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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 2968/89

of 2 October 1989

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 2860/89⁽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⁾, as last amended by Regulation (EEC) No 1636/87⁽⁴⁾, 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 1915/89⁽⁵⁾ 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 29 September 1989;

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 1915/89 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 3 October 1989.

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 274, 23. 9. 1989, p. 41.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 153, 13. 6. 1987, p. 1.

⁽⁵⁾ OJ No L 187, 1. 7. 1989, p. 1.

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

Done at Brussels, 2 October 1989.

For the Commission
Ray MAC SHARRY
Member of the Commission

ANNEX

to the Commission Regulation of 2 October 1989 fixing the import levies on cereals and on wheat or rye flour, groats and meal

CN code	Levies	
	Portugal	Third country
0709 90 60	18,08	124,41
0712 90 19	18,08	124,41
1001 10 10	19,31	163,67 ⁽¹⁾ ⁽²⁾
1001 10 90	19,31	163,67 ⁽¹⁾ ⁽²⁾
1001 90 91	17,69	111,45
1001 90 99	17,69	111,45
1002 00 00	45,45	118,36 ⁽³⁾
1003 00 10	36,12	114,33
1003 00 90	36,12	114,33
1004 00 10	27,52	105,73
1004 00 90	27,52	105,73
1005 10 90	18,08	124,41 ⁽²⁾ ⁽³⁾
1005 90 00	18,08	124,41 ⁽²⁾ ⁽³⁾
1007 00 90	36,12	127,95 ⁽⁴⁾
1008 10 00	36,12	0,00
1008 20 00	36,12	78,08 ⁽⁵⁾
1008 30 00	36,12	0,00 ⁽⁶⁾
1008 90 10	⁽⁷⁾	⁽⁷⁾
1008 90 90	36,12	0,00
1101 00 00	38,21	170,38
1102 10 00	77,07	179,14
1103 11 10	44,41	268,17
1103 11 90	40,80	183,54

⁽¹⁾ Where durum wheat originating in Morocco is transported directly from that country to the Community, the levy is reduced by ECU 0,60/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 ECU 1,81/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 ECU 0,60/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 (OJ No L 142, 9. 6. 1977, p. 10) and Commission Regulation (EEC) No 2622/71 (OJ No L 271, 10. 12. 1971, p. 22).

⁽⁷⁾ The levy applicable to rye shall be charged on imports of the product falling within CN code 1008 90 10 (triticale).

COMMISSION REGULATION (EEC) No 2969/89

of 2 October 1989

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 2860/89⁽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⁾, as last amended by Regulation (EEC) No 1636/87⁽⁴⁾, 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 1916/89⁽⁵⁾ 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 29 September 1989;

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 coming from 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 coming from third countries shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 3 October 1989.

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

Done at Brussels, 2 October 1989.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 274, 23. 9. 1989, p. 41.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 153, 13. 6. 1987, p. 1.

⁽⁵⁾ OJ No L 187, 1. 7. 1989, p. 4.

ANNEX

to the Commission Regulation of 2 October 1989 fixing the premiums to be added to the import levies on cereals, flour and malt

A. Cereals and flour

CN code	(ECU/tonne)			
	Current 10	1st period 11	2nd period 12	3rd period 1
0709 90 60	0	0	0	0
0712 90 19	0	0	0	0
1001 10 10	0	0	0	0
1001 10 90	0	0	0	0
1001 90 91	0	0	0	0
1001 90 99	0	0	0	0
1002 00 00	0	0	0	0
1003 00 10	0	0	0	0
1003 00 90	0	0	0	0
1004 00 10	0	0	0	0,81
1004 00 90	0	0	0	0,81
1005 10 90	0	0	0	0
1005 90 00	0	0	0	0
1007 00 90	0	0	0	0
1008 10 00	0	0	0	0
1008 20 00	0	4,07	4,07	4,07
1008 30 00	0	0	0	0
1008 90 90	0	0	0	0
1101 00 00	0	0	0	0

B. Malt

CN code	(ECU/tonne)				
	Current 10	1st period 11	2nd period 12	3rd period 1	4th period 2
1107 10 11	0	0	0	0	0
1107 10 19	0	0	0	0	0
1107 10 91	0	0	0	0	0
1107 10 99	0	0	0	0	0
1107 20 00	0	0	0	0	0

COMMISSION REGULATION (EEC) No 2970/89

of 2 October 1989

fixing the maximum buying-in price and the quantities of beef bought in for the eighth partial invitation to tender under Regulation (EEC) No 1627/89

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal⁽¹⁾, as last amended by Regulation (EEC) No 571/89⁽²⁾, and in particular Article 6 (7) thereof,Whereas, pursuant to Commission Regulation (EEC) No 859/89 of 29 March 1989 laying down detailed rules for the application of intervention measures in the beef and veal sector⁽³⁾, an invitation to tender was opened by Commission Regulation (EEC) No 1627/89 of 9 June 1989 on the buying-in of beef by invitation to tender⁽⁴⁾, as last amended by Regulation (EEC) No 2803/89⁽⁵⁾;

Whereas, in accordance with Article 11 (1) of Regulation (EEC) No 859/89, a maximum buying-in price is to be fixed for quality R3, where appropriate, for each partial invitation to tender in the light of the tenders received; whereas, in accordance with Article 12 of that Regulation, only tenders lower than or equal to the maximum price are to be accepted;

Whereas, after the tenders submitted for the eighth partial invitation to tender have been examined and taking account, pursuant to Article 6 (1) of Regulation (EEC) No 805/68, of the requirements for reasonable support of the market and the seasonal trend in slaughterings, the maximum buying-in price and the quantities which may be accepted into intervention should be fixed;

Whereas quantities offered currently exceed those which may be bought in; whereas a reduction coefficient should accordingly be applied, in accordance with Article 11 (3)

of Regulation (EEC) No 859/89, to the quantities which may be bought in;

Whereas the Management Committee for Beef and Veal has not delivered an opinion in the time limit set by its Chairman,

HAS ADOPTED THIS REGULATION:

Article 1

For the eighth partial invitation to tender opened by Regulation (EEC) No 1627/89:

(a) For category A:

- the maximum buying-in price is hereby fixed at ECU 279 per 100 kilograms of carcasses or half-carcasses of quality R3,
- the maximum quantity of carcasses or half-carcasses accepted is hereby fixed at 4 208 tonnes; the quantities offered are hereby reduced by 50 % pursuant to Article 11 (3) of Regulation (EEC) No 859/89;

(b) For category C:

- the maximum buying-in price is hereby fixed at ECU 279 per 100 kilograms of carcasses or half-carcasses of quality R3,
- the maximum quantity accepted is hereby fixed at 3 935 tonnes; the quantities offered are hereby reduced by 15 % pursuant to Article 11 (3) of Regulation (EEC) No 859/89.

Article 2

This Regulation shall enter into force on 3 October 1989.

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

Done at Brussels, 2 October 1989.

For the Commission

Ray MAC SHARRY

Member of the Commission⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 24.⁽²⁾ OJ No L 61, 4. 3. 1989, p. 43.⁽³⁾ OJ No L 91, 4. 4. 1989, p. 5.⁽⁴⁾ OJ No L 159, 10. 6. 1989, p. 36.⁽⁵⁾ OJ No L 270, 19. 9. 1989, p. 6.

COMMISSION REGULATION (EEC) No 2971/89
of 29 September 1989
concerning the stopping of fishing for horse mackerel by vessels flying the flag
of a Member State

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

Having regard to Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities ⁽¹⁾, as last amended by Regulation (EEC) No 3483/88 ⁽²⁾, and in particular Article 11 (3) thereof,

Whereas Council Regulation (EEC) No 4194/88 of 21 December 1988 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1989 and certain conditions under which they may be fished ⁽³⁾, as last amended by Regulation (EEC) No 2278/89 ⁽⁴⁾, provides for horse mackerel total allowable catches for 1989;

Whereas, in order to ensure compliance with the provisions relating to the quantitative limitations on catches of stocks subject to total allowable catches, it is necessary for the Commission to fix the date by which catches made by vessels flying the flag of a Member State are deemed to have exhausted the total allowable catches;

Whereas, according to the information communicated to the Commission, catches of horse mackerel in the waters of ICES divisions II a (EC zone), and IV (EC zone) by vessels flying the flag of a Member State or registered in

a Member State have reached the total allowable catches for 1989,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of horse mackerel in the waters of ICES divisions II a (EC zone) and IV (EC zone) by vessels flying the flag of a Member State or registered in a Member State are deemed to have exhausted the total allowable catches for 1989.

Fishing for horse mackerel in the waters of ICES divisions II a (EC zone) and IV (EC zone) by vessels flying the flag of a Member State or registered in a Member State is prohibited, as well as the retention on board, the transhipment and the landing of such stock captured by the abovementioned vessels after the date of entry into force of this Regulation.

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, 29 September 1989.

For the Commission
Manuel MARÍN
Vice-President

⁽¹⁾ OJ No L 207, 29. 7. 1987, p. 1.

⁽²⁾ OJ No L 306, 11. 11. 1988, p. 2.

⁽³⁾ OJ No L 369, 31. 12. 1988, p. 3.

⁽⁴⁾ OJ No L 218, 28. 7. 1989, p. 5.

COMMISSION REGULATION (EEC) No 2972/89**of 29 September 1989****on the sale, under the procedure laid down in Regulation (EEC) No 3143/85, of
butter held by certain intervention agencies and intended for direct
consumption in the form of concentrated butter**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products⁽¹⁾, as last amended by Regulation (EEC) No 763/89⁽²⁾, and in particular Article 6 (7) thereof,

Whereas Article 2a of Commission Regulation (EEC) No 3143/85 of 11 November 1985 on the sale at reduced prices of intervention butter intended for direct consumption in the form of concentrated butter⁽³⁾, as last amended by Regulation (EEC) No 2690/89⁽⁴⁾, introduces the option of selling intervention butter in two stages, firstly by tendering and secondly at prices fixed at a standard rate in advance;

Whereas in view of the current butter stock situation it is possible to offer butter for sale in accordance with the conditions laid down in the Annexes to this Regulation;

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

1. The following quantities of intervention butter intended for direct consumption in the form of concentrated butter shall be put up for sale in two stages pursuant to Article 2a of Regulation (EEC) No 3143/85:

- 400 tonnes held by the Spanish intervention agency and taken into storage before 1 June 1987,
- 500 tonnes held by the Irish intervention agency and taken into storage before 1 June 1987,
- 500 tonnes held by the United Kingdom intervention agency and taken into storage before 1 June 1987.

2. The intervention agencies referred to in paragraph 1 shall sell first the butter which has been stored the longest.

3. The sales shall be conducted in accordance with the provisions of Regulation (EEC) No 3143/85 and this Regulation.

4. The minimum prices referred to in Article 2a (3) of Regulation (EEC) No 3143/85 are given in Annex I hereto.

5. Only those tenders which reach the intervention agencies concerned not later than 12 noon on 9 October 1989 and those applications for purchase submitted from the fifth working day following the above deadline shall be taken into consideration.

6. Particulars relating to the quantities and the places where the products are stored may be obtained from the addresses given in Annex II.

Article 2

1. Tenders, which shall be in writing, shall be submitted either by registered post or delivered by hand to the intervention agency against acknowledgement of receipt, or by any written means of telecommunication.

2. Tenders shall state:

- (a) the name and address of the tenderer;
- (b) the price offered per 100 kilograms of butter having the fat content required, exclusive of internal taxes, ex coldstore, expressed in the currency of the Member State on whose territory the butter is stored;
- (c) the quantity of butter applied for, stating its fat content;
- (d) the establishment where the total quantity of butter is to be concentrated and packed in accordance with Articles 4 and 5 of Regulation (EEC) No 3143/85 and, where appropriate, the establishment where the total quantity of concentrated butter is to be packed for marketing. However, with the agreement of the competent agency, the total quantity of concentrated butter may be packed for marketing in an establishment other than that indicated in the tender;
- (e) where appropriate, the Member State on whose territory the butter is to be processed into concentrated butter and tracers are to be added.

3. A tender shall not be valid unless:

- (a) it is accompanied by a written undertaking to use in accordance with Regulation (EEC) No 3143/88 the quantity of butter stipulated in the tender for processing into concentrated butter;

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 84, 29. 3. 1989, p. 1.

⁽³⁾ OJ No L 299, 12. 11. 1985, p. 9.

⁽⁴⁾ OJ No L 261, 7. 9. 1989, p. 6.

- (b) it relates only to butter having the same fat content ;
- (c) it relates to a quantity of at least one tonne. However, if the butter has to be allocated proportionally and the quantity obtained by the tenderer is less than one tonne, the quantity obtained shall constitute the minimum quantity for tender ;
- (d) proof is furnished that, before expiry of the period set for the submission of tenders, the tenderer has lodged the tendering security referred to in Article 3 (1).

4. No tender may be withdrawn after the closing date specified in Article 1 (5).

Article 3

1. For the purposes of this Regulation, maintenance of the tender after the closing date for the submission of tenders, payment of the price and lodging of the destination security referred to in Article 2a (5) of Regulation (EEC) No 3143/88 shall constitute primary requirements compliance with which shall be ensured by the lodging of a tendering security of ECU 150 per tonne.

2. Tendering securities shall be lodged in the Member State in which the tender is submitted.

However, if tender states, in accordance with Article 2 (2), that the manufacture of the concentrated butter and the addition of tracers provided for in Article 5 (2) of Regulation (EEC) No 3143/85 are effected in a Member State other than the Member State in which the offer has been lodged, the tendering security may be lodged with the competent authority designated by the Member State where the processing will take place and which shall issue to the tenderer the proof referred to in Article 2 (3) (d).

Article 4

1. Tenders shall be rejected if the price offered is lower than the minimum price fixed for the tendering procedure.

2. Rights and obligations arising in connection with the invitation to tender shall not be transferable.

Article 5

1. Each tenderer shall be notified by the intervention agency of the result of his participation in the tendering procedure within the time limit referred to in the fourth subparagraph of Article 2a (3) of Regulation (EEC) No 3143/85.

2. Where the tenderer has been declared successful such notification shall indicate :

- (a) the quantity of butter sold ;
- (b) the sum of the destination security ;
- (c) the final date for processing into concentrated butter of the quantity of butter contained in the tender and for its packing.

Article 6

1. The successful tenderer shall, before the removal of the butter and within the time limit of 15 days specified

in Article 2a (6) of Regulation (EEC) No 3143/85, pay the intervention agency an amount corresponding to his tender for each quantity which he intends to remove from store.

2. Except in cases of *force majeure*, if the successful tenderer has not made the payment within the specified period the tendering security referred to in Article 3 shall be forfeited and the sale shall be cancelled in respect of the remaining quantities.

Article 7

1. When the amount referred to in Article 6 (1) has been paid and the destination security has been lodged, the intervention agency shall issue a removal warrant indicating :

- (a) the quantity in respect of which the conditions referred to above have been satisfied and the tender, identified by a serial number, to which it relates ;
- (b) the coldstore where it is stored ;
- (c) the final date for removing the butter ;
- (d) the final date for processing and packing.

2. If the payment referred to in Article 6 (1) has been made without removal of the butter having been effected within the period referred to above, the successful tenderer shall bear the cost and risk of storing the butter with effect from the day following that referred to in paragraph 1 (c). Removal may be effected by instalments.

3. The butter shall be handed over by the intervention agency in packages bearing, in clear and legible print, the statement referred to in Article 3 (2) of Regulation (EEC) No 3143/85.

The butter shall remain in its original packaging until the start of the processing operations in accordance with Article 4 of that Regulation.

Article 8

1. The applications to purchase referred to in Article 1 (5) shall be, *mutatis mutandis*, submitted and admissible under the conditions laid down in Article 2 (1), (2) (a), (c), (d) and (3) (a), (b) and (c).

2. The contract shall be concluded under the conditions referred to in Article 2 (4) of Regulation (EEC) No 3143/85.

Article 9

The destination security referred to in Article 3 (1) shall be ECU 200 per 100 kilograms.

Article 10

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, 29 September 1989.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX I

Member State	Product (%)	Quantity (tonnes)	Minimum price expressed in ECU per 100 kg
Spain	Butter ≥ 82	400	150
Ireland	Butter ≥ 80	500	150
United Kingdom	Butter ≥ 80	500	150

ANNEX II

Addresses of the intervention agencies

- Servicio Nacional de Productos Agrarios (SENPA),
Calle Beneficencia 8, E-28004 Madrid;
telephone: (341)522 29 61
telex: 41818 SENPA E
telefax: 521 98 32.
- Department of Agriculture and Food, Dairying (Trade) Division,
Agriculture House,
Kildare Street,
IRL-Dublin 2;
telephone: (35 31) 78 90 11,
telex: 93 607 agri-ei,
telefax: 616 263.
- Internal Market Division,
Intervention Board for Agricultural Produce,
Fountain House,
2 Queens Walk,
UK-Reading, Berks RG1 7QW
telephone: (44) 734-58 36 26,
telex: 848302.

COMMISSION REGULATION (EEC) No 2973/89

of 2 October 1989

on the supply of various lots of white sugar as food aid

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

Having regard to Council Regulation (EEC) No 3972/86 of 22 December 1986 on food-aid policy and food-aid management⁽¹⁾, as last amended by Regulation (EEC) No 1750/89⁽²⁾, and in particular Article 6 (1) (c) thereof,

Whereas Council Regulation (EEC) No 1420/87 of 21 May 1987 laying down implementing rules for Regulation (EEC) No 3972/86 on food-aid policy and food-aid management⁽³⁾ lays down the list of countries and organizations eligible for food-aid operations and specifies the general criteria on the transport of food aid beyond the fob stage;

Whereas following the taking of a number of decisions on the allocation of food aid the Commission has allocated to certain countries and beneficiary organizations 1 355 tonnes of sugar;

Whereas it is necessary to provide for the carrying-out of this measure in accordance with the rules laid down by

Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community food aid⁽⁴⁾; whereas it is necessary to specify the time limits and conditions of supply and the procedure to be followed to determine the resultant costs,

HAS ADOPTED THIS REGULATION:

Article 1

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

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, 2 October 1989.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 370, 30. 12. 1986, p. 1.

⁽²⁾ OJ No L 172, 21. 6. 1989, p. 1.

⁽³⁾ OJ No L 136, 26. 5. 1987, p. 1.

⁽⁴⁾ OJ No L 204, 25. 7. 1987, p. 1.

ANNEX I

1. **Operation No⁽¹⁾**: 397/89
2. **Programme**: 1989
3. **Recipient**: M. Pirlot, UNHCR, Case Postale 2500, CH-1211 Geneva 2 Depot; tel. 39 81 11, telex 27492 UNHCR CH
4. **Representative of the recipient⁽²⁾**: HCR-Office, Lingadzi House, Robert Mugabe Crescent, City Centre, Lilongwe 3; tel. 63 41 71
5. **Place or country of destination**: Malawi
6. **Product to be mobilized**: white sugar
7. **Characteristics and quality of the goods⁽³⁾**: white sugar of category 2 standard quality (Council Regulation (EEC) No 793/72 (OJ No L 94, 21. 4. 1972, p. 1) meeting the requirements set out in Article 3 (3) of Commission Regulation (EEC) No 2103/77 (OJ No L 246, 27. 9. 1977, p. 12)
8. **Total quantity**: 500 tonnes
9. **Number of lots**: one
10. **Packaging and marking⁽¹⁰⁾**: new jute bags, with inner polythene bag at least 0,05 mm thick; minimum weight of jute and polythene 420 g, net capacity 50 kg
Marking on bags (at least 5 cm high):
'ACTION No 397/89 / SUGAR / GIFT OF THE EUROPEAN ECONOMIC COMMUNITY TO UNHCR ASSISTANCE PROGRAMME / FOR REFUGEES IN MALAWI / FOR FREE DISTRIBUTION / BLANTYRE'
11. **Method of mobilization⁽⁹⁾**: sugar produced in the Community as defined at (a) and (b) in the sixth subparagraph of Article 24 (1a) of Council Regulation (EEC) No 1785/81 (OJ No L 177, 1. 7. 1981, p. 4)
12. **Stage of supply**: free at destination — Blantyre
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: —
16. **Address of the warehouse and, if appropriate, port of landing**: —
17. **Period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage**: 1 to 20. 11. 1989
18. **Deadline for the supply**: 31. 12. 1989
19. **Procedure for determining the costs of supply**: invitation to tender
20. **In the case of an invitation to tender, date of expiry of the period allowed for submission of tenders**: 17. 10. 1989 at 12 noon
21. **In the case of a second invitation to tender**:
 - (a) deadline for the submission of tenders: 31. 10. 1989 at 12 noon
 - (b) period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage: 15 to 30. 11. 1989
 - (c) deadline for the supply: 15. 1. 1990
22. **Amount of the tendering security**: ECU 15 per tonne
23. **Amount of the delivery security**: 10 % of the amount of the tender in ecus
24. **Address for submission of tenders⁽⁹⁾**: Bureau de l'aide alimentaire, à l'attention de Monsieur N. Arend, Bâtiment Loi 120, bureau 7/58, 200 rue de la Loi, B-1049 Bruxelles; telex AGREC 22037 B
25. **Refund payable on request by the successful tenderer⁽⁹⁾**: periodic refund applicable to white sugar on 1. 9. 1989 fixed by Commission Regulation (EEC) No 2660/89 (OJ No L 255, 1. 9. 1989, p. 80)

ANNEX II

1. **Operation Nos** (¹): 478/89, 479/89 and 480/89
2. **Programme**: 1989
3. **Recipient** (²) (¹²): UNRWA Headquarters, Vienna International Centre, PO Box 700, A-1400 Vienna; telex 135310 UNRWA A
4. **Representative of the recipient** (³):
 - A: Ashdod Port (478/89):
UNRWA Field Supply and Transport Officer, West Bank, PO Box 19149, Jerusalem, Israel
 - B: Latakia Port (479/89):
UNRWA Field Supply and Transport Officer, Syrian Arab Republic, PO Box 4313, Damascus, Syrian Arab Republic
 - C: Aqaba Port (480/89):
UNRWA Field Supply and Transport Officer, Jordan, PO Box 484, Amman, Jordan
5. **Place or country of destination**: Israel; Syrian Arab Republic; Jordan
6. **Product to be mobilized**: white sugar
7. **Characteristics and quality of the goods** (⁴) (¹³): white sugar of category 2 standard quality (Council Regulation (EEC) No 793/72 (OJ No L 94, 21. 4. 1972, p. 1) meeting the requirements set out in Article 3 (3) of Commission Regulation (EEC) No 2103/77 (OJ No L 246, 27. 9. 1977, p. 12)
8. **Total quantity**: 598 tonnes
9. **Number of lots**: one (in three parts: A: 357 tonnes; B: 129 tonnes; C: 112 tonnes)
10. **Packaging and marking** (¹⁰): new jute bags, with inner polythene bag at least 0,05 mm thick, minimum weight of jute and polythene 420, net capacity 50 kg (in 20-foot containers 'FLC/LCL shipper's count-load and stowage') (¹¹):
Marking on bags (at least 5 cm high):
 - A: 'ACTION No 478/89 / SUGAR / GIFT OF THE EUROPEAN ECONOMIC COMMUNITY TO UNRWA FOR FREE DISTRIBUTION TO PALESTINE REFUGEES / ASHDOD'
 - B: 'ACTION No 479/89 / SUGAR / GIFT OF THE EUROPEAN ECONOMIC COMMUNITY TO UNRWA FOR FREE DISTRIBUTION TO PALESTINE REFUGEES / LATAKIA'
 - C: 'ACTION No 480/89 / SUGAR / GIFT OF THE EUROPEAN ECONOMIC COMMUNITY TO UNRWA FOR FREE DISTRIBUTION TO PALESTINE REFUGEES / AQABA'
11. **Method of mobilization** (⁷): sugar produced in the Community as defined at (a) and (b) in the sixth subparagraph of Article 24 (1a) of Council Regulation (EEC) No 1785/81 (OJ No L 177, 1. 7. 1981, p. 4)
12. **Stage of supply**: free at port of landing — landed
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: A: Ashdod (¹⁴); B: Latakia; C: Aqaba
16. **Address of the warehouse and, if appropriate, port of landing**: —
17. **Period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage**: 1 to 30. 11. 1989
18. **Deadline for the supply**: 31. 12. 1989
19. **Procedure for determining the costs of supply**: invitation to tender

20. Date of expiry of the period allowed for submission of tenders : 19. 10. 1989 at 12 noon
21. In the case of a second invitation to tender : -
- (a) deadline for the submission of tenders : 31. 10. 1989 at 12 noon
 - (b) period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage : 15 to 30. 11. 1989
 - (c) deadline for the supply : 31. 12. 1989
22. Amount of the tendering security : ECU 15 per tonne
23. Amount of the delivery security : 10 % of the amount of the tender in ecus
24. Address for submission of tenders (*) : Bureau de l'aide alimentaire, à l'attention de Monsieur N. Arend, bâtiment Loi 120, bureau 7/58, 200 rue de la Loi, B-1049 Bruxelles ; telex AGREC 22037 B
25. Refund payable on request by the successful tenderer (*) : periodic refund applicable to white sugar on 1. 3. 1989 fixed by Commission Regulation (EEC) No 2660/89 (OJ No L 255, 31. 9. 1989, p. 80)
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ANNEX III

1. **Operation No⁽¹⁾:** 404/89
2. **Programme:** 1989
3. **Recipient:** UNHCR, Case Postale 2500, CH-1211 Geneva 2 Depot; tel. 39 81 11, telex 27492 UNHCR CH
4. **Representative of the recipient⁽²⁾ (7):** HCR-Office, 4 Deary Avenue, Belgravia; tel. 79 32 74
5. **Place or country of destination:** Zimbabwe
6. **Product to be mobilized:** white sugar
7. **Characteristics and quality of the goods⁽³⁾ (5) (6):** white sugar of category 2 standard quality (Council Regulation (EEC) No 793/72 (OJ No L 94, 21. 4. 1972, p. 1) meeting the requirements set out in Article 3 (3) of Commission Regulation (EEC) No 2103/77 (OJ No L 246, 27. 9. 1977, p. 12)
8. **Total quantity:** 200 tonnes
9. **Number of lots:** one
10. **Packaging and marking⁽¹⁰⁾:** new jute bags, with inner polythene bag at least 0,05 mm thick, minimum weight of jute and polythene 420 g, net capacity 50 kg
Marking on bags (at least 5 cm high):
'ACTION No 404/89 / SUGAR / GIFT OF THE EUROPEAN ECONOMIC COMMUNITY TO UNHCR ASSISTANCE PROGRAMME / FOR REFUGEES IN ZIMBABWE / FOR FREE DISTRIBUTION / HARARE'
11. **Method of mobilization⁽⁹⁾:** sugar produced in the Community as defined at (a) and (b) in the sixth subparagraph of Article 24 (1a) of Council Regulation (EEC) No 1785/81 (OJ No L 177, 1. 7. 1981, p. 4)
12. **Stage of supply:** free at destination
13. **Port of shipment:** —
14. **Port of landing specified by the recipient:** —
15. **Port of landing:** —
16. **Address of the warehouse and, if appropriate, port of landing:** Harare Warehouse
17. **Period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage:** 1 to 20. 11. 1989
18. **Deadline for the supply:** 31. 12. 1989
19. **Procedure for determining the costs of supply:** invitation to tender
20. **In the case of an invitation to tender, date of expiry of the period allowed for submission of tenders:** 17. 10. 1989 at 12 noon
21. **In the case of a second invitation to tender:**
 - (a) deadline for the submission of tenders: 31. 10. 1989 at 12 noon
 - (b) period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage: 5 to 30. 11. 1989
 - (c) deadline for the supply: 15. 1. 1990
22. **Amount of the tendering security:** ECU 15 per tonne
23. **Amount of the delivery security:** 10 % of the amount of the tender in ecus
24. **Address for submission of tenders⁽⁴⁾:** Bureau de l'aide alimentaire, à l'attention de Monsieur N. Arend, Bâtiment Loi 120, bureau 7/58, 200 rue de la Loi, B-1049 Bruxelles; telex AGREC 22037 B
25. **Refund payable on request by the successful tenderer⁽⁸⁾:** periodic refund applicable to white sugar on 1. 9. 1989 fixed by Commission Regulation (EEC) No 2660/89 (OJ No L 255, 1. 9. 1989, p. 80)

ANNEX IV

1. **Operation No⁽¹⁾**: 532/89
2. **Programme**: 1989
3. **Recipient**: World Food Programme, Via Cristoforo Colombo 426, I-00145 Rome; telex 626675 WFP I
4. **Representative of the recipient⁽²⁾**: see OJ No C 103, 16. 4. 1987
5. **Place or country of destination**: Mozambique
6. **Product to be mobilized**: white sugar
7. **Characteristics and quality of the goods⁽³⁾(⁴)(⁵)**: white sugar of category 2 standard quality (Council Regulation (EEC) No 793/72 (OJ No L 94, 21. 4. 1972, p. 1) meeting the requirements set out in Article 3 (3) of Commission Regulation (EEC) No 2103/77 (OJ No L 246, 27. 9. 1977, p. 12)
8. **Total quantity**: 57 tonnes
9. **Number of lots**: one
10. **Packaging and marking⁽⁶⁾**: new jute bags, with inner polythene bag at least 0,05 mm. thick, minimum weight of jute and polythene 420 g, net capacity 50 kg
Marking on bags (at least 5 cm high):
'ACTION No 532/89 / MOZAMBIQUE 0356302 / SUGAR / GIFT OF THE EUROPEAN ECONOMIC COMMUNITY / ACTION OF THE WORLD FOOD PROGRAMME / BEIRA IN TRANSIT TO MADIMBA / MOZAMBIQUE'
11. **Method of mobilization⁽⁷⁾**: sugar produced in the Community as defined at (a) and (b) in the sixth subparagraph of Article 24 (1a) of Council Regulation (EEC) No 1785/81 (OJ No L 177, 1. 7. 1981, p. 4)
12. **Stage of supply**: free at port of shipment
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: —
16. **Address of the warehouse and, if appropriate, port of landing**: —
17. **Period for making the goods available at the port of shipment**: 1 to 20. 11. 1989
18. **Deadline for the supply**: —
19. **Procedure for determining the costs of supply**: invitation to tender
20. **In the case of an invitation to tender, date of expiry of the period allowed for submission of tenders**: 17. 10. 1989 at 12 noon
21. **In the case of a second invitation to tender**:
 - (a) deadline for the submission of tenders: 31. 10. 1989 at 12 noon
 - (b) period for making the goods available at the port of shipment: 15. 11 to 5. 12. 1989
 - (c) deadline for the supply: —
22. **Amount of the tendering security**: ECU 15 per tonne
23. **Amount of the delivery security**: 10 % of the amount of the tender in ecus
24. **Address for submission of tenders⁽⁸⁾**: Bureau de l'aide alimentaire, à l'attention de Monsieur N. Arend, bâtiment Loi 120, bureau 7/58, 200 rue de la Loi, B-1049 Bruxelles; telex AGREC 22037 B
25. **Refund payable on request by the successful tenderer⁽⁹⁾**: periodic refund applicable to white sugar on 1. 9. 1989 fixed by Commission Regulation (EEC) No 2660/89 (OJ No L 255, 1. 9. 1989, p. 80)

Notes :

- (¹) The operation number is to be quoted in all correspondence.
- (²) Commission delegate to be contacted by the successful tenderer : see list published in *Official Journal of the European Communities* No C 227 of 7 September 1985, page 4.
- (³) The successful tenderer shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded.
- The radioactivity certificate must indicate the caesium-134 and -137 levels.
- (⁴) In order not to overload the telex, tenderers are requested to provide, before the date and time laid down in point 20 of the Annexes, evidence that the tendering security referred to in Article 7 (4) (a) of Regulation (EEC) No 2200/87 has been lodged, preferably :
- either by porter at the office referred to in point 24 of the Annexes,
 - or by telecopier on one of the following numbers in Brussels :
- 235 01 32
236 10 97
235 01 30
236 20 05
- (⁵) The successful tenderer shall give the beneficiaries' representatives a health certificate at the time of delivery.
- (⁶) The successful tenderer shall give the beneficiaries' representatives a certificate of origin at the time of delivery.
- (⁷) The successful tenderer shall contact the recipient as soon as possible to establish which consignment documents are required and how they are to be distributed.
- (⁸) Commission Regulation (EEC) No 2330/87 (OJ No L 210, 1. 8. 1987, p. 56), as last amended by Regulation (EEC) No 2226/89 (OJ No L 214, 24. 7. 1989, p. 10) is applicable as regards the export refund and, where appropriate, the monetary and accession compensatory amounts, the representative rate and the monetary coefficient. The date referred to in Article 2 of the abovementioned Regulation is that referred to in point 25 of the Annexes.
- (⁹) The rule provided at the second indent in point (a) of Article 18 (2) of Regulation (EEC) No 2103/77 is binding for determination of the sugar category.
- (¹⁰) Since the goods may be rebagged, the successful tenderer must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.
- (¹¹) Supply free at terminal, as provided for in Article 14 (5) (a) of Regulation (EEC) No 2200/87, implies that the following costs at the port of landing shall be borne by the successful tenderer :
- should containers be used on a FCL/FCL or LCL/FCL basis, all costs of unloading and transportation from the under hook stage up to the designated destuffing area via, if any, transit check shed area. The costs of destuffing the goods from the containers, local charges incurred at a later stage, and costs occasioned by delays of detention or returning the containers are to be borne by the recipient,
 - should containers be used on an LCL/LCL or FCL/LCL basis, all the costs of unloading and transportation from the under hook stage up to the designated destuffing area via, if any, transit check shed area and by way of derogation from the aforementioned paragraph 5 (a) of Article 14, the LCL charges (destuffing of the goods). The local charges incurred after the stage of destuffing the goods from the containers are to be borne by the recipient.
- (¹²) The supplier is to detail the Manager, Supply Division, UNRWA, Vienna, by telex 135310 UNRWA A, the name of the carrying vessel, names and addresses of shipping agent and insurance agent at port of discharge.
- (¹³) Certificates and documents required for each shipment :
- one original and two copies of insurance certificate,
 - one original and two copies of health certificate,
 - one original and two copies of inspection certificate regarding quality, quantity and packing,
 - one certificate of non-contamination by radioactivity.
- (¹⁴) Ashdod : Consignment to be stowed in 20-foot containers containing not more than 17 tonnes each, net ; not more than 30 containers are to be shipped on any vessel.

COMMISSION REGULATION (EEC) No 2974/89

of 2 October 1989

re-establishing the levying of customs duties applicable to third countries on
certain products originating in Yugoslavia

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Cooperation Agreement between the European Economic Community and the Socialist Federal Republic of Yugoslavia ⁽¹⁾, and in particular Protocol 1 thereto,Having regard to Council Regulation (EEC) No 4234/88 of 19 December 1988 establishing ceilings and Community surveillance for imports of certain products originating in Yugoslavia (1989) ⁽²⁾, and in particular Article 1 thereof,

Whereas the abovementioned Protocol 1 and Article 15 of the Cooperation Agreement provide that the products listed in the Annex are imported exempt of customs duty into the Community, subject to the ceiling shown, above which the customs duties applicable to third countries may be re-established;

Whereas imports into the Community of those products, originating in Yugoslavia, have reached that ceiling;

whereas the situation on the Community market requires that customs duties applicable to third countries on the products in question be re-established,

HAS ADOPTED THIS REGULATION:

Article 1

From 6 October to 31 December 1989, the levying of customs duties applicable to third countries shall be re-established on imports into the Community of the products listed in the Annex originating in Yugoslavia.

*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, 2 October 1989.

For the Commission

Christiane SCRIVENER

Member of the Commission⁽¹⁾ OJ No L 41, 14. 2. 1983, p. 2.⁽²⁾ OJ No L 372, 31. 12. 1988, p. 15.

ANNEX

Order No	CN-code	Description	Ceiling (tonnes)
01.0040	3915	Waste, parings and scrap, of plastics :	1 524
	3915 90	— Of other plastics :	
		— — Other :	
	3915 90 91	— — — Of epoxide resins	
	3915 90 99	— — — Other	
	3916	Monofilament of which any cross-sectional dimension exceeds 1 mm, rods, sticks and profile shapes, whether or not surface-worked but not otherwise worked, of plastics :	
	3916 90	— Of other plastics :	
	ex 3916 90 90	— — Other :	
		— Of regenerated cellulose	
	3917	Tubes, pipes and hoses, and fittings therefor (for example, joints, elbows, flanges), of plastics :	
	3917 10	— Artificial guts (sausage casings) of hardened protein or of cellulosic materials :	
	ex 3917 10 90	— — Of cellulose plastic materials :	
		— Of regenerated cellulose	
		— Tubes, pipes and hoses, rigid :	
	3917 29	— — Of other plastics :	
		— — — Seamless and cut to a length exceeding the maximum cross-sectional dimension, whether or not surface-worked, but not otherwise worked :	
	ex 3917 29 19	— — — — Other :	
		— Of regenerated cellulose	
	3917 32	— — Other, not reinforced or otherwise combined with other materials, without fittings :	
		— — — Seamless and cut to a length exceeding the maximum cross-sectional dimension, whether or not surface-worked, but not otherwise worked :	
	ex 3917 32 51	— — — — Other :	
		— Of regenerated cellulose	
	3917 39	— — Other :	
		— — — Seamless and cut to a length exceeding the maximum cross-sectional dimension, whether or not surface-worked, but not otherwise worked :	
	ex 3917 39 19	— — — — Other :	
		— Of regenerated cellulose	
	3919	Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls :	
	3919 10	— In rolls of a width not exceeding 20 cm :	
		— — Other :	
	ex 3919 10 90	— — — Other :	
		— Of regenerated cellulose	
	3919 90	— Other :	
		— — Other :	
	ex 3919 90 90	— — — Other :	
		— Of regenerated cellulose	

Order No	CN-code	Description	Ceiling (tonnes)
01.0040 (continued)	3920	Other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials :	1 524
		– Of cellulose or its chemical derivatives :	
	3920 71	– – Of regenerated cellulose :	
		– – – Sheets, film or strip, coiled or not, of a thickness of less than 0,75 mm :	
	3920 71 11	– – – – Not printed	
	3920 71 19	– – – – Printed	
	3920 71 90	– – – Other :	
	3921	Other plates, sheets, film, foil and strip, of plastics :—	
		– Cellular :	
	3921 14 00	– – Of regenerated cellulose	

COMMISSION REGULATION (EEC) No 2975/89

of 2 October 1989

re-establishing the levying of customs duties applicable to third countries on certain products originating in Yugoslavia

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Cooperation Agreement between the European Economic Community and the Socialist Federal Republic of Yugoslavia ⁽¹⁾, and in particular Protocol 1 thereto,

Having regard to Council Regulation (EEC) No 4234/88 of 19 December 1988 establishing ceilings and Community surveillance for imports of certain products originating in Yugoslavia (1988) ⁽²⁾, and in particular Article 1 thereof,

Whereas the abovementioned Protocol 1 and Article 15 of the Cooperation Agreement provide that the products listed in the Annex are imported exempt of customs duty into the Community, subject to the ceiling shown, above which the customs duties applicable to third countries may be re-established;

Whereas imports into the Community of those products, originating in Yugoslavia, have reached that ceiling;

whereas the situation on the Community market requires that customs duties applicable to third countries on the products in question be re-established,

HAS ADOPTED THIS REGULATION:

Article 1

From 6 October to 31 December 1989, the levying of customs duties applicable to third countries shall be re-established on imports into the Community of the following products listed in the Annex originating in Yugoslavia.

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, 2 October 1989.

For the Commission

Christiane SCRIVENER

Member of the Commission

⁽¹⁾ OJ No L 41, 14. 2. 1983, p. 2.

⁽²⁾ OJ No L 372, 31. 12. 1988, p. 15.

ANNEX

Order No	CN code	Description	Ceiling (tonnes)
01.0170	7409	Copper plates, sheets and strip, of a thickness exceeding 0,15 mm	1 124

COMMISSION REGULATION (EEC) No 2976/89
of 2 October 1989
introducing a countervailing charge on apples originating in Argentina

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 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables⁽¹⁾, as last amended by Regulation (EEC) No 1119/89⁽²⁾, and in particular the second subparagraph of Article 27 (2) thereof,

Whereas Commission Regulation (EEC) No 2631/89⁽³⁾, introduced a countervailing charge on apples originating in Argentina;

Whereas for apples originating in Argentina there were no prices for six consecutive working days; whereas the

conditions specified in Article 26 (1) of Regulation (EEC) No 1035/72 are therefore fulfilled and the countervailing charge on imports of apples originating in Argentina can be abolished,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2631/89 is hereby repealed.

Article 2

This Regulation shall enter into force on 3 October 1989.

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

Done at Brussels, 2 October 1989.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 118, 20. 5. 1972, p. 1.

⁽²⁾ OJ No L 118, 29. 4. 1989, p. 12.

⁽³⁾ OJ No L 254, 31. 8. 1989, p. 22.

COMMISSION REGULATION (EEC) No 2977/89

of 2 October 1989

introducing a countervailing charge on fresh lemons originating in Uruguay

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 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables⁽¹⁾, as last amended by Regulation (EEC) No 1119/89⁽²⁾, and in particular the second subparagraph of Article 27 (2) thereof,

Whereas Article 25 (1) of Regulation (EEC) No 1035/72 provides that, if the entry price of a product imported from a third country remains at least 0,6 ECU below the reference price for two consecutive market days, a countervailing charge must be introduced in respect of the exporting country concerned, save in exceptional circumstances; whereas this charge is equal to the difference between the reference price and the arithmetic mean of the last two entry prices available for that exporting country;

Whereas Commission Regulation (EEC) No 1373/89 of 19 May 1989 fixing for the 1989/90 marketing year the reference prices for fresh lemons⁽³⁾ fixed the reference price for products of class I for the month of September 1989 at 56,00 ECU per 100 kilograms net;

Whereas the entry price for a given exporting country is equal to the lowest representative prices recorded for at least 30 % of the quantities from the exporting country concerned which are marketed on all representative markets for which prices are available less the duties and the charges indicated in Article 24 (3) of Regulation (EEC) No 1035/72; whereas the meaning of representative price is defined in Article 24 (2) of Regulation (EEC) No 1035/72;

Whereas, in accordance with Article 3 (1) of Commission Regulation (EEC) No 2118/74⁽⁴⁾, as last amended by

Regulation (EEC) No 3811/85⁽⁵⁾, the prices to be taken into consideration must be recorded on the representative markets or, in certain circumstances, on other markets;

Whereas, for fresh lemons originating in Uruguay the entry price calculated in this way has remained at least 0,6 ECU below the reference price for two consecutive market days; whereas a countervailing charge should therefore be introduced for these fresh lemons;

Whereas, if the system is to operate normally, the entry price 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 Council Regulation (EEC) No 1676/85⁽⁶⁾, as last amended by Regulation (EEC) No 1636/87⁽⁷⁾,
- 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,

HAS ADOPTED THIS REGULATION:

Article 1

A countervailing charge of 12,80 ECU per 100 kilograms net is applied to fresh lemons (CN code ex 0805 30 10) originating in Uruguay.

Article 2

This Regulation shall enter into force on 4 October 1989.

⁽¹⁾ OJ No L 118, 20. 5. 1972, p. 1.
⁽²⁾ OJ No L 118, 29. 4. 1989, p. 12.
⁽³⁾ OJ No L 137, 20. 5. 1989, p. 24.
⁽⁴⁾ OJ No L 220, 10. 8. 1974, p. 20.

⁽⁵⁾ OJ No L 368, 31. 12. 1985, p. 1.
⁽⁶⁾ OJ No L 164, 24. 6. 1985, p. 1.
⁽⁷⁾ OJ No L 153, 13. 6. 1987, p. 1.

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

Done at Brussels, 2 October 1989.

For the Commission

Ray MAC SHARRY

Member of the Commission

COMMISSION REGULATION (EEC) No 2978/89
of 2 October 1989
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 1069/89 ⁽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 1920/89 ⁽³⁾, as last amended by Regulation (EEC) No 2961/89 ⁽⁴⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 1920/89 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 3 October 1989.

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

Done at Brussels, 2 October 1989.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 114, 27. 4. 1989, p. 1.

⁽³⁾ OJ No L 187, 1. 7. 1989, p. 13.

⁽⁴⁾ OJ No L 281, 30. 9. 1989, p. 96.

ANNEX

to the Commission Regulation of 2 October 1989 fixing the import levies on white sugar and raw sugar

(ECU/100 kg)

CN code	Levy
1701 11 10	25,96 ⁽¹⁾
1701 11 90	25,96 ⁽¹⁾
1701 12 10	25,96 ⁽¹⁾
1701 12 90	25,96 ⁽¹⁾
1701 91 00	31,41
1701 99 10	31,41
1701 99 90	31,41 ⁽²⁾

⁽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 Commission Regulation (EEC) No 837/68 (OJ No L 151, 30. 6. 1968, p. 42).

⁽²⁾ In accordance with Article 16 (2) of Regulation (EEC) No 1785/81 this amount is also applicable to sugar obtained from white and raw sugar containing added substances other than flavouring or colouring matter.

COMMISSION REGULATION (EEC) No 2979/89

of 2 October 1989

altering the basic amount of the import levies on syrups and certain other products in the sugar sector

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 1069/89⁽²⁾, and in particular Article 16 (8) thereof,

Whereas the import levies on syrups and certain other sugar products were fixed by Commission Regulation (EEC) No 2926/89⁽³⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 2926/89 to the infor-

mation known to the Commission that the basic amount of the levy on syrups and certain other sugar products at present in force should be altered,

HAS ADOPTED THIS REGULATION:

Article 1

The basic amounts of the import levy on the products listed in Article 1 (1) (d) of Regulation (EEC) No 1785/81, as fixed in the Annex to Regulation (EEC) No 2926/89, are hereby altered to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 3 October 1989.

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

Done at Brussels, 2 October 1989.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 114, 27. 4. 1989, p. 1.

⁽³⁾ OJ No L 281, 30. 9. 1989, p. 9.

ANNEX

to the Commission Regulation of 2 October 1989 altering the basic amount of the import
levies on syrups and certain other products in the sugar sector

(ECU)

CN code	Basic amount per percentage point of sucrose content and per 100 kg net of the product in question	Amount of levy per 100 kg of dry matter
1702 20 10	0,3141	—
1702 20 90	0,3141	—
1702 30 10	—	39,47
1702 40 10	—	39,47
1702 60 10	—	39,47
1702 60 90	0,3141	—
1702 90 30	—	39,47
1702 90 60	0,3141	—
1702 90 71	0,3141	—
1702 90 90	0,3141	—
2106 90 30	—	39,47
2106 90 59	0,3141	—

COMMISSION REGULATION (EEC) No 2980/89

of 2 October 1989

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 2860/89 ⁽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 1806/89 ⁽⁴⁾, and in particular Article 12 (4) 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 ⁽⁵⁾, as last amended by Regulation (EEC) No 1636/87 ⁽⁶⁾, and in particular Article 3 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas the import levies on products processed from cereals and rice were fixed by Commission Regulation (EEC) No 2893/89 ⁽⁷⁾, as amended by Regulation (EEC) No 2966/89 ⁽⁸⁾;

Whereas Council Regulation (EEC) No 1906/87 ⁽⁹⁾ amended Council Regulation (EEC) No 2744/75 ⁽¹⁰⁾ as regards products falling within CN codes 2302 10, 2302 20, 2302 30 and 2302 40;

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 29 September 1989;

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 ECU 3,02 per tonne of basic product; whereas, pursuant to Article 1 of Commission Regulation (EEC) No 1579/74 ⁽¹¹⁾, as last amended by Regulation (EEC) No 1740/78 ⁽¹²⁾, 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 fixed in the Annex to amended Regulation (EEC) No 2893/89 are hereby altered to the amounts set out in the Annex.

Article 2

This Regulation shall enter into force on 3 October 1989.

(¹) OJ No L 281, 1. 11. 1975, p. 1.
 (²) OJ No L 274, 23. 9. 1989, p. 41.
 (³) OJ No L 166, 25. 6. 1976, p. 1.
 (⁴) OJ No L 177, 24. 6. 1989, p. 1.
 (⁵) OJ No L 164, 24. 6. 1985, p. 1.
 (⁶) OJ No L 153, 13. 6. 1987, p. 1.
 (⁷) OJ No L 279, 28. 9. 1989, p. 16.
 (⁸) OJ No L 281, 30. 9. 1989, p. 109.
 (⁹) OJ No L 182, 3. 7. 1987, p. 49.
 (¹⁰) OJ No L 281, 1. 11. 1975, p. 65.

(¹¹) OJ No L 168, 25. 6. 1974, p. 7.
 (¹²) OJ No L 202, 26. 7. 1978, p. 8.

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

Done at Brussels, 2 October 1989.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX

to the Commission Regulation of 2 October 1989 altering the import levies on products processed from cereals and rice

(ECU/tonne)

CN code	Import levies		
	Portugal	ACP or OCT	Third countries (other than ACP or OCT)
1102 90 90	39,76	131,78	134,80
1103 19 90	39,76	131,78	134,80
1103 29 90	39,76	131,78	134,80
1104 19 99	70,88	232,56	238,60
1104 29 10*30 (*)	60,65	206,72	209,74
1104 29 10*40 (?)	60,65	206,72	209,74
1104 29 10*90 (*)	60,65	206,72	209,74
1104 29 30*30 (*)	60,65	206,72	209,74
1104 29 30*40 (?)	60,65	206,72	209,74
1104 29 30*90 (*)	60,65	206,72	209,74
1104 29 99	39,76	131,78	134,80

(*) TARIC code: millet.

(?) TARIC code: sorghum.

(*) TARIC code: others.

COMMISSION REGULATION (EEC) No 2981/89**of 2 October 1989****altering the export refunds on cereals and on wheat or rye flour, groats and meal**

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

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

Having regard to Regulation (EEC) No 2727/75 of the
Council of 29 October 1975 on the common organization
of the market in cereals⁽¹⁾, as last amended by Regulation
(EEC) No 2860/89⁽²⁾, and in particular the fifth subpara-
graph of Article 16 (2) thereof,

Whereas the export refunds on cereals and on wheat or
rye flour, groats and meal were fixed by Commission
Regulation (EEC) No 2920/89⁽³⁾;

Whereas it follows from applying the detailed rules
contained in Commission Regulation (EEC) No 2920/89
to the information known to the Commission that the

export refunds at present in force should be altered to the
amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 (a),
(b) and (c) of Regulation (EEC) No 2727/75, exported in
the natural state, as fixed in the Annex to Regulation
(EEC) No 2920/89 are hereby altered as shown in the
Annex to this Regulation in respect of the products set
out therein.

Article 2

This Regulation shall enter into force on 3 October 1989.

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

Done at Brussels, 2 October 1989.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 274, 23. 9. 1989, p. 41.

⁽³⁾ OJ No L 280, 29. 9. 1989, p. 44.

ANNEX

to the Commission Regulation of 2 October 1989 altering the export refunds on cereals and on wheat or rye flour, groats and meal

(ECU/tonne)		
Product code	Destination (°)	Amount of refund
0709 90 60 000	—	—
0712 90 19 000	—	—
1001 10 10 000	06	95,00
	07	95,00
	02	0
1001 10 90 000	01	10,00
1001 90 91 000	08	35,00
	02	0
1001 90 99 000	04	25,00
	05	25,00
	02	10,00
1002 00 00 000	03	25,00
	05	25,00
	02	10,00
1003 00 10 000	09	57,00
	02	0
1003 00 90 000	04	37,00
	02	0
1004 00 10 000	08	57,00
	02	0
1004 00 90 000	01	0
1005 10 90 000	—	—
1005 90 00 000	03	40,00
	02	0
1007 00 90 000	—	—
1008 20 00 000	—	—
1101 00 00 110	01	59,00
1101 00 00 120	01	59,00
1101 00 00 130	01	53,00
1101 00 00 150	01	50,00
1101 00 00 170	01	47,00
1101 00 00 180	01	44,00
1101 00 00 190	—	—
1101 00 00 900	—	—
1102 10 00 100	01	59,00
1102 10 00 200	01	59,00
1102 10 00 300	01	59,00
1102 10 00 500	01	59,00
1102 10 00 900	—	—
1103 11 10 100	01	168,00
1103 11 10 200	01	159,00
1103 11 10 500	01	142,00
1103 11 10 900	01	134,00
1103 11 90 100	01	59,00
1103 11 90 900	—	—

(¹) The destinations are identified as follows :

- 01 All third countries,
- 02 Other third countries,
- 03 Switzerland, Austria and Liechtenstein,
- 04 Switzerland, Austria, Liechtenstein, Ceuta and Melilla,
- 05 Zone II b),
- 06 Turkey,
- 07 Algeria,
- 08 Zone I,
- 09 Zone VI, Zone I.

NB : The zones are those defined in Commission Regulation (EEC) No 1124/77 (OJ No L 134, 28. 5. 1977, p. 53), as last amended by Regulation (EEC) No 296/88 (OJ No L 30, 2. 2. 1988, p. 9).

COMMISSION REGULATION (EEC) No 2982/89
of 2 October 1989
altering the corrective amount applicable to the refund on cereals

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 2860/89 ⁽²⁾, and in particular the fourth sentence of the second subparagraph of Article 16 (4) thereof,

Having regard to Council Regulation (EEC) No 2746/75 of 29 October 1975 laying down general rules for granting export refunds on cereals and criteria for fixing the amount of such refunds ⁽³⁾,

Whereas the corrective amount applicable to the refund on cereals was fixed by Commission Regulation (EEC) No 2914/89 ⁽⁴⁾, as amended by Regulation (EEC) No 2959/89 ⁽⁵⁾;

Whereas, on the basis of today's cif prices and cif forward delivery prices, taking foreseeable developments on the market into account, the corrective amount at present applicable to the refund on cereals should be altered,

HAS ADOPTED THIS REGULATION:

Article 1

The corrective amount referred to in Article 16 (4) of Regulation (EEC) No 2727/75, fixed in the Annex to amended Regulation (EEC) No 2914/89, which is applicable to the export refunds fixed in advance in respect of cereals, is hereby altered to the amounts set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 3 October 1989.

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

Done at Brussels, 2 October 1989.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 274, 23. 9. 1989, p. 41.

⁽³⁾ OJ No L 281, 1. 11. 1975, p. 78.

⁽⁴⁾ OJ No L 280, 29. 9. 1989, p. 28.

⁽⁵⁾ OJ No L 281, 30. 9. 1989, p. 93.

ANNEX

to the Commission Regulation of 2 October 1989 altering the corrective amount applicable to the refund on cereals

Product code	Destination (*)	(ECU/tonne)						
		Current 10	1st period 11	2nd period 12	3rd period 1	4th period 2	5th period 3	6th period 4
0709 90 60 000	—	—	—	—	—	—	—	—
0712 90 19 000	—	—	—	—	—	—	—	—
1001 10 10 000	01	0	0	0	0	—	—	—
1001 10 90 000	01	0	0	0	0	— 40,00	— 40,00	— 40,00
1001 90 91 000	—	—	—	—	—	—	—	—
1001 90 99 000	01	0	0	0	0	— 30,00	— 30,00	— 30,00
1002 00 00 000	01	0	0	0	0	— 30,00	— 30,00	— 30,00
1003 00 10 000	01	0	0	0	0	—	—	—
1003 00 90 000	01	0	0	0	0	— 30,00	— 30,00	— 30,00
1004 00 10 000	—	—	—	—	—	—	—	—
1004 00 90 000	01	0	0	0	0	— 30,00	— 30,00	— 30,00
1005 10 90 000	—	—	—	—	—	—	—	—
1005 90 00 000	01	0	0	0	— 30,00	— 30,00	— 30,00	— 30,00
1007 00 90 000	—	—	—	—	—	—	—	—
1008 20 00 000	—	—	—	—	—	—	—	—
1101 00 00 110	01	0	0	0	0	0	— 30,00	— 30,00
1101 00 00 120	01	0	0	0	0	0	— 30,00	— 30,00
1101 00 00 130	01	0	0	0	0	0	— 30,00	— 30,00
1101 00 00 150	01	0	0	0	0	0	— 30,00	— 30,00
1101 00 00 170	01	0	0	0	0	0	— 30,00	— 30,00
1101 00 00 180	01	0	0	0	0	0	— 30,00	— 30,00
1101 00 00 190	—	—	—	—	—	—	—	—
1101 00 00 900	—	—	—	—	—	—	—	—
1102 10 00 100	01	0	0	0	0	0	— 30,00	— 30,00
1102 10 00 200	01	0	0	0	0	0	— 30,00	— 30,00
1102 10 00 300	01	0	0	0	0	0	— 30,00	— 30,00
1102 10 00 500	01	0	0	0	0	0	— 30,00	— 30,00
1102 10 00 900	—	—	—	—	—	—	—	—
1103 11 10 100	01	0	0	0	0	0	— 50,00	— 50,00
1103 11 10 200	01	0	0	0	0	0	— 50,00	— 50,00
1103 11 10 500	01	0	0	0	0	0	— 50,00	— 50,00
1103 11 10 900	01	0	0	0	0	0	— 50,00	— 50,00
1103 11 90 100	01	0	0	0	0	0	— 50,00	— 50,00
1103 11 90 900	—	—	—	—	—	—	—	—

(*) For the following destinations:

01 All third countries.

NB: The zones are those defined in Commission Regulation (EEC) No 1124/77 (OJ No L 134, 28. 5. 1977, p. 53), as last amended by Regulation (EEC) No 296/88 (OJ No L 30, 2. 2. 1988, p. 9).

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 15 September 1989

relating to a proceeding under Article 85 of the EEC Treaty
(IV/31.734 — Film purchases by German television stations)

(Only the German, English and Dutch texts are authentic)

(89/536/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Whereas :

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty ⁽¹⁾, as last amended by the Act of Accession of Spain and Portugal, and in particular Articles 6 and 8 thereof,

Having regard to the Commission Decision of 15 December 1986 to initiate a proceeding in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission, pursuant to Article 19 (1) of Regulation No 17 in conjunction with Commission Regulation No 99/63/EEC of 25 July 1963 on the hearings provided for in Article 19 (1) and (2) of Council Regulation No 17 ⁽²⁾, and having received the undertakings' written views and their oral views at the hearing held on 13 October 1987,

Having regard to the notification of the relevant agreements on 2 December 1988 and the application for exemption under Article 85 (3) of the EEC Treaty,

Having published a summary of the agreements in accordance with Article 19 (3) of Regulation No 17 ⁽³⁾,

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

I. THE FACTS

- (1) This proceeding relates to agreements on television rights to American feature films, television films and television series by the Erstes Deutsches Fernsehen.

A. The undertakings concerned

- (2) The Hessischer Rundfunk, the Norddeutscher Rundfunk, Radio Bremen, the Saarländischer Rundfunk, the Sender Freies Berlin, the Süddeutscher Rundfunk, the Südwestfunk and the Westdeutscher Rundfunk (hereinafter referred to as 'the ARD broadcasting organizations') together with the Bayerischer Rundfunk, which is not covered by this proceeding, belong to the Arbeitsgemeinschaft der öffentlich-rechtlichen Landesrundfunkanstalten der Bundesrepublik Deutschland (Association of public broadcasting organizations of the Federal Republic of Germany — ARD). The activities of the broadcasting organizations belonging to the ARD include the broadcasting on terrestrial frequencies throughout the Federal Republic of a joint television channel known as 'Erstes Deutsches Fernsehen'. They also broadcast, in some cases alone and in others in cooperation with one another, regional programmes known as 'Dritte Programme' — also via terrestrial frequencies — and, via satellite, an additional channel known as 'Eins Plus'.

Degeto Film GmbH, whose registered office is in Frankfurt/Main and which is responsible for purchasing programmes, particularly the acquisition of television rights to films, is a joint subsidiary belonging to all the ARD broadcasting organizations.

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ No 127, 20. 8. 1963, p. 2268/63.

⁽³⁾ OJ No C 54, 3. 3. 1989, p. 2.

- (3) The American film production and distribution company Metro-Goldwyn-Mayer/United Artists Entertainment Co. (MGM/UA), whose registered office is in Culver City, United States of America, came into being in 1981 as a result of a merger between Metro-Goldwyn-Mayer Inc. (MGM) and United Artists Corporation (UA). It was one of the leading American film and television production companies and owned one of the largest American film libraries, consisting of some 3 000 feature films, including a number of films that had been given awards, and also television productions and cartoons. One of its subsidiaries was United Artists Corporation, whose subsidiary was Algemene Financieringsmaatschappij Nefico BV (Nefico), whose registered office is in Amsterdam.
- (4) In March 1986, MGM/UA was taken over by Turner Broadcasting System Inc. (TBS). The subsidiary company United Artists Corporation (including its subsidiary Nefico) was sold off and became an independent company. The former parent company MGM/UA was finally liquidated in August 1986. Its assets, including all its film and television rights, were taken over partly by Turner Entertainment Co. (TEC), a subsidiary of TBS. The remaining rights, including the right to the company name Metro-Goldwyn-Mayer, were transferred to the former subsidiary United Artists Corporation, which then changed its name to Metro-Goldwyn-Mayer/United Artists Communications (MGM/UA Co). Nefico remains its subsidiary.

B. The agreements

- (5) On 8 and 9 February 1984, the ARD broadcasting organizations, represented by Degeto Film GmbH, concluded with Nefico three agreements on the acquisition of television rights, with MGM/UA providing an unconditional guarantee for the obligations entered into by Nefico. The agreements were as follows:
- (a) the Library Licence Agreement concluded on 9 February 1984;
 - (b) the James Bond Licence Agreement concluded on 9 February 1984; and
 - (c) a further agreement, concluded on 8 February 1984, providing for the payment of a separate fee for the exclusivity granted.

These agreements, which entered into force with retroactive effect on 1 October 1983, were supplemented and partly amended by an exchange of letters (nine letters dated 9 February 1984, one letter dated 23 February 1984, three letters dated 31 August 1984 and one letter dated 15 April 1986) and two agreements concluded on 21 August 1986.

Subsequent to this, the situation regarding the agreements is as follows:

1. The subject matter of the agreements

- (6) (a) Under the Library Licence Agreement the ARD broadcasting organizations acquired television rights in 1 350 feature films to be selected from MGM/UA's film library. During the period 1984 to 1993 they are to choose at least 70 of these library films a year and during the period 1994 to 1998 at least 130 films a year. A list of the films selected must be submitted by 31 December 1986.

The rights in 514 (originally 663 when the agreement was concluded), of the selected library films are currently covered by other licences and will be available to them only as from 1994. However, MGM/UA's top seven films including *Gone with the Wind* and *Ben Hur*, which are also licensed to other licensees, were from the outset not covered by the Library Licence Agreement.

- (7) (b) The Library Licence Agreement also includes rights in all new films released by MGM/UA between 1 January 1984 and 31 December 1998 for showing in cinemas or produced for first showing on television. MGM/UA must make available a total of at least 150 suitable films, with at least 10 suitable films per year.
- (8) (c) The Library Licence Agreement also covers all cartoons controlled by MGM/UA up to 1 January 1984 (a total of 744 half-hour units), and
- (d) 416 hours of television films and television series (television product). These are selected by the ARD broadcasting organizations from the existing and future library of MGM/UA, with at least 26 hours being selected per year.
- (9) (e) Under the James Bond Agreement, the ARD broadcasting organizations also acquired television rights in 14 named James Bond films from MGM/UA's existing library.
- (f) Under a supplementary letter dated 9 February 1984, they were further granted television rights in all new James Bond films produced or acquired by MGM/UA between 1 January 1984 and 31 December 1998.

- (10) Following the liquidation of MGM/UA and the assumption of its rights and obligations by TEC and MGM/UA Co., the rights and obligations under the agreements were extended to TEC and MGM/UA Co., in addition to Nefico, with the films covered by the agreements devolving partly to TEC and partly to MGM/UA Co. Essentially, TEC owns

those films which, before the merger with UA in 1988, used to belong to the MGM library, i.e. 927 of the feature films selected by the ARD broadcasting organizations from MGM/UA's total film library, 617 of the 744 half-hour cartoon units and the bulk of the television product. The remaining films, which used to belong to the former UA library, including the James Bond films, are controlled by MGM/UA Co. In addition, under the agreements concluded between TEC and MGM/UA Co., MGM/UA Co. is solely responsible for the production of the new films covered by the agreements, including the new James Bond films.

2. *Exclusivity*

- (11) The ARD broadcasting organizations have acquired the exclusive right to the television broadcasting in German within the contract area of all the films concerned (library films, new films, cartoons and television product selected by them) with the result that, during the contract period, except in the case of the subsequently granted 'windows' (see points 30 *et seq.* below), no other licences may be granted, not even for the purposes of exploitation on pay-TV. However, the original agreements do provide for two pay windows of up to a year in which 25 % of the films may be licensed to third parties for exploitation on pay-TV. In so far as individual library films selected were licensed to other parties when the agreements were concluded, such licences may not be extended.

In addition, the ARD broadcasting organizations were granted exclusivity in respect of the library as a whole for the duration of the selection period, i.e. up to 31 December 1986, so that during this period no television rights could be granted to third parties within the contract area in respect of the entire film library.

3. *The licence territory*

- (12) The area covered by the agreements comprises not only the territory of the Federal Republic of Germany, including West Berlin, but also the German Democratic Republic, Austria, Liechtenstein, Luxembourg, Province Alto Adige (South Tyrol) and the German-speaking part of Switzerland.

4. *Term of the licences*

- (13) The licence term for any particular feature film or television film is usually 15 years. In the case of 136 feature films that were licensed to other licencees when the agreements were concluded, the term is 16 years. It is shorter in the case of some of the films for which only a limited number of broadcasts is permitted if the last authorized

broadcast takes place before the expiration of 15 years.

The licence term begins on 1 January of the year in which the ARD broadcasting organizations schedule the first broadcast, i.e. between 1 January 1984 and 31 December 1998.

5. *Number of showings*

- (14) Feature films — both those selected from the library and the new films — and cartoons may in principle be shown any number of times.

MGM/UA may, however, designate 75 of the library films and 45 of the new films for not more than 15 showings. Television product and all the James Bond films may similarly each be shown only 15 times.

6. *The technical form of the exploitation*

- (15) The exploitation may in principle take place either through terrestrial transmission or through transmission by cable and satellite, including direct broadcast satellites. However, transmission by direct broadcast satellite is partly restricted.

7. *The language versions*

- (16) The films may normally be broadcast only in the German-language version. However, a limited number of films may be broadcast in two languages (German and English), with English subtitles or in their original English version (with or without German subtitles).

8. *Right of first negotiation*

- (17) The ARD broadcasting organizations have, from 1 October 1983 until 1 January 1997, a right of first negotiation if MGM/UA wishes to conclude with a third party an agreement similar to the Library Licence Agreement. MGM/UA must then first negotiate exclusively with the ARD broadcasting organizations for 30 days. If upon expiry of this period it enters into negotiations with third parties, it must inform the ARD broadcasting organizations of the content of such negotiations. The ARD broadcasting organizations have five days within which to decide whether they wish to conclude an agreement on the terms offered by a third party. MGM/UA may not conclude with any other party any agreement whose content is less favourable to MGM/UA than the last written offer from the ARD broadcasting organizations. The final judgement on this is made by MGM/UA.

A similar right of first negotiation also applies until 1 January 1997 if MGM/UA wishes to conclude an output agreement on the films newly produced or acquired after 31 December 1998.

9. *Sublicensing of the acquired rights*

- (18) The ARD broadcasting organizations are authorized to sublicense (transfer) outside the Federal Republic of Germany to other broadcasting organizations the rights acquired under the Library Licence Agreement, but not the rights in the James Bond films.

Inside the Federal Republic of Germany, by contrast, they may grant sublicences only to undertakings associated with them.

Outside the Federal Republic of Germany, the ARD broadcasting organizations have sublicensed 625 films to the Österreichischer Rundfunk and 150 films to the Schweizer Rundfunk.

10. *The licence fee*

- (19) The fee for the acquired rights, including the rights in new films, totals US \$ 80 million.

C. *General conditions governing the acquisition and broadcasting of television programmes*

1. *The development of television in the Federal Republic of Germany*

- (20) Following the ending in 1984 of the monopoly on broadcasting held by the public broadcasting organizations, there are now various private broadcasters in addition to the two public broadcasting organizations, the ARD and the ZDF (Zweites Deutsches Fernsehen). Two of these private broadcasting organizations, SAT 1 and RTL Plus, broadcast — via satellite and cable and recently also via terrestrial frequencies — a full range of programmes which can be received throughout the Federal Republic. A third full-range channel to be broadcast throughout the Federal Republic, Tele 5, is currently being developed. There are also other channels which are still at an experimental stage and a number of local or regional broadcasting stations. In addition, a number of foreign English-language and French-language channels are fed into the cable networks and transmitted via them. Their significance and degree of distribution are still small. Experiments are also being made with pay-TV.

- (21) Most private television stations are financed exclusively from advertising revenue. At present they are therefore predominantly less well-off than the public organizations, which have secure income from fees as well as advertising income. High ratings are necessary in order to achieve advertising revenue, and these can be achieved only by providing programmes having mass appeal.

2. *Importance, stock and distribution of feature films and television product*

- (22) (a) Feature films are a particularly important component of programming. Compared with television product (i.e. television films and television series), they are in many cases on a higher artistic level and are produced with greater financial expense, are therefore often more popular and mostly achieve high ratings. Every year, including the Dritte Programme, the ARD broadcasting organizations broadcast some 500 feature films, and the ZDF some 250 films, not counting repeats, rebroadcasts on the Dritte Programme and the programmes broadcast by Eins Plus, which mostly consist of repeats. Amongst the private broadcasters, SAT 1 broadcasts some 300 feature films annually and RTL Plus some 250, with all the broadcasters attempting, as a result of competition for viewers and high ratings, to extend the range of feature films they broadcast. All in all, therefore, in view of an anticipated extension in programming by the current broadcasters and also the arrival of new broadcasters, the demand for television rights in feature films may be expected to increase.

- (23) Worldwide, there is at present a stock of some 30 000 feature films suitable for exploitation on German television. Some 40 to 50 % of these were produced in the United States.

The major feature film libraries in the United States belong to the so-called major companies: MGM/UA (now MGM/UA Co. and TEC) (some 3 000), MCA/Universal (some 2 600), Columbia and 20th Century Fox (some 2 100 each) and Warner Bros and Paramount (some 1 100 each). In Europe, some 2 500 feature films are available in the United Kingdom and some 2 000 films each in the Federal Republic of Germany, France and Italy, owned by a large number of small and medium-sized undertakings.

- (24) Over 100 000 hours of television product suitable for exploitation on German television are available worldwide, with a further 3 000 hours or so being produced each year. In the case of cartoons, some 5 000 to 6 000 half-hour units are available worldwide, with a further 450 to 500 half-hour units being produced each year.

- (25) (b) Television rights in feature films and television product throughout the world are generally granted on an exclusive basis for a specific language version, a specific broadcasting area and a specific period. The licence territory comprises in principle the broadcasting area allocated to the relevant national television

broadcasting organizations, i.e. the territory of a given State, but is sometimes also extended to include adjacent areas of neighbouring States in which the language of the licensed language version is also spoken.

- (26) The average licence period is a few years. Licence periods of more than 10 years are extremely rare and are in any case granted to intermediaries and only in exceptional instances to television stations. The agreements usually relate to varying quantities of films ranging in some cases up to a few hundred. However, as far as the Commission can ascertain, in no case previously has an agreement relating to more than 1 000 films been concluded with a television broadcasting organization and never has the entire library of a film production and distribution undertaking been made available for selection. Furthermore, agreements with television broadcasting organizations usually relate to films which are already available and only in extremely rare cases do they also cover new productions. In the past the ARD broadcasting organizations have usually concluded agreements for 200 to 300 films for an average licence period of five years.

- (27) (c) On the German market, particular importance attaches to a group, which has established itself as an intermediary and acquires German-language television rights throughout the world in order to sublicense them to television broadcasting organizations. At present, this group holds German-language rights in some 15 000 feature films and 50 000 hours of television product. These include the essential parts of the libraries of the American major companies 20th Century Fox, Warner Bros, Paramount and Columbia and some 200 films of MGM/UA, which revert to MGM/UA Co. or TEC only in 1994 and will then be available to the ARD broadcasting organizations.

- (28) Because of its important position, the group has been able to negotiate with film production and distribution companies larger numbers of licences and longer licence periods than is otherwise usual throughout the world and has in some cases also been able to acquire rights in entire film libraries or to conclude agreements allowing it to select the most attractive films from the libraries. The group comprises film and television production and distribution companies. It also has shares in some private television broadcasting organizations.

D. Course of the proceedings and subsequent agreements and declarations

- (29) On 22 December 1986, the Commission sent the parties to the agreements a statement of objections

in which, given the number of films involved and the period covered by the agreements, it challenged the exclusivity of the rights acquired and the lack of access for third parties to the films. Following a hearing held on 13 October 1987, the ARD broadcasting organizations then made efforts, in negotiations with TEC and MGM/UA Co., to allow third parties access to the films.

On 16 December 1988, the following agreement was concluded with TEC on TEC's films:

- (30) The ARD broadcasting organizations allow TEC, by means of so-called 'windows', to license its films (feature films, cartoons and television product) to third parties. These windows designate certain periods relating to single films, during which the exclusivity granted to the ARD broadcasting organizations is lifted. The ARD broadcasting organizations do not themselves use the films during the windows and, at the same time, they allow the licensing of the films to third parties.

The windows amount to between two and six years, and in exceptional cases to eight years, their beginning and end being designated with regard to each film. They are staggered and begin in some cases before (Pre-Term-Window) and in some cases during (In-Term-Window) use by the ARD broadcasting organizations; in the latter case, use by the ARD broadcasting organizations is interrupted.

- (31) During the windows TEC's licenses may broadcast one run (i.e. one transmission in prime time and one repeat within two days outside prime time). The ARD broadcasting organizations make copies suitable for televising available to TEC's licenses in good time before the beginning of the windows and if the films are already available in German the copies are in German. If a German version is not yet available, the ARD broadcasting organizations contribute 50 % to the necessary dubbing costs, if the dubbing is carried out in agreement with them.

- (32) The ARD broadcasting organizations also release the television product which they have not themselves selected from the 416 hours allotted to them, with the result that TEC can grant licences without restriction on such television product to third parties. In this regard, the agreements had originally granted the ARD broadcasting organizations exclusivity even for the product not selected by them and had ruled out licensing to any other parties. However, in the case of seven named television series, the ARD broadcasting organizations are granted a right of first negotiation.

- (33) The ARD broadcasting organizations further allow third parties to broadcast the films in a foreign-language version throughout the entire contract area or to broadcast them into the licence territory from outside, which was not originally allowed under the agreements.

- (34) With regard to MGM/UA Co. with which a contractual agreement could not be concluded, on 3 February 1989, the ARD broadcasting organizations gave the following unilateral irrevocable grant:

MGM/UA Co. is authorized, in respect of all the films controlled by it (library films, new films, James Bond films, television product and cartoons), to grant licences to other television broadcasting organizations for one run per year within the framework of so-called 'windows'. The windows cover periods of two years and begin five years after first use by the ARD broadcasting organizations or, in the case of 213 library films, 13 years thereafter. Any MGM/UA Co. licensees receive from the ARD broadcasting organizations in good time before the beginning of the windows copies suitable for broadcasting and in so far as the German version is available the copies are in German.

- (35) In addition, the ARD broadcasting organizations release the television product which up to the time of the undertaking given by them they did not select from the available stock, with the result that it can be licensed to other parties. Lastly, they allow the foreign-language broadcasting of the films into the licence territory, in so far as such broadcasting takes place within the framework of a foreign-language channel.
- (36) Following the agreement with TEC and the irrevocable grant given to MGM/UA Co., by means of which account was taken of the Commission's demands, the ARD broadcasting organizations notified the agreements on 2 December 1988 with a view to exemption under Article 85 (3) of the EEC Treaty.
- (37) Further to the publication of a summary of the agreements notified, the Commission did not receive any observations from third parties. However, MGM/UA Co. informed the Commission, following such publication, that it opposed exemption on the grounds that the windows created were insufficient and the restrictions of competition were not removed.

II. LEGAL ASSESSMENT

A. Article 85 (1)

1. Agreements between undertakings

- (38) The agreements in question constitute agreements between undertakings, since the ARD broadcasting organizations and Nefico and its former parent company MGM/UA are undertakings within the meaning of Article 85 (1). This applies notwithstanding the fact that the ARD broadcasting organizations are public institutions charged under national law with the task of providing programmes in the public interest. The functional concept of undertaking in Article 85 (1) covers any activity directed at trade in goods or services irrespective of the legal form of the undertaking and regardless of

whether or not it is intended to earn profits. Accordingly, the Court of Justice ruled in Case 155/73 ⁽¹⁾ that public television broadcasting organizations are undertakings within the meaning of Article 85 (1) in so far as they exercise activities of an economic nature.

- (39) The acquisition of television rights constitutes such an economic activity. What is involved is the acquisition of a good for a consideration, with the broadcasting organizations being in direct competition with other undertakings, in particular private television stations.

Nor is any other approach called for by the taking into account of the right to free broadcasting. The question may be left open how far such a fundamental right exists at Community level and whether, as under national (German) constitutional law, it includes a duty on the part of public broadcasting organizations to provide programmes and in certain circumstances protects their acquisition of programmes. At any rate, there is no indication that the application of the competition rules in this case would thwart the duty on the part of broadcasting organizations to provide programmes, since they remain free to continue to conclude agreements on the acquisition of television rights in so far as the scope and duration of the agreements are in accordance with competition law.

- (40) Nor, for the same reason, does Article 90 (2) of the EEC Treaty stand in the way of the applicability of the competition rules because it is not apparent that in the present case application of the competition rules prevent the fulfilment of the public task of the ARD broadcasting organizations, so that Article 90 (2) is not relevant.

2. Restriction of competition

- (41) The agreements in question have as their object and effect the restriction of competition. The question may be left open here whether the rights granted to the ARD broadcasting organizations amount to licences in the legal and technical sense, or whether what is involved is an assignment of rights for a limited period and to a limited extent. If it is assumed that there is an assignment of rights, the restriction of competition lies in the fact that, despite this transfer of property, the ARD broadcasting organizations may not grant any sub-licences in the Federal Republic of Germany (in the case of the James Bond films, also outside the Federal Republic of Germany) which restricts them in their freedom of action and at the time impedes other television stations from having access to the films. If, by contrast, it is assumed, as the parties themselves seem to assume, that the agreements involve licences, then, taking into account the principles set out in the Coditel II judgement of the Court ⁽²⁾ the restriction of competition derives, by contrast, from the duration and the scope of the exclusivity.

⁽¹⁾ [1974] ECR 409.

⁽²⁾ [1982] ECR 3381.

- (42) In its Coditel II judgment the Court of Justice held that the granting of an exclusive right to exhibit a film (the reference here is to presentation in a cinema) was not as such a restriction of competition. However, it simultaneously made it clear that the exercise of such a right may, depending on the accompanying legal or economic circumstances, result in a restriction of competition, regard naturally being had not only to the actual exercise of the right, but also to the contractually agreed scope for its exercise. The Court of Justice focuses, in particular, on the question of whether or not the exercise of the right creates barriers which are artificial and unjustifiable in terms of the needs of the cinematographic industry, whether the charging of fees which exceed a fair return on investment is made possible and whether an exclusivity is created the duration of which is disproportionate to such needs. Such circumstances exist in this case taking the agreements as a whole.

(a) Number and duration of the exclusive rights and duration of the selection period

- (43) Of significance firstly is the unusually large number of the licensed rights.

Although the granting of exclusive rights to show films does not as such constitute a restriction of competition, account must be taken of the fact that the stock of suitable feature films cannot be increased at will and that therefore large quantities of films must not be withdrawn from the market as a result of long-term exclusive ties. The number of films involved in this case goes well beyond the normal quantity necessitated by the needs of programme acquisition and programme planning and also well beyond the previous acquisition practice of the ARD broadcasting organizations themselves. It is true that the films acquired by the ARD broadcasting organizations represent only 4,5 % of the total stock available worldwide. However, since such films represent a selected and therefore particularly interesting part of the library of one of the world's leading production and distribution companies and since they include many films with particular mass appeal such as the James Bond films or films that have been given awards, the rights acquired have an importance which goes beyond the purely numerical quantity involved. A further difficulty is the fact that not only the films available in the MGM/UA library are included, but also all of MGM/UA's new productions, and new productions are often particularly attractive.

- (44) The duration of the agreements is also of relevance. The licence period is naturally influenced by the large amount of licensed films, since such a

number of films calls for a fairly long period to allow optimum exploitation. The resulting duration of the licence period was up to now not customary in the industry and goes beyond the previous acquisition practice of the ARD broadcasting organizations themselves. It is also not called for by the requirements of programme acquisition and planning. Account should be taken here, in particular, of the staggering of the licence period, which in the case of the last 130 library films begins only on 1 January 1998 and thus expires only in 2013. This staggering means that the exclusive tie of the parties to the agreements is extended beyond the actual licence period of 15 years, with the result that other television stations are prevented from having access to some of the films, even before the actual licence period of the ARD broadcasting organizations begins. This long duration of the agreements and the extension of the exclusivity beyond the actual licence period are disproportionate within the meaning of the Coditel II judgment of the Court of Justice and result in an artificial barrier to other undertakings.

- (45) The relevant restrictions are not removed by the newly created windows in view of the fact that they lift the granted exclusivity only within certain periods, without third parties having full access to the films.

- (46) The selection period arising from the large quantity of films is also restrictive of competition. The fact that, for the duration of the selection period, i.e. between 1 October 1983 and 31 December 1986, MGM/UA was not allowed to grant any licences to third parties made its entire film library unavailable to other undertakings throughout this period. Since this also affected films which the ARD broadcasting organizations did not subsequently select, an artificial barrier was created for other television stations.

(b) The right of first negotiation

- (47) The right of first negotiation granted to the ARD broadcasting organizations restricts MGM/UA in selecting the parties with which it concludes agreements and adversely affects the negotiating position of other undertakings. This represents a further restriction of competition which reinforces the anti-competitive effect of the number and duration of the rights acquired by the ARD broadcasting organizations.

3. Effect on trade between Member States

- (48) Trade between Member States is affected by these agreements, since the contract area goes beyond the Federal Republic of Germany and also covers other Member States — Luxembourg and parts of Italy.

B. Article 85 (3)

Following the more recent agreement between the ARD broadcasting organizations and TEC and the irrevocable grant given by the ARD broadcasting organizations to MGM/UA Co., the conditions set out in Article 85 (3) are now met.

1. *Improvement in the distribution of goods*

- (49) In view of the abovementioned more recent agreement and the grant given, the agreements contribute to improving the distribution of goods, because they enlarge the offer of films on the relevant market.

The large number of films concerned, and in particular the selection of such a large number from the available library, meant that the entire MGM/UA library was systematically examined to see which of the available films were suitable for exploitation on German television. The ARD broadcasting organizations, which are familiar with the needs of German television and the viewing habits of their customers, were in a better position to do this than MGM/UA, which was not well acquainted with the German market and hitherto had distributed only smaller numbers of films through an intermediary. As a result of the selection agreement it was realized, in particular, that a series of, in general, fairly old films, were exploitable on German television and they were made accessible to German television viewers for the first time. These films had not previously been shown in the German-speaking area of Europe either on television or in the cinema and therefore no German version existed.

- (50) A further improvement in the distribution of goods derives from the windows, in particular from the arrangement concerning the dubbing costs. As a result of the windows the films can also be shown by other broadcasting organizations alternating with the ARD broadcasting organizations. The staggering of the windows ensures that, during the period of the agreements, a fairly large number of films can be licensed to third parties each year. Of particular interest to other television stations is the fact that, in accordance with the agreement with TEC, they may show a large portion of the films before the ARD broadcasting organizations themselves and indeed, in the case of quite a number of films, may do so during a period of up to eight years.
- (51) MGM/UA has submitted to the Commission in this respect that, as far as their duration and their sequence are concerned, the windows are insufficient and unattractive to private television stations. However, this argument is not convincing in the Commission's view. The Commission has received statements from private television stations in the Federal Republic which make clear their interest in acquiring licences under two-year windows. Furthermore, TEC, which under its agreement with the ARD broadcasting organizations, has windows

of up to eight years, has already entered into specific negotiations with television stations, and has already licenced a number of the films within the windows.

- (52) The new private stations in particular benefit from the fact that the ARD broadcasting organizations provide them not only with copies suitable for direct broadcast, but also dubbed versions of the films for which they received licences within the framework of the windows, and from the fact that, where such versions are not yet available, the ARD broadcasting organizations pay 50 % of the cost of dubbing. This must be seen as an improvement in the distribution of goods, since without such an arrangement some of the private channels could not broadcast such films. Particularly in the start-up phase, new private television stations have considerable financial difficulties which in many cases do not allow them to cover the costs of high-quality dubbing. The agreements in question therefore not only allow the films to be brought on to the German market and to be dubbed, but also, through the arrangements established with regard to dubbing, create the conditions which enable the films to be shown not only by the ARD broadcasting organizations, but, in alternation with them, by the other channels as well.
- (53) The large number of films has also resulted in a distinctly lower price per film to be achieved than in the case of individual agreements relating to smaller quantities of films. This in turn has meant that the ARD broadcasting organizations, which as public institutions have to work on the basis of fixed budgets, have been able to acquire more films than would otherwise have been possible.
2. *Fair share in the resulting benefit for consumers*
- (54) Consumers, i.e. the television viewers, receive a fair share of the resulting benefit, since more films are shown in the Germany language than would have been the case in the absence of the agreements.
3. *Indispensability of the restrictions and lack of any scope for eliminating competition*
- (55) Following the agreement concluded with TEC and the irrevocable grant given to MGM/UA Co., no restrictions are now imposed which are not indispensable to the attainment of the objectives described above. The newly created windows have limited the exclusivity granted to the ARD broadcasting organizations. The remaining exclusivity is necessary in order to allow a fair return from the relevant investments (licence fee, dubbing costs and administrative costs arising from selection). This applies also to the ban on licences for pay-TV, since simultaneous exploitation of the films on pay-TV would considerably affect the value of the films for the ARD broadcasting organizations. Other restrictions preventing exemption which were not indispensable and which were previously contained in the agreements have now been removed. This applies, in particular, to the

exclusivity relating to television product, which originally extended to programmes not selected by the ARD broadcasting organizations, and the ban on foreign-language broadcasts, which prevented cross-frontier broadcasting of the relevant films by pan-European channels.

- (56) The agreements notified do not afford the ARD broadcasting organizations the possibility of eliminating competition in respect of a substantial part of the products in question, since, in the first place, the windows allow other television channels to have access to the films and, in the second place, apart from the films in question here, there are sufficient other films suitable for exploitation on German-language television available on the market.

D. Articles 6 and 8 of Regulation No 17

- (57) Pursuant to Article 6 (1) of Regulation No 17, this Decision applies from the date of the last supplement to the agreements, i.e. 3 February 1989.

Having regard to the length of the contract period, the length of the windows available to other television channels and the fact that the market for television and television programmes in the German-speaking area is developing, exemption under Article 8 (1) of Regulation No 17 is granted for 10 years.

- (58) So that the Commission can check during the exemption period whether the conditions for exemption continue to be fulfilled, Degeto Film GmbH is required to submit to the Commission all amendments and additions to the agreements and possible further agreements, concluded by exercising the right of first negotiation,

HAS ADOPTED THIS DECISION:

Article 1

Pursuant to Article 85 (3) of the EEC Treaty, the provisions of Article 85 (1) are hereby declared inapplicable from 3 February 1989 until 2 February 1999 to the agreements concluded on 8 and 9 February 1984 between Degeto Film GmbH and Algemene Financieringsmaatschappij Nefico BV.

Article 2

The following obligation is attached to this Decision: Degeto Film GmbH shall immediately inform the Commission of any amendment and addition to the

agreements and of any new agreement concluded by exercising the right of first negotiation.

Article 3

This Decision is addressed to the following undertakings:

1. Degeto Film GmbH,
Bertramstraße 8,
D-6000 Frankfurt/Main;
2. Hessischer Rundfunk,
Bertramstraße 8,
D-6000 Frankfurt/Main;
3. Norddeutscher Rundfunk,
Rothenbaumchaussee 132-134,
D-2000 Hamburg 13;
4. Radio Bremen,
Heinrich-Hertz-Straße 13,
D-2800 Bremen;
5. Saarländischer Rundfunk,
Funkhaus Halberg,
D-6600 Saarbrücken;
6. Sender Freies Berlin,
Masurenallee 8-14,
D-1000 Berlin 19;
7. Süddeutscher Rundfunk,
Neckarstraße 230,
D-7000 Stuttgart 1;
8. Südwestfunk,
Hans-Bredow-Straße,
D-7570 Baden-Baden;
9. Westdeutscher Rundfunk,
Appellhofplatz 1,
D-5000 Köln;
10. Algemene Financieringsmaatschappij Nefico BV,
Rijswijkstraat 175,
NL-Amsterdam;
11. MGM/UA Communications Company,
10000 W. Washington Boulevard,
Culver City, California 90232,
United States;
12. Turner Entertainment Co.,
10100 Venise Boulevard,
Culver City, California 90232,
United States.

Done at Brussels, 15 September 1989.

For the Commission
Sir Leon BRITTAN
Vice-President

COMMISSION DECISION

of 27 September 1989

terminating the anti-dumping proceeding concerning imports of mica
originating in Japan

(89/537/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,Having regard to Council Regulation (EEC) No 2423/88
of 11 July 1988 on protection against dumped or
subsidized imports from countries not members of the
European Economic Community⁽¹⁾, and in particular
Article 9 thereof,After consultations within the Advisory Committee as
provided for by that Regulation,

Whereas :

A. Procedure

- (1) In 1988 the Commission received a complaint lodged by the Cie Royale Asturienne des Mines, Division Cogebi, representing the majority of Community production of mica. The complaint contained evidence of dumping of the product concerned originating in Japan and of material injury and threat of injury resulting therefrom, which was considered sufficient to warrant the opening of an investigation.
- (2) The Commission accordingly announced, by notice published in the *Official Journal of the European Communities*⁽²⁾, the initiation of an anti-dumping proceeding concerning imports into the Community of mica originating in Japan. The product concerned comprised agglomerated or reconstituted mica, whether or not on a support of paper, paperboard or other materials falling within CN codes 6814 10 00, 6814 90 10 and 6814 90 90. The Commission commenced an investigation.
- (3) The Commission officially notified the producers/exporters and importers allegedly concerned, the representatives of the exporting country and the complainant and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.
- (4) Most of the producers addressed by the Commission replied that they had not exported the product concerned to the Community; the only company which had exported mica products to the Community during the investigation period, i.e.

Nippon Rika Kogyosho, Tokyo, Japan, and the two
importers concerned requested and were granted
hearings.

- (5) The Commission sought and verified all the information it deemed necessary. On the spot investigations were carried out at the premises of the following companies :
 - (a) *Community producer* :
Cie Royale Asturienne des Mines (Division Cogebi), Lot, Belgium ;
 - (b) *producers/exporters* :
Nippon Rika Kogyosho, Tokyo, Japan,
Okabe Mica Co. Ltd, Tokyo, Japan ;
 - (c) *importer in the Community* :
AEG Isolier- und Kunststoff GmbH, Kassel-Walden, Germany.
- (6) The investigation period set pursuant to Article 7
(1) (c) of Regulation (EEC) No 2423/88 covered the period from 1 January to 30 November 1988.

B. The product

- (7) Mica is generally available in the following three types :
 - mica paper,
 - mica heater sheets,
 - mica fire resistant tape for cable.

It was found during the investigation that a special type of mica paper, called Ar-Mat, had been developed by Nippon Rika and was exported during the investigation period by this company to the Community. The complainant neither produced nor intends to produce this material in the near future. This special type has therefore been excluded from the investigation.

C. Dumping

(i) *Normal value*

- (8) With regard to mica heater sheets, normal value was determined for each thickness on the basis of weighted average domestic prices charged by Nippon Rika to independent customers. In the absence of domestic sales of the thickness exported, normal value was determined on the basis of an arithmetic average price between the two thicknesses nearest to the exported product.

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.⁽²⁾ OJ No C 323, 16. 12. 1988, p. 3.

As far as fire resistant insulating tape, i.e. AMS 864 G, is concerned, which was not sold on the domestic market during the investigation period, normal value was based — in the absence of domestic sales of the same size as that of the exports to the Community — on constructed value determined by adding the average cost of production of all sizes of the like product, i.e. T 512 A, plus the average margin of profit realized for that product on the domestic market.

(ii) *Export price*

- (9) Export prices were determined on the basis of the prices actually paid or payable for the products sold for export to the Community.

(iii) *Comparison*

- (10) The normal value was compared with the export prices for the corresponding type and thickness of the product on a transaction by transaction basis. All comparisons were made at ex-works level.
- (11) The exporting company claimed several adjustments pursuant to Article 2 (9) and (10) of Council Regulation (EEC) No 2423/88 for differences affecting price comparability. To the extent that the company had proven its claims adjustments were made for directly related selling expenses, such as transport, insurance, loading, ancillary costs, credit terms and commissions.
- (12) The exporting company also claimed an adjustment of the normal value pursuant to Article 2 (10) (c) (iv) of Regulation (EEC) No 2423/88 for additional services rendered, when the product was sold on the domestic market. The company claimed that the amount of the adjustment should correspond to the direct costs incurred for cutting the product concerned into slices.

This adjustment could not be granted, since Article 2 (10) (c) (iv) only covers after-sales services, whereas the services allegedly being rendered related to pre-sales services. In addition, this request was made outside the time limit.

(iv) *Dumping margin*

- (13) The weighted average dumping margin calculated on this basis amounts to 41,26 % for the mica heater sheets and to 5,7 % for the fire-resistant cable, the margins of dumping being equal to the amount by which the normal value exceeds the prices for exports to the Community, duly adjusted.

D. Injury

- (14) As Italy was allegedly the only part of the Community market where losses were incurred by

the complainant and to where 70 % of the Japanese exports were directed, the investigation concentrated particularly on this market.

With regard to the injury allegedly being caused by the dumped imports, the evidence available to the Commission showed that Japanese exports of mica to the Community increased from zero in 1984 to 40,5 tonnes in 1987 and to 102,5 tonnes during the investigation period.

Exports of mica from Japan into Italy increased from zero tonnes in 1984 through 1987 to 87 tonnes during the investigation period, with a consequent increase in market share held by the exporting country from 0 % in 1984 to 17,6 % during the same period.

When assessing the market shares held by the suppliers of mica to the Italian market, account has to be taken of the fact that the consumption of mica on this market increased from 448 tonnes in 1984 to 542 tonnes in 1985, i.e. by 20,9 % and decreased to 508 tonnes, i.e. by 6,3 % in 1986. In 1987 it increased to 634 tonnes, i.e. by 24,8 % and decreased to 618 tonnes, i.e. by 2,5 % during the investigation period.

This development shows an overall increase in the consumption of mica in Italy by 38 % from 1984 to the investigation period. In the absence of production of mica in Italy the figures relating to consumption and market shares were calculated on the basis of the imports from Japan and supplies from other Member States.

- (15) With regard to the resale prices of these imports on the Italian market, it was found that during the period under investigation the Japanese product undercut the prices of the complainant Community producer by 21,5 % (weighted average margin).
- (16) With regard to the possible impact of the dumped imports on the situation of the complainant Community producer, account has been taken of the following factors (the following figures cover the three types of mica products mentioned under recital 7):
- (a) the complainant increased its production capacity by 18,3 % in 1985, by 29,8 % in 1986, by 32,5 % in 1987 and by 1,6 % during the investigation period. This development corresponds to an increase of more than 100 % between 1984 and 1988.

The increase in production capacity took place mainly in order to meet estimated market requirements outside the Community, in particular in the Far East;

(b) the complainant's production increased by 18,3 % in 1985, by 29,5 % in 1986 and by 21,7 % in 1987 and decreased by 2,8 % during the investigation period.

(c) after remaining stable between 1984 and 1986 the complainant's capacity utilization decreased by 7,9 % in 1987 but only by 2,9 % during the investigation period;

(d) with regard to the complainant's sales in the Community and in particular on the Italian market the following findings were made:

(i) Community-wide sales of all mica products increased steadily from 1984 to 1988 with an increase of 9 % during the investigation period;

(ii) Community-wide sales of mica heater sheets increased by 12,2 % in 1985, by 26,8 % in 1986, by 2,2 % in 1987 and by 2,4 % during the investigation period;

(iii) on the Italian market sales of mica heater sheets remained stable or even increased, with the exception of the sales to only one of the complainant's major customers. The latter decreased by 7,4 % in 1985 and by 9,1 % in 1986; they remained stable in 1987 and decreased by 48 % during the investigation period;

(e) as far as the development of the complainant's market share on a Community-wide basis and in Italy is concerned the following findings were made. (In the absence of figures concerning sales by non-complainant Community producers, market shares are based on the complainant's market knowledge.):

(i) its market share for all mica products in the Community decreased from 44 % in 1984 to 42 % during the investigation period;

(ii) its market share for mica heater sheets in the Community decreased from 72 % in 1984 to 71,1 % in 1985, it increased again to 72,1 % in 1986 and decreased to 69,8 % in 1987 and to 65,2 % during the investigation period;

(iii) on the Italian market the complainant's market share for mica heater sheets decreased from 69 % in 1984 to 46 % during the investigation period, its market share for all mica products decreasing by only 7 %;

(f) with regard to the complainant's profitability it was found that its profits on sales of all mica

products, and in particular of sales of mica heater sheets in the Community, were already significant in 1984 and further increased by 30 % and 20 % respectively between 1984 and 1988;

(g) the personnel employed by the complainant in the mica sector remained stable throughout the period 1984 to 1988.

(17) Although some injury has been established on the Italian market, where the complainant realized about 20 % of his turnover in mica heater sheets in the Community, it is considered that this does not constitute material injury.

E. Threat of injury

(18) In order to examine the allegations made by the complainant with regard to a situation of threat of injury, the Commission carefully examined the telexes sent to the complainant by one of the other Japanese producers of mica, i.e. Okabe Mica Co. Ltd, and the activities of this company, which threatened to retaliate against the complainant by selling huge quantities of mica at very low prices in the Community.

However, it was considered that, in the absence of any exports of mica by Okabe Mica Co. Ltd to the Community either during the investigation period or afterwards, there was insufficient evidence to indicate that the intention declared by this firm would lead to a situation wherein the threats are likely to develop into actual injury.

(19) With regard to Nippon Rika, the only Japanese producer who in fact exported mica to the Community, there is no evidence to indicate any probability of an increase in exports of mica to the Community by this company.

(20) In these circumstances it is considered that a change of circumstances which would create a situation in which the dumping could cause injury cannot at present be clearly foreseen and is not imminent.

F. Termination of the proceeding

(21) The proceeding concerning imports of mica originating in Japan should therefore be terminated without the imposition of measures.

(22) No objections to this course of action were raised in the Advisory Committee.

- (23) The complainant was informed of the essential facts and considerations on the basis of which the Commission intended to terminate this proceeding. Subsequently, the complainant made its comments known to the Commission. However, these comments concerning the findings of threat of injury are not substantiated and cannot therefore be considered as affecting at present the findings outlined above with regard to injury and threat of injury.

The exporter was also informed of the dumping findings but did not significantly challenge the Commission's calculations,

HAS DECIDED AS FOLLOWS:

Sole Article

The anti-dumping proceeding concerning imports of mica originating in Japan is hereby terminated.

Done at Brussels, 27 September 1989.

For the Commission

Karel VAN MIERT

Member of the Commission
