 54, 5. 3. 1979, p. 1.

⁽²⁾ OJ No L 367, 31. 12. 1985, p. 39.

⁽³⁾ OJ No L 281, 2. 10. 1986, p. 8.

⁽⁴⁾ OJ No L 302, 28. 10. 1986, p. 8.

COMMISSION REGULATION (EEC) No 397/87

of 9 February 1987

altering the import levies on products processed from cereals and rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal.

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 1579/86⁽²⁾, and in particular Article 14 (4) thereof,Having regard to Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice⁽³⁾, as last amended by Regulation (EEC) No 1449/86⁽⁴⁾ and in particular Article 12 (4) thereof,Having regard to Council Regulation No 1676/85 of 11 June 1985 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy⁽⁵⁾ and in particular Article 3 thereof,

Having regard to the advice of the Monetary Committee,

Whereas the import levies on products processed from cereals and rice were fixed by Commission Regulation (EEC) No 282/87⁽⁶⁾, as amended by Regulation (EEC) No 325/87⁽⁷⁾;Whereas Council Regulation (EEC) No 1588/86⁽⁸⁾ as amended by Council Regulation (EEC) No 2744/75⁽⁹⁾ as regards products falling within subheading 23.02 A of the Common Customs Tariff;

Whereas, if the levy system is to operate normally, levies should be calculated on the following basis:

— in the case of currencies which are maintained in relation to each other at any given moment within a band

of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Regulation (EEC) No 1676/85,

— for other currencies, an exchange rate based on the arithmetic mean of the spot market rates of each of these currencies recorded over a given period in relation to the Community currencies referred to in the previous indent, and the aforesaid coefficient;

Whereas these exchange rates being those recorded on 6 February 1987;

Whereas the aforesaid corrective factor affects the entire calculation basis for the levies, including the equivalence coefficients;

Whereas the levy on the basic product as last fixed differs from the average levy by more than 3,02 ECU per tonne of basic product; whereas, pursuant to Article 1 of Commission Regulation (EEC) No 1579/74⁽¹⁰⁾ the levies at present in force must therefore be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies to be charged on products processed from cereals and rice covered by Regulation (EEC) No 2744/75, as last amended by Regulation (EEC) No 1588/86, as fixed in the Annex to amended Regulation (EEC) No 282/87 are hereby altered to the amounts set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 10 February 1987.

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

Done at Brussels, 9 February 1987.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 139, 24. 5. 1986, p. 29.

⁽³⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽⁴⁾ OJ No L 133, 21. 5. 1986, p. 1.

⁽⁵⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁶⁾ OJ No L 28, 30. 1. 1987, p. 18.

⁽⁷⁾ OJ No L 30, 31. 1. 1987, p. 84.

⁽⁸⁾ OJ No L 139, 24. 5. 1986, p. 47.

⁽⁹⁾ OJ No L 281, 1. 11. 1975, p. 65.

⁽¹⁰⁾ OJ No L 168, 25. 6. 1974, p. 7.

ANNEX

to the Commission Regulation of 9 February 1987 altering the import levies on products processed from cereals and rice

CCT heading No	Import levies (ECU/tonne)	
	Third countries (other than ACP or OCT)	ACP or OCT
11.01 D ⁽²⁾	290,80	284,76
11.02 A IV ⁽²⁾	290,80	284,76
11.02 B I a) 2 aa)	164,38	161,36
11.02 B I a) 2 bb) ⁽²⁾	287,78	284,76
11.02 B I b) 2 ⁽²⁾	287,78	284,76
11.02 C IV ⁽²⁾	256,14	253,12
11.02 D IV ⁽²⁾	164,38	161,36
11.02 E I a) 2 ⁽²⁾	164,38	161,36
11.02 E I b) 2 ⁽²⁾	322,44	316,40
11.02 F IV ⁽²⁾	290,80	284,76

⁽²⁾ For the purpose of distinguishing between products falling within heading Nos 11.01 and 11.02 and those falling within subheading 23.02 A, products falling within heading Nos 11.01 and 11.02 shall be those meeting the following specifications:

- a starch content (determined by the modified Ewers polarimetric method), referred to dry matter, exceeding 45 % by weight,
 - an ash content, by weight, referred to dry matter (after deduction of any added minerals), not exceeding 1,6 % for rice, 2,5 % for wheat, 3 % for barley, 4 % for buckwheat, 5 % for oats and 2 % for other cereals.
- Germ of cereals, whole, rolled, flaked or ground, falls in all cases within heading No 11.02.

COMMISSION REGULATION (EEC) No 398/87
of 9 February 1987
fixing the import levies on white sugar and raw sugar

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector ⁽¹⁾, as last amended by Regulation (EEC) No 229/87 ⁽²⁾, and in particular Article 16 (8) thereof,

Whereas the import levies on white sugar and raw sugar were fixed by Commission Regulation (EEC) No 2051/86 ⁽³⁾, as last amended by Regulation (EEC) No 388/87 ⁽⁴⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 2051/86 to the infor-

mation known to the Commission that the levies at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION :

Article 1

The import levies referred to in Article 16 (1) of Regulation (EEC) No 1785/81 shall be, in respect of white sugar and standard quality raw sugar, as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 10 February 1987.

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

Done at Brussels, 9 February 1987.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 25, 28. 1. 1987, p. 1.

⁽³⁾ OJ No L 173 1. 7. 1986, p. 91.

⁽⁴⁾ OJ No L 36, 7. 2. 1987, p. 27.

ANNEX

to the Commission Regulation of 9 February 1987 fixing the import levies on white sugar and raw sugar

(ECU/100 kg)		
CCT heading No	Description	Levy
17.01	Beet sugar and cane sugar, in solid form :	
	A. White sugar : flavoured or coloured sugar	51,67
	B. Raw sugar	43,48 ⁽¹⁾

⁽¹⁾ Applicable to raw sugar with a yield of 92 % ; if the yield is other than 92 %, the levy applicable is calculated in accordance with the provisions of Article 2 of Regulation (EEC) No 837/68.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 29 July 1986

on aid proposed by the Rheinland-Pfalz Land Government for a metalworking firm in Betzdorf

(Only the German text is authentic)

(87/98/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having given notice to the parties concerned to submit their comments, in accordance with the above Article, and having regard to those comments,

Whereas :

I

By memorandum dated 11 April 1985 the Government of the Federal Republic of Germany asked the Commission to authorize the award of a capital grant of DM 1 176 750 to a metalworking firm in Betzdorf for an extension investment costing DM 15,69 million, of which the grant would cover 7,5 %. On 14 May 1985 the Commission asked the Federal Government for further information, which it supplied by memorandum dated 21 August 1985. The investment involved plant and machinery for the manufacture of beer kegs, metal filing cabinets and radiators, improvements in the distribution system and an extension of computerization. Altogether, DM 5,72 million of the investment cost was related to building work and DM 9,97 million to plant and machinery. The project would create over 50 permanent jobs.

Although the investment was not being undertaken in an assisted area, either under the Federal/*Land* Government

Joint Programme (*Gemeinschaftsaufgabe*) or under the regional aid scheme, the Rheinland-Pfalz *Land* Government wished to award a capital grant for it because of the above-average unemployment both in Betzdorf (in 1984 unemployment in Betzdorf employment office sub-district had been 8 % above the national average) and in the neighbouring areas of the State (where, in 1983 to 1984, unemployment had averaged 25 % above the national average), and because of the threat to steel industry jobs in the northern part of Altenkirchen district and the Siegerland. The Federal Government considered that the aid was unlikely to have any effect on the common market as only 10 % of the enterprise's output on average was exported.

After a preliminary scrutiny, the Commission was of the opinion that the planned award fell within Article 92 (1) of the Treaty and could not be deemed compatible with the common market under the exception clause of Article 92 (3) (c) because the economic and social situation in Betzdorf employment office sub-district was not so bad that aid could be said to be necessary to attract development, as the exception clause required. This was inferred from an analysis of the figures the Commission had for average unemployment in the Betzdorf employment office sub-district over the five-year period 1980 to 1984, and the changes in the rate of unemployment over the period, the number of people travelling to work at the plant, and travel-to-work patterns in the sub-district generally, and average *per capita* gross value added at factor cost over the years 1980 and 1982 in the labour market region Siegen in which Betzdorf is situated and whose situation was therefore relevant to that in Betzdorf.

Being of the opinion that the planned award did not qualify for application of the exception clause of Article 92 (3) (c), the Commission decided to open the procedure laid down in Article 93 (2). By letter dated 4 October 1985 it asked the Federal Government to submit its observations, and by letters dated 13 December 1985 invited comments from the other Member States.

Comments were also invited from other interested parties by a notice published in the *Official Journal of the European Communities*⁽¹⁾.

II

In its observations, sent by letter dated 5 November 1985 and expanded on, at the Commission's request, by letter dated 7 January 1986, the Federal Government stated that the unemployment rate in Betzdorf was still very high, but that the main reason for the need to provide new jobs in the area was the threat to over 400 steel industry jobs in the Betzdorf employment office sub-district, at Muderbach, only seven kilometres away from Betzdorf. It was feared that, with the steel industry job losses, the unemployment rate in the Betzdorf employment office sub-district would rise to over 20 % above the national average in the next few years.

Moreover, Betzdorf was only a few kilometres outside a Joint Programme assisted area and a large proportion of the firm's workforce came from it, especially from the local authority Altenkirchen.

III

The two other Member States, three trade associations and two individual firms that also made representations under the procedure agreed with the Commission's view of the case.

IV

- (1) The aid proposed by the Rheinland-Pfalz *Land* Government for a metalworking firm in Betzdorf favours the firm by reducing the cost of its investment.

This conclusion is not refuted by the argument that regional aid merely compensates for the disadvantages of the area concerned from the point of view of firms choosing a location for their investment. In the first place, it should be pointed out that even compensation for the disadvantages of an area strictly speaking favours the recipient, since it reduces his costs in that

area. Whether a measure involves aid is to be judged not by the reasons behind it or its objectives but by its effects compared with the situation that originally existed in the common market without the measure. Secondly, in most cases it is doubtful whether the disadvantages of an area can be quantified with sufficient accuracy to fix aid at a level which exactly compensates for them. Above all, however, regional aid is usually set by Member States at so high a level that it provides firms with a positive financial inducement to locate and invest in certain areas. The contention that regional aid favours the recipients is confirmed by the wording of Article 92 itself. Article 92 (3) provides that aid to promote or facilitate the economic development of certain areas may, under certain circumstances, be held compatible with the common market. This shows that such aid falls within Article 92 (1) and that it therefore cannot be argued that regional aid does not favour the recipients as it merely compensates for the disadvantages of the particular location.

The aid in issue in the present case would distort competition because it would calculably improve the recipient's return on its investment, thereby strengthening its financial position compared with competitors who do not receive such assistance. The distortion of competition by aid with a net (i.e. after tax) grant equivalent of 5,09 % would be appreciable. A reduction in the cost of investment by such a margin would give the assisted firm a considerable advantage over its unaided competitors.

Insofar as the aid induces the firm to remain at its present location, this also constitutes a distortion of competition falling within Article 92 (1), for the institution of a system ensuring that competition in the common market is not distorted (Article 3 (f) of the EEC Treaty) implies that firms should be allowed to make up their own mind where to locate and that their choice should therefore not be swayed or guided by financial inducements.

The aid concerned in the present case is also likely to affect trade between Member States because the products for which the firm is investing in manufacturing facilities are traded between Member States and moreover the firm takes part in that trade.

In 1984 intra-Community trade in beer kegs and similar containers made of steel sheet with a capacity of 50 litres or over (NIMEXE code 73.23-10) amounted to 116 720 tonnes, worth 88,436 million ECU. The Federal Republic's share of that trade was 39 %.

(1) OJ No C 338, 31. 12. 1985, p. 5.

In 1984 also, 5 145 tonnes of door or roll-up front filing cabinets and 4 949 tonnes of metal drawer cabinets of 80 cm or more in height (NIMEXE codes 94.03-33 and 94.03-35), worth a total of 28,484 million ECU, were traded between Member States. The Federal Republic's share of the trade was 34 % for door and roll-up front cabinets and 21 % for drawer cabinets.

Trade in cast-iron and steel radiators (NIMEXE code 73.37-59) in 1984 amounted to 139 485 tonnes worth 188,956 million ECU, or 31 % of the value of EEC production.

The Federal Government has also stated that, in 1984, the firm concerned exported 5 % of its output to other Member States and 5 % to countries outside the EEC. A proportion of 5 % of output exported to other Member States cannot be regarded as insignificant. The Commission therefore must repudiate the Federal Government's view that the aid would be unlikely to affect the common market.

In addition, part of the investment is on extending the firm's distribution network in European and other markets and adapting the network to future requirements on European markets through increased computerization. The firm already has sales show-rooms in five Member States outside the Federal Republic.

Finally, the effect of aid on trade between Member States is to be judged not only by its effect on the proportion of a firm's output that is exported, but also by its effect on the firm's sales on the domestic market. If the Member State concerned is involved in intra-Community trade in the products, the firm is also in competition on its domestic market with imports from other Member States, which are likewise affected by the distortion of competition.

The aid proposed by the Rheinland-Pfalz *Land* Government in this case therefore falls within the scope of Article 92 (1).

- (2) As the present case concerns regional aid, it is necessary to consider whether either of the exceptions from the prohibition of State aid provided for in Article 92 (3) (a) and (c) is applicable.

These exceptions may be applied, in particular, only when the Commission is satisfied that market forces alone would be insufficient to guide the recipients

towards behaviour that would serve one of the objectives specified in the exception clauses.

To invoke the exceptions in cases where there is no such causal link would be to allow trading conditions between Member States to be affected and competition to be distorted without any compensating benefit to the Community.

In applying the principles set out above in its scrutiny of regional aid schemes, the Commission must satisfy itself that the regions concerned are suffering from problems which are serious enough, in comparison with the situation in the rest of the Community, to justify the grant of aid at the level proposed. The scrutiny must show that the aid is necessary to achieve objectives specified in Article 92 (3) (a) or (c). Where this cannot be demonstrated, it must be assumed that the aid does not serve the objectives specified in the exception clauses, but does little more than further the private interests of the recipient.

- (3) The exception provided for in Article 92 (3) (a) is applicable to aid which promotes the economic development of areas where the standard of living is abnormally low or where there is serious underemployment.

When the Commission opened the Article 93 (2) procedure against the Tenth General Plan of the Joint Programme, it took the view that the economic and social situation in the Federal Republic, whether nationally or locally, did not justify application of Article 92 (3) (a). The Commission stated this position in the annex to its letter to the Federal Government of 6 November 1981. This view was confirmed by the further study which the Commission carried out before opening the Article 93 (2) procedure against the regional aid schemes of the *Länder* of Baden-Württemberg, Bavaria, Hessen, Lower Saxony, Rheinland-Pfalz and Schleswig-Holstein, and was restated in the annex to the Commission's letter to the Federal Government of 10 August 1984. The Commission would refer to both these statements.

The Commission's latest review of the situation confirms its impression that neither in the Federal Republic as a whole nor in the particular area concerned by this Decision is the standard of living abnormally low or is there serious underemployment. In Rheinland-Pfalz, where the proposed aid award is to be made, *per capita* GDP in 1983 was 7 % above the Community average and unemployment in 1985 39 % below the Community average.

- (4) The exception provided for in Article 92 (3) (c) is applicable to aid which facilitates the development of certain economic areas, but which does not adversely affect trading conditions to an extent contrary to the common interest.

The only circumstances in which the effect on trading conditions caused by regional aid can be regarded as not against the common interest for the purposes of Article 92 (3) (c) are where it can be shown that the aided region suffers from difficulties that, as well as being above average nationally, are also relatively severe by Community standards, that without the aid market forces would not eliminate these difficulties, that the level of the aid is in proportion to the difficulties, and that the grant of aid does not unduly distort competition within the common market in particular sectors.

To ensure that its Community-related assessment is systematic and objective, the Commission has developed a method of determining, for a given Member State, general threshold levels of structural unemployment and *per capita* gross domestic product from which regional aid can be deemed acceptable.

These thresholds are regularly reviewed in the light of the latest figures. The current thresholds from which regions in the Federal Republic are considered in principle to be eligible for aid are a level of *per capita* gross domestic product or gross value added at factor cost of less than 76 % of the national average or an average unemployment rate over five years of more than 145 % of the national average. The Federal Government was informed of these thresholds in a letter sent to the Federal Economics Minister dated 31 July 1985. The Federal Government noted the current thresholds in a memorandum to the Commission dated 22 January 1986. When the Commission opened the Article 93 (2) procedure in the present case, it took the figure of *per capita* gross value added at factor cost for the labour market region Siegen, to which Betzdorf sub-district belongs, namely 95 % of the national average, as indicative of the situation in Betzdorf. The German Government did not challenge this. The average unemployment rate in Betzdorf sub-district over the period 1981 to 1985 was only 108 % of the national average.

On the basis of the thresholds, then, regional aid in Betzdorf employment office sub-district would not be

compatible with the common market. The result obtained from applying the thresholds is taken only as a *prima facie* presumption, however, which may be revised in a second stage of the assessment procedure if other indicators of the present situation or future trends point to the opposite conclusion.

- (5) In stage two of its scrutiny, the Commission went on to check the results of the economic and social analysis that it had carried out before opening the Article 93 (2) procedure (and to which it would refer here) against the latest unemployment figures and in the light of the arguments put forward in the Federal Government's reply to the opening of the procedure. The outcome was as follows:

- The unemployment rate in Betzdorf sub-district is not very high, but over the five years 1981 to 1985 its reading on the national unemployment index (Germany = 100) averaged, as already stated, only 108. Moreover, after 1983, the reading fell by 16 percentage points, more than compensating for an eight-point rise between 1981 and 1983. By May 1986 it had further improved to stand at only 89.
- The Federal Government has stated that over 400 jobs are threatened in the Niederschelden steel works at Mundersbach. Should these job losses occur, the regional labour market should be able to absorb them — just as it did the 364 earlier redundancies at the same works between 1981 and 1985 — without major problems. Even on the worst-case assumption of 400 workers being made redundant at once, all registering as unemployed and no alternative jobs at all being available, the unemployment rate in Betzdorf sub-district would only rise to 117 on the national index. Hence, no serious regional problems are likely.
- Finally, the argument that a large proportion of the workforce of the firm comes from neighbouring assisted areas can be discounted. The Federal Government has now stated that in fact only two employees come from Altenkirchen and only 6 % of the workforce from Joint Programme assisted areas at all.

Even on closer scrutiny, therefore, the social and economic difficulties of Betzdorf employment office sub-district cannot be said to be severe by Community standards. The effect on trading conditions caused by the proposed aid would therefore be against the common interest,

HAS ADOPTED THIS DECISION :

Article 1

The aid of DM 1 176 750 proposed by the Rheinland-Pfalz *Land* Government for a metalworking firm at Betzdorf, of which the Government of the Federal Republic of Germany informed the Commission on 11 April 1985, is incompatible with the common market under Article 92 (1) of the EEC Treaty. It may not therefore be granted.

Article 2

The Federal Republic of Germany shall inform the Commission, within two months from the date of notifi-

cation of this Decision, of the measures it has taken to comply therewith.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 29 July 1986.

For the Commission

Peter SUTHERLAND

Member of the Commission

COMMISSION DECISION

of 29 July 1986

on aid proposed by the Rheinland-Pfalz *Land* Government for a fibre processing firm in Scheuerfeld

(Only the German text is authentic)

(87/99/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having given notice to the parties concerned to submit their comments, in accordance with the above Article, and having regard to those comments,

Whereas :

I

By memorandum dated 29 May 1985 the Government of the Federal Republic of Germany asked the Commission to authorize the award of a capital grant of DM 1 170 000 to a fibre-processing firm in Scheuerfeld for an extension investment costing DM 15,6 million, of which the grant would cover 7,5 %. On 28 June 1985 the Commission asked the Federal Government for further information, which it supplied by memorandum dated 31 October 1985. The investment involved plant and machinery for the manufacture of coated wood fibre and hard fibre mouldings for the interior trim of motor vehicles. The project would create 50 permanent jobs.

Although the investment was not being undertaken in an assisted area, either under the Federal/*Land* Government Joint Programme (*'Gemeinschaftsaufgabe'*) or under the regional aid scheme, the Rheinland-Pfalz Government wished to award a capital grant for it because of

- the above-average unemployment (in 1984, 8 % above the national average) and the threat to steel industry jobs in Betzdorf employment office sub-district, of which Scheuerfeld is part,
- the above-average unemployment in the Altenkirchen employment office sub-district which is only 5 km away and lies in a Joint Programme assisted area (in 1983 to 1984) unemployment there had averaged 40,1 % above the national average),
- threatened steel industry redundancies in another neighbouring employment office sub-district, Wissen, and in the Siegerland.

After a preliminary scrutiny, the Commission was of the opinion that the planned award fell within Article 92 (1) of the Treaty and could not be deemed compatible with

the common market under the exception clause of Article 92 (3) (c) because the economic and social situation in Betzdorf employment office sub-district was not so bad that aid could be said to be necessary to attract development, as the exception clause required. This was inferred from an analysis of the figures the Commission had for average unemployment in the Betzdorf employment office sub-district over the five-year period 1980 to 1984 and in September 1985, and the changes in the rate of unemployment over the period, the number of people travelling to work at the plant and travel-to-work patterns in the sub-district generally, average *per capita* gross value added at factor cost over the years 1980 and 1982 in the labour market region Siegen in which Betzdorf is situated, and whose situation was therefore relevant to that in Betzdorf, and average gross pay levels in manufacturing industry for 1983 in Betzdorf sub-district.

Being of the opinion that the planned award did not qualify for application of the exception clause of Article 92 (3) (c), the Commission decided to open the procedure laid down in Article 93 (2). By letter dated 6 December 1985 it asked the Federal Government to submit its observations, and by letters dated 7 February 1986 invited comments from the other Member States. Comments were also invited from other interested parties by a notice published in the *Official Journal of the European Communities*⁽¹⁾.

II

In its observations sent by letter dated 7 January 1986, the Federal Government stated that the unemployment rate in Betzdorf was still very high, but that the main reason for the need to provide new jobs in the area was the threat to over 400 steel industry jobs in the Betzdorf employment office sub-district at Mundersbach which was only seven kilometres away from Betzdorf, and to jobs in the steel works at Wissen only 10 kilometres away. It was feared that, with the steel industry job losses, the unemployment rate in the Betzdorf employment office sub-district would rise to over 20 % above the national average in the next few years.

⁽¹⁾ OJ No C 34, 14. 2. 1986, p. 2.

Moreover, Betzdorf was only a few kilometres outside a Joint Programme assisted area and a large proportion of the firm's workforce came from it, especially from the local authority Altenkirchen.

III

The two other Member States and one individual firm that also made representations under the procedure agreed with the Commission's view of the case.

IV

- (1) The aid proposed by the Rheinland-Pfalz *Land* Government for a fibre processing firm in Scheuerfeld favours the firm by reducing the cost of its investment.

This conclusion is not refuted by the argument that regional aid merely compensates for the disadvantages of the area concerned from the point of view of firms choosing a location for their investment. In the first place, it should be pointed out that even compensation for the disadvantages of an area strictly speaking favours the recipient, since it reduces his costs in that area. Whether a measure involves aid is to be judged not by the reasons behind it or its objectives but by its effects compared with the situation that originally existed in the common market without the measure. Secondly, in most cases it is doubtful whether the disadvantages of an area can be quantified with sufficient accuracy to fix aid at a level which exactly compensates for them. Above all, however, regional aid is usually set by Member States at so high a level that it provides firms with a positive financial inducement to locate and invest in certain areas. The contention that regional aid favours the recipients is confirmed by the wording of Article 92 itself. Article 92 (3) provides that aid to promote or facilitate the economic development of certain areas may under certain circumstances be held compatible with the common market. This shows that such aid falls within Article 92 (1) and that it cannot be argued that regional aid does not favour the recipients as it merely compensates for the disadvantages of the particular location.

The aid in issue in the present case would distort competition because it would calculably improve the recipient's return on its investment, thereby strengthening its financial position compared with competitors who do not receive such assistance. The distortion of competition by aid with a net (i.e. after tax) grant equivalent of 4,4 % would be appreciable. A reduction in the cost of investment by such a margin

would give the assisted firm a considerable advantage over its unaided competitors.

Insofar as the aid induces the firm to remain at its present location, this also constitutes a distortion of competition falling within Article 92 (1), for the institution of a system ensuring that competition in the common market is not distorted (Article 3 (f) of the EEC Treaty) implies that firms should be allowed to make up their own mind where to locate and that their choice should therefore not be swayed or guided by financial inducements.

The aid concerned in the present case is also likely to affect trade between Member States because the products concerned are traded between Member States and moreover the aided firm takes part in that trade.

In 1984 intra-Community trade in mouldings made of wood fibre or other vegetable fibres (NIMEXE code 44.11-20) amounted to 47 347 tonnes, worth 25,353 million ECU. The Federal Republic's share of that trade was 72,4 %.

The Federal Government has also stated that, in 1984, the firm concerned exported 22 % of its output to other Member States of the then Community and a further 12 % to Spain.

Finally, the effect of aid on trade between Member States is to be judged not only by its effect on the proportion of a firm's output that is exported, but also by its effect on the firm's sales on the domestic market. If the Member State concerned is involved in intra-Community trade in the products, the firm is also in competition on its domestic market with imports from other Member States, which are likewise affected by the distortion of competition.

The aid proposed by the Rheinland-Pfalz *Land* Government in this case therefore falls within the scope of Article 92 (1).

- (2) As the present case concerns regional aid, it is necessary to consider whether either of the exceptions from the prohibition of State aid provided for in Article 92 (3) (a) and (c) is applicable. These exceptions may be applied, in particular, only when the Commission is satisfied that market forces alone would be insufficient to guide the recipients towards behaviour that would serve one of the objectives specified in the exception clauses.

To invoke the exceptions in cases where there is no such clausal link would be to allow trading conditions between Member States to be affected and competition to be distorted without any compensating benefit to the Community.

In applying the principles set out above in its scrutiny of regional aid schemes, the Commission must satisfy itself that the regions concerned are suffering from problems which are serious enough, in comparison with the situation in the rest of the Community, to justify the grant of aid at the level proposed. The scrutiny must show that the aid is necessary to achieve objectives specified in Article 92 (3) (a) or (c). Where this cannot be demonstrated, it must be assumed that the aid does not serve the objectives specified in the exception clauses, but does little more than further the private interests of the recipient.

- (3) The exception provided for in Article 92 (3) (a) is applicable to aid which promotes the economic development of areas where the standard of living is abnormally low or where there is serious underemployment.

When the Commission opened the Article 93 (2) procedure against the Tenth General Plan of the Joint Programme, it took the view that the economic and social situation in the Federal Republic, whether nationally or locally, did not justify application of Article 92 (3) (a). The Commission stated this position in the annex to its letter to the Federal Government of 6 November 1981. This view was confirmed by the further study which the Commission carried out before opening the Article 93 (2) procedure against the regional aid schemes of the *Länder* Baden-Württemberg, Bavaria, Hessen, Lower Saxony, Rheinland-Pfalz and Schleswig-Holstein, and was restated in the annex to the Commission's letter to the Federal Government of 10 August 1984. The Commission would refer to both these statements.

The Commission's latest review of the situation confirms its impression that neither in the Federal Republic as a whole nor in the particular area concerned by this Decision is the standard of living abnormally low or is there serious underemployment. In Rheinland-Pfalz, where the proposed aid award is to be made, *per capita* GDP in 1983 was 7 % above the Community average and unemployment in 1985 39 % below the Community average.

- (4) The exception provided for in Article 92 (3) (c) is applicable to aid which facilitates the development of certain economic areas, but which does not adversely affect trading conditions to an extent contrary to the common interest.

The only circumstances in which the effect on trading conditions caused by regional aid can be regarded as not against the common interest for the purposes of Article 92 (3) (c) are where it can be shown that the

aided region suffers from difficulties that, as well as being above average nationally, are also relatively severe by Community standards, that without the aid market forces would not eliminate these difficulties, that the level of the aid is in proportion to the difficulties, and that the grant of aid does not unduly distort competition within the common market in particular sectors.

To ensure that its Community-related assessment is systematic and objective, the Commission has developed a method of determining, for a given Member State, general threshold levels of structural unemployment and *per capita* gross domestic product from which regional aid can be deemed acceptable.

These thresholds are regularly reviewed in the light of the latest figures. The current thresholds from which regions in the Federal Republic are considered in principle to be eligible for aid are a level of *per capita* gross domestic product or gross value added at factor cost of less than 76 % of the national average or an average unemployment rate over five years of more than 145 % of the national average. The Federal Government was informed of these thresholds in a letter sent to the Federal Economics Minister dated 31 July 1985. The Federal Government noted the current thresholds in a memorandum to the Commission dated 22 January 1986. When the Commission opened the Article 93 (2) procedure in the present case, it took the figure of *per capita* gross value added at factor cost for the Labour market region Siegen, to which Betzdorf sub-district belongs, namely 95 % of the national average, as indicative of the situation in Betzdorf. The German Government did not challenge this. The average unemployment rate in Betzdorf sub-district over the period 1981 to 1985 was only 108 % of the national average.

On the basis of the thresholds, then, regional aid in Betzdorf employment office sub-district would not be compatible with the common market. The result obtained from applying the thresholds is taken only as a *prima facie* presumption, however, which may be revised in a second stage of the assessment procedure if other indicators of the present situation or future trends point to the opposite conclusion.

- (5) In stage two of its scrutiny, the Commission went on to check the results of the economic and social analysis that it had carried out before opening the Article 93 (2) procedure (and to which it would refer here) against the latest unemployment figures and in the light of the arguments put forward in the Federal Government's reply to the opening of the procedure. The outcome was as follows:

- The unemployment rate in Betzdorf sub-district is not very high, but over the five years 1981 to 1985 its reading on the national unemployment index (Germany = 100) averaged, as already stated, only 108. Moreover, after 1983, the reading fell by 16 percentage points, more than compensating for an eight-point rise between 1981 and 1983. By May 1986 it had further improved to stand at only 89.
- The Federal Government has stated that over 400 jobs are threatened in the Niederschelden steel works at Mudersbach. Should these job losses occur, the regional labour market should be able to absorb them — just as it did the 364 earlier redundancies at the same works between 1981 and 1985 — without major problems. Even on the worst-case assumption of 400 workers being made redundant at once, all registering as unemployed and no alternative jobs at all being available, the unemployment rate in Betzdorf sub-district would only rise to 117 on the national index. Hence, no serious regional problems are likely.
- Nor do the possible steel industry redundancies — which the Federal Government has not quantified — in the neighbouring employment office sub-district of Wissen necessarily make serious regional problems likely in Betzdorf sub-district. In May 1986 unemployment in Wissen sub-district was, at 94 on the national index, below the national average.
- Finally, the aid cannot be authorized because of the above-average unemployment of 140,1 on the national index in 1983 to 1984 in Altenkirchen sub-district, where a large proportion of the workforce of the firm lives. The average unemployment reading in Altenkirchen over the five-year period 1981 to 1985 was only 128 and after 1983 the reading fell by 34 points.

Even on closer scrutiny, therefore, the social and economic difficulties of Betzdorf employment office

sub-district cannot be said to be severe by Community standards. The effect on trading conditions caused by the proposed aid would therefore be against the common interest,

HAS ADOPTED THIS DECISION:

Article 1

The aid of DM 1 170 000 proposed by the Rheinland-Pfalz *Land* Government for a fibre processing firm at Scheuerfeld, of which the Government of the Federal Republic of Germany informed the Commission on 29 May 1985, is incompatible with the common market under Article 92 (1) of the EEC Treaty. It may not therefore be granted.

Article 2

The Federal Republic of Germany shall inform the Commission, within two months from the date of notification of this Decision, of the measures it has taken to comply therewith.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 29 July 1986.

For the Commission

Peter SUTHERLAND

Member of the Commission

CORRIGENDA

Corrigendum to Commission Regulation (EEC) No 366/87 of 5 February 1987 introducing a countervailing charge and suspending the preferential customs duty on imports of lemons originating in Turkey

(Official Journal of the European Communities No L 35 of 6 February 1987)

On page 13 the following paragraph is added to Article 1 :

'The rate of customs duty on imports of these products shall be 4 %.'

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