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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 102/90**of 16 January 1990****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 3707/89⁽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 15 January 1990;

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 17 January 1990.

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 363, 13. 12. 1989, p. 1.

⁽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, 16 January 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX

to the Commission Regulation of 16 January 1990 fixing the import levies on cereals and on wheat or rye flour, groats and meal

(ECU/tonne)

CN code	Levies	
	Portugal	Third country
0709 90 60	32,80	132,07 ⁽²⁾ ⁽³⁾
0712 90 19	32,80	132,07 ⁽²⁾ ⁽³⁾
1001 10 10	40,11	174,04 ⁽¹⁾ ⁽⁵⁾
1001 10 90	40,11	174,04 ⁽¹⁾ ⁽⁵⁾
1001 90 91	33,59	134,10
1001 90 99	33,59	134,10
1002 00 00	58,71	126,64 ⁽⁶⁾
1003 00 10	49,88	116,50
1003 00 90	49,88	116,50
1004 00 10	41,28	121,66
1004 00 90	41,28	121,66
1005 10 90	32,80	132,07 ⁽²⁾ ⁽³⁾
1005 90 00	32,80	132,07 ⁽²⁾ ⁽³⁾
1007 00 90	49,88	137,15 ⁽⁴⁾
1008 10 00	49,88	23,31
1008 20 00	49,88	70,86 ⁽⁴⁾
1008 30 00	49,88	0,00 ⁽⁷⁾
1008 90 10	⁽⁷⁾	⁽⁷⁾
1008 90 90	49,88	0,00
1101 00 00	60,91	201,62
1102 10 00	96,07	191,17
1103 11 10	76,80	283,88
1103 11 90	64,84	216,80

⁽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 products imported directly into the French overseas departments, 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 103/90

of 16 January 1990

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 3707/89⁽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 15 January 1990;

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 17 January 1990.

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

Done at Brussels, 16 January 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.⁽²⁾ OJ No L 363, 13. 12. 1989, p. 1.⁽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 16 January 1990 fixing the premiums to be added to the import levies on cereals, flour and malt

A. Cereals and flour

CN code	(ECU/tonne)			
	Current 1	1st period 2	2nd period 3	3rd period 4
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
1004 00 90	0	0	0	0
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	14,49	14,49	18,11
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 1	1st period 2	2nd period 3	3rd period 4	4th period 5
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 104/90
of 15 January 1990
amending Regulation (EEC) No 1545/89 on transitional measures for the grant of
agricultural income aids

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 768/89 of 21 March 1989 establishing a system of transitional aids to agricultural income⁽¹⁾, and in particular Article 12 thereof,

Whereas Commission Regulation (EEC) No 1545/89⁽²⁾ stipulates, *inter alia*, that they shall apply only to draft measures notified to the Commission before 1 April 1989 and only where the grant of aid to individual recipients is decided before 1 January 1990;

Whereas, the finalization of the many detailed rules required for the implementation of the aid system instituted by Regulation (EEC) No 768/89 has taken more time than was initially anticipated as a result of which the time limits laid down in Articles 1 and 2 of Regulation (EEC) No 1545/89 now need to be extended; whereas it is necessary to take account of certain provisions of Commission Regulation (EEC) No 3813/89 of 19 December 1989 laying down detailed rules for the application of the system of transitional aids to agricultural income⁽³⁾ so as to ensure that aids authorized under the present Regulation will be duly taken into account;

Whereas it is therefore necessary to modify certain provisions of Regulation (EEC) No 1545/89;

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

Article 1

Article 1 of Regulation (EEC) No 1545/89 is hereby amended as follows:

1. Paragraph (1) (a) is replaced by the following:

'(a) draft measures for the institution or amendment of which have been notified to the Commission before 23 December 1989 pursuant to Article 93 (3) of the Treaty';

2. Paragraph 2 is replaced by the following:

'2. Paragraph 1 shall apply only to income aids which it is decided to grant to individual recipients before 1 January 1991 and which are at least in part paid to them before that date.';

3. A new paragraph 3a inserted as follows:

'3a. Where the Commission has authorized income aids in accordance with this Regulation, the limit referred to in Article 7 (1) of Regulation (EEC) No 3813/89 shall, under a programme of agricultural income aid, be reduced by 15 % for the holdings which benefit from this authorization and which are eligible under such a programme. However in no case shall this reduction for any holding exceed the actual payment per annual agricultural work unit on that holding.'

Article 2

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

It shall apply until 31 December 1990.

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

Done at Brussels, 15 January 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 84, 29. 3. 1989, p. 8.

⁽²⁾ OJ No L 151, 3. 6. 1989, p. 23.

⁽³⁾ OJ No L 371, 20. 12. 1989, p. 17.

COMMISSION REGULATION (EEC) No 105/90

of 16 January 1990

opening an invitation tender for the refund on export of wholly milled medium grain and long grain A rice to certain third countries and amending Regulation (EEC) No 3126/89

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice⁽¹⁾, as last amended by Regulation (EEC) No 1806/89⁽²⁾, and in particular Article 17 thereof,

Having regard to Council Regulation (EEC) No 1431/76 of 21 June 1976 laying down general rules for granting export refunds on rice and criteria for fixing the amount of such refunds⁽³⁾, and in particular Article 4 thereof,

Whereas examination of the balance sheet shows that exportable amounts of rice are currently held by producers; whereas this situation could affect the normal development of producer prices during the 1989/90 marketing year;

Whereas, in order to remedy this situation, it is appropriate to make use of export refunds to zones which may be supplied by the Community; whereas the special situation of the rice market makes it necessary to limit the refunds, and therefore to apply Article 4 of Regulation (EEC) No 1431/76 enabling the refund amount to be fixed by tendering procedure;

Whereas Commission Regulation (EEC) No 3126/89 of 18 October 1989 on a invitation to tender for the refund on export of wholly milled medium grain and long grain A rice to certain third countries⁽⁴⁾ specified the export markets as Zones I to VI and VIII, excluding Guyana, Madagascar and Surinam, as listed in Annex I to Commission Regulation (EEC) No 1124/77⁽⁵⁾, as last amended by Regulation (EEC) No 3049/89⁽⁶⁾; whereas it appears that the use of a specific tendering procedure would allow more rice to be sold for export to certain Eastern European countries; whereas the destination zones specified in Regulation (EEC) No 3126/89 should therefore be altered;

Whereas it should be stated that the provisions of Commission Regulation (EEC) No 584/75 of 6 March 1975 laying down detailed rules for the application of the system of tendering for export refunds on rice⁽⁷⁾, as last amended by Regulation (EEC) No 379/89⁽⁸⁾, apply to this invitation to tender;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. An invitation to tender is hereby opened, for the export refund referred to in Article 4 of Regulation (EEC) No 1431/76, for Zones II (a) and III as specified in Annex I to Regulation (EEC) No 1124/77 and for the German Democratic Republic.
2. The invitation to tender shall be open until 21 June 1990. During that period weekly invitations to tender shall be issued and the date for submission of tenders shall be determined in the notice of invitation to tender.
3. The invitation to tender shall take place in accordance with the provisions of Regulation (EEC) No 584/75 and with the following provisions.

Article 2

A tender shall be valid only if it covers a quantity for export of at least 50 tonnes but not more than 5 000 tonnes.

Article 3

The security referred to in Article 3 of Regulation (EEC) No 584/75 shall be ECU 20 per tonne.

Article 4

1. Notwithstanding the provisions of Article 21 (1) of Commission Regulation (EEC) No 3719/88⁽⁹⁾, export licences issued within this invitation to tender shall, for the purposes of determining their period of validity, be considered as having been issued on the day the tender was submitted.
2. The licences shall be valid from their date of issue, within the meaning of paragraph 1, until the end of the third month following.

⁽¹⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽²⁾ OJ No L 177, 24. 6. 1989, p. 1.

⁽³⁾ OJ No L 166, 25. 6. 1976, p. 36.

⁽⁴⁾ OJ No L 301, 19. 10. 1989, p. 14.

⁽⁵⁾ OJ No L 134, 28. 5. 1977, p. 53.

⁽⁶⁾ OJ No L 292, 11. 10. 1989, p. 10.

⁽⁷⁾ OJ No L 61, 7. 3. 1975, p. 25.

⁽⁸⁾ OJ No L 44, 16. 2. 1989, p. 22.

⁽⁹⁾ OJ No L 331, 2. 12. 1988, p. 1.

Article 5

Tenders submitted must reach the Commission through the Member States not later than one and a half hours after the time limit for weekly submission of tenders as laid down in the notice of invitation to tender. They must be transmitted in accordance with the table given in the Annex.

If no tenders are submitted, the Member States shall inform the Commission accordingly within the same time limit as that given in the above subparagraph.

Article 6

The time set for submitting tenders shall be Belgian time.

Article 7

1. On the basis of tenders submitted, the Commission shall decide in accordance with the procedure laid down in Article 27 of Regulation (EEC) No 1418/76:

- either to fix a maximum export refund, taking account of the criteria laid down in Articles 2 and 3 of Regulation (EEC) No 1431/76,
- or not to take any action on the tenders.

2. Where a maximum export refund is fixed, an award shall be made to the tenderer or tenderers whose tenders are at or below the maximum export refund level.

Article 8

The time limit for submission of tenders for the first partial invitation to tender shall be 10 a.m. (Belgian time) on 1 February 1990.

The final date for submission of tenders is hereby fixed at 21 June 1990.

Article 9

Article 1 (1) of Regulation (EEC) No 3126/89 is replaced by the following:

'1. An invitation to tender is hereby opened for the export refund referred to in Article 4 of Regulation (EEC) No 1431/76, for Zones I, II (b), IV, V, VI and VIII (except Guyana, Madagascar and Surinam, as specified in Annex I to Regulation (EEC) No 1124/77.'

Article 10

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, 16 January 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

*ANNEX***Weekly invitation to tender for the refund on export of wholly milled medium grain and long grain A rice to certain third countries**

(Closing date for the submission of tenders (date/time))

1	2	3
Serial number of tenders	Quantities in tonnes	Amount of export refund in ecu per tonne
1		
2		
3		
4		
5		
etc.		

COMMISSION REGULATION (EEC) No 106/90

of 16 January 1990

on the sale by the procedure laid down in Regulation (EEC) No 2539/84 of beef held by certain intervention agencies and intended for processing within the Community and repealing Regulation (EEC) No 3435/89

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 805/68 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 7 (3) thereof,

Whereas Commission Regulation (EEC) No 2539/84 of 5 September 1984 laying down detailed rules for certain sales of frozen beef held by the intervention agencies ⁽³⁾, as amended by Regulation (EEC) No 1809/87 ⁽⁴⁾, has provided for the possibility of applying a two-stage procedure when selling beef from intervention stocks;

Whereas certain intervention agencies hold stocks of intervention meat; whereas an extension of the period of storage should be avoided on account of the ensuing high costs; whereas, in the present market situation, there are outlets for such meat for processing in the Community;

Whereas such sales should be made in accordance with Commission Regulations (EEC) No 2539/84, (EEC) No 569/88 ⁽⁵⁾, as last amended by Regulation (EEC) No 3551/89 ⁽⁶⁾, and (EEC) No 2182/77 ⁽⁷⁾, as last amended by Regulation (EEC) No 3988/87 ⁽⁸⁾, subject to certain special exceptions on account of the particular use to which the products in question are to be put;

Whereas Commission Regulation (EEC) No 3435/89 ⁽⁹⁾ should be repealed;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. The following approximate quantities of beef shall be put up for sale for processing within the Community:

- approximately 250 tonnes of bone-in beef held by the Spanish intervention agency and bought in before 1 August 1989,
- approximately 500 tonnes of bone-in beef held by the United Kingdom intervention agency and bought in before 1 April 1989,
- approximately 1 500 tonnes of bone-in beef held by the German intervention agency and bought in before 1 April 1989,
- approximately 100 tonnes of bone-in beef held by the Dutch intervention agency and bought in before 1 April 1989,
- approximately 800 tonnes of boned beef held by the United Kingdom intervention agency and bought in before 1 April 1989,
- approximately 200 tonnes of boned beef held by the French intervention agency and bought in before 1 January 1989,
- approximately 300 tonnes of boned beef held by the Danish intervention agency and bought in before 1 April 1989,
- approximately 400 tonnes of boned beef held by the Irish intervention agency and bought in before 1 July 1989.

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

3. The sales shall be conducted in accordance with the provisions of Regulations (EEC) No 2539/84, (EEC) No 569/88, (EEC) No 2182/77 and this Regulation.

4. The qualities and the minimum prices referred to in Article 3 (1) of Regulation (EEC) No 2539/84 are given in Annex I hereto.

5. Only those tenders shall be taken into consideration which reach the intervention agencies concerned no later than 12 noon on 24 January 1990.

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

Article 2

1. Notwithstanding Article 3 (1) and (2) of Regulation (EEC) No 2182/77, the tender or application to purchase:

- (a) shall be valid only if presented by a natural or legal person who, for at least 12 months, has been engaged in the processing of products containing beef and who is entered in a public register of a Member State;

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 24.

⁽²⁾ OJ No L 61, 4. 3. 1989, p. 43.

⁽³⁾ OJ No L 238, 6. 9. 1984, p. 13.

⁽⁴⁾ OJ No L 170, 30. 6. 1987, p. 23.

⁽⁵⁾ OJ No L 55, 1. 3. 1988, p. 1.

⁽⁶⁾ OJ No L 348, 29. 11. 1989, p. 16.

⁽⁷⁾ OJ No L 251, 1. 10. 1977, p. 60.

⁽⁸⁾ OJ No L 376, 31. 12. 1987, p. 31.

⁽⁹⁾ OJ No L 277, 27. 9. 1989, p. 14.

(b) must be accompanied by:

- a written undertaking by the applicant to process the meat purchased into products specified in Article 1 (1) of Regulation (EEC) No 2182/77 within the period referred to in Article 5 (1) of the abovementioned Regulation,
- a precise indication of the establishment or establishments where the meat which has been purchased will be processed.

2. The applicants referred to in paragraph 1 may instruct an agent to take delivery, on their behalf, of the products which they purchase. In this case the agent shall submit the tenders or applications to purchase of the purchasers whom he represents.

3. The purchasers and agents referred to in the foregoing paragraphs shall maintain and keep up to date an accounting system which permits the destination and use of the products to be ascertained with a view particularly to checking to ensure that the quantities of products purchased and manufactured tally.

Article 3

1. The security provided for in Article 5 (1) of Regulation (EEC) No 2539/84 shall be ECU 10 per 100 kilograms.

2. The security provided for in Article 5 (3) (a) of Regulation (EEC) No 2539/84 shall be:

- ECU 100 per 100 kilograms for unboned forequarters,
- ECU 140 per 100 kilograms for boned meat.

Article 4

Regulation (EEC) No 3435/89 is hereby repealed.

Article 5

This Regulation shall enter into force on 18 January 1990.

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

Done at Brussels, 16 January 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANEXO I — BILAG I — ANHANG I — ΠΑΡΑΡΤΗΜΑ I — ANNEX I — ANNEXE I — ALLEGATO I — BIJLAGE I — ANEXO I

Estado miembro Medlemsstat Mitgliedstaat Κράτος μέλος Member State État membre Stato membro Lid-Staat Estado-membro	Productos Produkter Erzeugnisse Προϊόντα Products Produits Prodotti Produkten Produtos	Cantidades (toneladas) Mængde (tons) Mengen (Tonnen) Ποσότητες (τόνοι) Quantities (tonnes) Quantités (tonnes) Quantità (tonnellate) Hoeveelheid (ton) Quantidade (toneladas)	Precio mínimo expresado en ecus por tonelada (¹) Mindstepriser i ECU/ton (¹) Mindestpreise, ausgedrückt in ECU/Tonne (¹) Ελάχιστες τιμές πώλησεως εκφραζόμενες σε Ecu ανά τόνο (¹) Minimum prices expressed in ecus per tonne (¹) Prix minimaux exprimés en écus par tonne (¹) Prezzi minimi espressi in ecu per tonnellata (¹) Minimumprijzen uitgedrukt in ecu per ton (¹) Preço mínimo expresso em ecus por tonelada (¹)
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a) Carne sin deshuesar — Ikke udbenet kød — Fleisch mit Knochen — Κρέας μη αποστεωμένο — Unboned beef — Viande avec os — Carni con osso — Vlees met been — Carne com osso

Bundesrepublik Deutschland	— Vorderviertel, stammend von : Kategorien A/C, Klassen U, R, O	1 500	1 650
Nederland	— Voorvoeten, afkomstig van : Categorie A, klasse R	100	1 650
United Kingdom	— Forequarters, from : Category C, class U, R, O	500	1 650
España	— Quartos delanteros, procedentes : Categoría A, clase U, R, O	250	1 650

b) Carne deshuesada — Udbenet kød — Fleisch ohne Knochen — Αποστεωμένο κρέας — Boned beef — Viande désossée — Carni senza osso — Vlees zonder been — Carne desossada

France	— Catégorie A / Catégorie C : Caisse B	200	1 750
Ireland	— Category C : Briskets	400	2 100
United Kingdom	— Category C : Clod and sticking Pony Pony parts Thin flanks Foreribs Briskets Striploin flanked Forequarters flanks	50 300 10 10 80 300 4 50	2 500 2 700 2 000 1 600 2 700 2 100 1 000 1 600
Danmark	— Kategori A / Kategori C : Øvrigt kød af forfjerdinger Bryst og slag	220 80	2 500 1 800

(¹) Estos precios se entenderán netos con arreglo a lo dispuesto en el apartado 1 del artículo 17 del Reglamento (CEE) nº 2173/79.

(¹) Disse priser gælder netto i overensstemmelse med bestemmelserne i artikel 17, stk. 1, i forordning (EØF) nr. 2173/79.

(¹) Diese Preise gelten netto gemäß den Vorschriften von Artikel 17 Absatz 1 der Verordnung (EWG) Nr. 2173/79.

(¹) Οι τιμές αυτές εφαρμόζονται επί του καθαρού βάρους σύμφωνα με τις διατάξεις του άρθρου 17 παράγραφος 1 του κανονισμού (ΕΟΚ) αριθ. 2173/79.

(¹) These prices shall apply to net weight in accordance with the provisions of Article 17 (1) of Regulation (EEC) No 2173/79.

(¹) Ces prix s'entendent poids net conformément aux dispositions de l'article 17 paragraphe 1 du règlement (CEE) nº 2173/79.

(¹) Il prezzo si intende peso netto in conformità del disposto dell'articolo 17, paragrafo 1 del regolamento (CEE) n. 2173/79.

(¹) Deze prijzen gelden netto, overeenkomstig de bepalingen van artikel 17, lid 1, van Verordening (EEG) nr. 2173/79.

(¹) Estes preços aplicam-se a peso líquido conforme o disposto no nº 1 do artigo 17º do Regulamento (CEE) nº 2173/79.

*ANEXO II — BILAG II — ANHANG II — ΠΑΡΑΡΤΗΜΑ II — ANNEX II — ANNEXE II —
ALLEGATO II — BIJLAGE II — ANEXO II*

Direcciones de los organismos de intervención — Interventionsorganernes adresser —
Anschriften der Interventionsstellen — Διευθύνσεις των οργανισμών παρεμβάσεως — Addresses
of the intervention agencies — Adresses des organismes d'intervention — Indirizzi degli
organismi d'intervento — Adressen van de interventiebureaus — Endereços dos organismos de
intervenção

- DANMARK :** Direktoratet for Markedsordningerne
EF-Direktoratet
Frederiksborggade 18
1360 København K
tlf. (01) 15 41 30, telex 15137 DK, telefax 01 926 948
- BUNDESREPUBLIK
DEUTSCHLAND :** Bundesanstalt für landwirtschaftliche Marktordnung (BALM)
Referat 313 — Adickesallee 40
6000 Frankfurt am Main 18
Telex 411 156 / 411 727 / 41 38 90
Tel. 0 69 / 15 64 (0) 7 04 / 7 731 772, Telefax 069-1 564 776, Teletext 6 990 732
- ESPAÑA :** Servicio nacional de productos agrarios (SENPA)
c/ Beneficencia 8
28003 Madrid
Tel. 222 29 61
Télex 23427 SENPA E
- FRANCE :** OFIVAL
Tour Montparnasse
33, avenue du Maine
75755 Paris Cedex 15
Tél. 45 38 84 00, télex 26 06 43
- IRELAND :** Department of Agriculture and Food
Agriculture House
Kildare Street
Dublin 2
Tel. (01) 78 90 11, ext. 22 78
Telex 4280 and 5118
- NEDERLAND :** Ministerie van Landbouw en Visserij
Voedselvoorzienings- en verkoopbureau (VIB)
Burg. Kessenplein 3
Postbus 960
6430 AZ Hoensbroek
Tel. (045) / 23 83 83, telefax (045) / 22 27 35, telex 56396
- UNITED KINGDOM :** Intervention Board for Agricultural Produce
Fountain House
2 Queens Walk
Reading RG1 7QW
Berkshire
Tel. (0734) 58 36 26
Telex 848 302
-

COMMISSION REGULATION (EEC) No 107/90

of 16 January 1990

amending Regulation (EEC) No 1767/82 as regards certain cheese from
Switzerland and Austria

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,Having regard to Council Regulation (EEC) No 804/68 of
27 June 1968 on the common organization of the market
in milk and milk products ⁽¹⁾, as last amended by Regula-
tion (EEC) No 3879/89 ⁽²⁾, and in particular Article 14 (7)
thereof,Whereas from 1 January 1990 Switzerland has given
Vacherin fribourgeois cheese the new name 'Fromage
fribourgeois'; whereas this new name has been included
in the combined nomenclature from 1 January 1990 as
provided for in Commission Regulation (EEC) No
2886/89 ⁽³⁾; whereas the references concerned in
Commission Regulation (EEC) No 1767/82 of 1 July
1982 laying down detailed rules for applying specific
import levies on certain milk products ⁽⁴⁾, as last amended
by Regulation (EEC) No 49/90 ⁽⁵⁾, should be amended
accordingly;Whereas Regulation (EEC) No 1767/82 should also be
amended as regards the name of the agency in Austria
issuing the IMA 1 certificates provided for in Article 1 of
that 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*Regulation (EEC) No 1767/82 is hereby amended as
follows:

1. in points (c) and (d) of Annex I and in footnote 2 (a), in
points B and B (1) of Annex III and in Annex IV
opposite the reference to the non-member country
Switzerland, 'Vacherin fribourgeois' is replaced by
'Fromage fribourgeois';
2. in Annex IV, opposite the reference to the non-
member country Austria, under the heading 'Issuing
agency: Name', 'Milchwirtschaftsfond and Österrei-
chische Hartkäse Export-Gesellschaft, either jointly or
separately' is replaced by 'Milchwirtschaftsfond and
ÖHEG-Österreichische Hartkäse Exportförderungsge-
sellschaft mbH, either jointly or separately'.

*Article 2*This Regulation shall enter into force on the third day
following its publication in the *Official Journal of the
European Communities*.

It shall apply with effect from 1 January 1990.

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

Done at Brussels, 16 January 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.⁽²⁾ OJ No L 378, 27. 12. 1989, p. 1.⁽³⁾ OJ No L 282, 2. 10. 1989, p. 1.⁽⁴⁾ OJ No L 196, 5. 7. 1982, p. 1.⁽⁵⁾ OJ No L 8, 11. 1. 1990, p. 18.

COMMISSION REGULATION (EEC) No 108/90

of 16 January 1990

amending Regulation (EEC) No 598/86 on the application of the supplementary trade mechanism to imports into Spain of common wheat of breadmaking quality from the Community as constituted at 31 December 1985

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 569/86 of 25 February 1986 laying down general rules for the application of the supplementary mechanism applicable to trade ⁽¹⁾, as last amended by Regulation (EEC) No 3296/88 ⁽²⁾, and in particular Article 7 (1) thereof,

Whereas Article 81 (1) of the Act of Accession makes imports of breadmaking common wheat subject to the abovementioned mechanism in Spain;

Whereas Article 84 (1) of the Act of Accession of Spain and Portugal provides for the determination of guide quantities until 31 December 1989 only; whereas, in view of the fact that from 1 January 1990, only an indicative ceiling is fixed, the detailed rules for the application of the supplementary trade mechanism laid down in Commission Regulation (EEC) No 598/86 ⁽³⁾, as last amended by Regulation (EEC) No 3592/86 ⁽⁴⁾, should be amended accordingly;

Whereas the indicative ceilings for imports into Spain of breadmaking common wheat must increase progressively; whereas that effect may be attained by fixing the indica-

tive ceiling for 1990 at the level of the guide quantity applicable for 1989, plus 15 %;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 598/86 is hereby amended as follows:

1. Article 2 is repealed;
2. Article 4 is replaced by the following:

Article 4

For breadmaking common wheat, the indicative import ceiling shall be 306 077 tonnes in 1990.

Article 2

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

It shall apply with effect from 1 January 1990.

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

Done at Brussels, 16 January 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 55, 1. 3. 1986, p. 106.

⁽²⁾ OJ No L 293, 27. 10. 1988, p. 7.

⁽³⁾ OJ No L 58, 1. 3. 1986, p. 16.

⁽⁴⁾ OJ No L 334, 27. 11. 1986, p. 19.

COMMISSION REGULATION (EEC) No 109/90
of 16 January 1990
fixing the aid for soya beans

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 1491/85 of 23 May 1985 laying down special measures in respect of soya beans ⁽¹⁾, as last amended by Regulation (EEC) No 2217/88 ⁽²⁾, and in particular Article 2 (7) thereof,

Having regard to Council Regulation 2286/88 of 19 July 1988 providing for the granting of special aid for soya beans produced and processed in Portugal ⁽³⁾,

Whereas the amount of the aid referred to in Article 2 (1) of Regulation (EEC) No 1491/85 was fixed by Commission Regulation (EEC) No 3305/89 ⁽⁴⁾, as last amended by Regulation (EEC) No 4017/89 ⁽⁵⁾;

Whereas it follows from applying the rules and other provisions contained in Regulation (EEC) No 3305/89 to

the information at present available to the Commission that the amount of the aid at present in force should be altered as set out in this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The amount of the aid provided for in Regulation (EEC) No 1491/85 and the amount of the special aid provided for in Article 1 of Regulation (EEC) No 2286/88 in the case of Portugal shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 17 January 1990.

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

Done at Brussels, 16 January 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 151, 10. 6. 1985, p. 15.

⁽²⁾ OJ No L 197, 26. 7. 1988, p. 11.

⁽³⁾ OJ No L 201, 27. 7. 1988, p. 2.

⁽⁴⁾ OJ No L 320, 1. 11. 1989, p. 64.

⁽⁵⁾ OJ No L 382, 30. 12. 1989, p. 36.

ANNEX

to the Commission Regulation of 16 January 1990 fixing the aid for soya beans

(ECU/100 kg)

	Seed harvested in		
	Spain	Portugal	another Member State
Seed processed in current period			
— Spain	0,000	27,443	27,443
— Portugal	19,516	27,443 (*)	27,443
— another Member State	19,516	27,443	27,443
Seed processed in first period			
— Spain	0,000	27,506	27,506
— Portugal	19,579	27,506 (*)	27,506
— another Member State	19,579	27,506	27,506
Seed processed in second period			
— Spain	0,000	27,503	27,503
— Portugal	19,576	27,503 (*)	27,503
— another Member State	19,576	27,503	27,503
Seed processed in third period			
— Spain	0,000	28,030	28,030
— Portugal	20,103	28,030 (*)	28,030
— another Member State	20,103	28,030	28,030
Seed processed in fourth period			
— Spain	0,000	28,217	28,217
— Portugal	20,290	28,217 (*)	28,217
— another Member State	20,290	28,217	28,217
Seed processed in fifth period			
— Spain	0,000	28,181	28,181
— Portugal	20,254	28,181 (*)	28,181
— another Member State	20,254	28,181	28,181

(*) Special aid.

COMMISSION REGULATION (EEC) No 110/90**of 16 January 1990****altering the export refunds on white sugar and raw sugar exported in the natural state**

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 the second subparagraph of Article 19 ⁽⁴⁾ thereof,

Whereas the refunds on white sugar and raw sugar exported in the natural state were fixed by Commission Regulation (EEC) No 4/90 ⁽³⁾, as last amended by Regulation (EEC) No 71/90 ⁽⁴⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 4/90 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 (1) (a) of Regulation (EEC) No 1785/81, undenatured and exported in the natural state, as fixed in the Annex to amended Regulation (EEC) No 4/90 are hereby altered to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 17 January 1990.

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

Done at Brussels, 16 January 1990.

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 1, 4. 1. 1990, p. 8.

⁽⁴⁾ OJ No L 10, 12. 1. 1990, p. 30.

ANNEX

to the Commission Regulation of 16 January 1990 altering the export refunds on white sugar and raw sugar exported in the natural state

(ECU)

Product code	Amount of refund	
	per 100 kg	per percentage point of sucrose content and per 100 kg net of the product in question
1701 11 90 100	24,45 ⁽¹⁾	
1701 11 90 910	23,50 ⁽¹⁾	
1701 11 90 950	⁽²⁾	
1701 12 90 100	24,45 ⁽¹⁾	
1701 12 90 910	23,50 ⁽¹⁾	
1701 12 90 950	⁽²⁾	
1701 91 00 000		0,2658
1701 99 10 100	26,58	
1701 99 10 910	25,55	
1701 99 10 950	25,55	
1701 99 90 100		0,2658

⁽¹⁾ Applicable to raw sugar with a yield of 92 % ; if the yield is other than 92 %, the refund applicable is calculated in accordance with the provisions of Article 5 (3) of Regulation (EEC) No 766/68.

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

COMMISSION REGULATION (EEC) No 111/90

of 16 January 1990

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 3707/89 ⁽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 3942/89 ⁽⁷⁾, as last amended by Regulation (EEC) No 91/90 ⁽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 15 January 1990;

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 3942/89 are hereby altered to the amounts set out in the Annex.

Article 2

This Regulation shall enter into force on 17 January 1990.

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 363, 13. 12. 1989, p. 1.

⁽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 379, 28. 12. 1989, p. 13.

⁽⁸⁾ OJ No L 11, 13. 1. 1990, p. 35.

⁽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, 16 January 1990.

For the Commission
Ray MAC SHARRY
Member of the Commission

ANNEX

to the Commission Regulation of 16 January 1990 altering the import levies on products processed from cereals and rice

CN code	Import levies		
	Portugal	ACP or OCT	Third countries (other than ACP or OCT)
1103 21 00	65,06	239,60	245,64
1104 19 10	65,06	239,60	245,64
1104 29 11	46,63	177,04	180,06
1104 29 31	55,48	212,98	216,00
1104 29 91	36,47	135,77	138,79
1104 30 10	30,63	99,83	105,87
1107 10 11	69,25	236,94	247,82
1107 10 19	54,49	177,04	187,92
1108 11 00	92,69	292,84	313,39
1109 00 00	312,50	532,44	713,78

**COUNCIL REGULATION (EEC) No 112/90
of 16 January 1990**

imposing a definitive anti-dumping duty on imports of certain compact disc players originating in Japan and the Republic of Korea and collecting definitively the provisional duty

THE COUNCIL 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 Articles 9 and 12 thereof,

Having regard to the proposal submitted by the Commission after consultation within the Advisory Committee as provided for under the above Regulation,

Whereas :

A. PROVISIONAL MEASURES

- (1) The Commission, by Regulation (EEC) No 2140/89⁽²⁾ (hereinafter referred to as 'the Commission Regulation') imposed a provisional anti-dumping duty on imports of certain compact disc players originating in Japan and the Republic of Korea. That duty was extended for a maximum period of two months by Council Regulation (EEC) No 3444/89⁽³⁾.

B. SUBSEQUENT PROCEDURE

- (2) Following the imposition of the provisional anti-dumping duty, the Japanese and Korean exporters who so requested were granted an opportunity to be heard by the Commission. They also made written submissions making known their views on the findings.
- (3) Some Japanese exporters who cooperated during the proceeding had presented additional claims which required further examination. Investigations, limited to these additional claims, were carried out on the premises of some exporters in Japan, where it was considered possible so to do within the time constraints between provisional and definitive duty.

- (4) Some importers and exporters who did not make themselves known to the Commission within the time limit specified in the opening notice applied to be heard according to Article 2 of the Commission Regulation. While their views were fully taken into account, no new full investigation of any exporter could be carried out within the time constraints. The new and unverified data submitted by them had to be disregarded.

- (5) Upon request, parties were also informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive duties and the definitive collection of amounts secured by way of a provisional duty. They were also granted a period within which to make representations.

- (6) The oral and written submissions and comments of the parties were considered and, where appropriate, the Commission's findings were modified to take account of them.

- (7) Due to the complexity of the proceeding, in particular to the detailed verification of the data and the number of exporters involved and the numerous arguments put forward, the investigation could not be concluded within the time limit provided for in Article 7 (9) (a) of Regulation (EEC) No 2423/88.

C. PRODUCT UNDER CONSIDERATION, LIKE PRODUCT AND COMMUNITY INDUSTRY

- (8) In its provisional findings, the Commission considered that all Community-produced stand-alone compact disc players, as defined in recitals 7 to 12 of the Commission Regulation, are like products to all stand-alone compact disc players exported from Korea and Japan and that the Community producers, Philips, Grundig and Bang & Olufsen form the Community industry, within the meaning of Article 4 (5) of Regulation (EEC) No 2423/88. Although some exporters continued to claim that these models should not be considered like products, because of the differences in the level of technical specifications and the sophistication of features, no new arguments were presented by the exporters against these findings. They are, therefore, confirmed by the Council.

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No L 205, 18. 7. 1989, p. 5.

⁽³⁾ OJ No L 331, 16. 11. 1989, p. 45.

D. EXPORT PRICE**(a) Sales to independent importers**

- (9) With regard to export sales made by Japanese and Korean exporters directly to independent importers in the Community, prices were determined on the basis of the price actually paid or payable for all sales of the product sold for export net of all taxes, discounts and rebates actually granted and directly related to the sales under consideration.

(b) Sales to related importers

- (10) In cases where exports were made to subsidiary companies which imported the product into the Community it was considered appropriate, in view of the relationship between exporter and importer, that export prices be reconstructed on the basis of the prices, net after discounts and rebates, at which the imported product was first resold to an independent buyer. Discounts, rebates and the value of free goods directly linked to a sale under consideration were deducted from the price to the independent customer and suitable adjustment was made to take account of all costs incurred between import and resale, including all duties and taxes.
- (11) For some subsidiaries, some costs, mainly advertising, market research and also some operating costs, were reimbursed by the exporting parent company and, consequently, shown as revenue in the subsidiary's accounting records. It was considered, however, that these expenses were incurred by the subsidiaries, are normally borne by the importing subsidiaries and, consequently, have to be considered as part of their costs.
- (12) Two exporters paid, in Japan, advertising expenses in fact incurred in Europe, for literature expenses, promotional campaign and brand name promotion realised exclusively or partially in Europe, exclusively or partially for the product under consideration. It was considered, for the Member States of the Community where the exporter concerned has importing subsidiaries, that these expenses, in so far as they related to the Member State and the product concerned, were to be considered as expenses normally incurred by the sales subsidiaries and they were added to the cost of these subsidiaries unless the company concerned could show that the expenses concerned were such as should normally be borne by the exporter. In fact, any other treatment of such expenses would introduce a discrimination between the abovementioned exporters and those whose subsidiaries paid directly all the expenses normally incurred by them.

- (13) For one company it was found that the figures concerning the cif prices incorporated in the computer listings submitted by its subsidiaries in Europe were incorrect. The company has agreed that the Commission use the prices contained in the written submission for its computer calculations.

- (14) One exporter requested the Commission to exclude 34 % of the resales of its sales subsidiary in the Community concerning three out of the five models it sold during the investigation period, on the grounds that these sales were stock sales as the models concerned were not produced during the investigation period. The Commission, in keeping with Regulation (EEC) No 2423/88 and previous practice, considered that the time of sales is the determining factor rather than the time of production. Accordingly, this claim could not be accepted.

- (15) After publication of the Commission Regulation, one exporter claimed a basis of allocation for advertising expenses different from that claimed in the original submission verified by the Commission. The modification of the method of allocation of one item of expenses at such a late stage of the proceeding could not be accepted. A global turnover allocation of expenses was used.

(c) Categories of customer

- (16) The Council confirms the Commission's findings on establishing export prices as set out in recitals 19 to 22 of the Commission Regulation for the exporters other than those mentioned below.
- (17) Four exporters, i.e. Yamaha, Sanyo, Pioneer and Matsushita, claimed again that their export sales were made to categories of customer distributors, different from those to whom sales were made on the domestic market (generally a mixture of distributors and retailers and, in some cases, end users) and account should be taken of this fact.
- (18) The Commission therefore carefully examined the functions of the customers and whether they were clearly reflected, for the markets and the product concerned, in the quantities sold and in the pattern of prices charged. It concluded that export sales were effectively made to distributors.

E. NORMAL VALUE**(a) Domestic price**

- (19) Generally, for most of the producers/exporters included in the proceeding, normal value was established, as for the purpose of provisional findings,

on the weighted average domestic prices of all sales to independent customers. These prices were net of all discounts and rebates directly linked to the sales of compact disc players (hereinafter referred to as 'CDPs').

(20) One exporter claimed that the normal value established for its sales on the domestic market should take account of the purchase value of compact discs which, it alleged, were given as a form of rebate on the price paid for the product under consideration. It was established that these rebates-in-kind were directly linked to the sales under consideration. The exporter claimed that the effective purchase value of these goods should be deducted from the domestic selling price. It was established that these goods were purchased by the exporter several years before the investigation period and neither an indication of their cost had they been purchased during the investigation period nor an estimate of the effect of these goods on the market value of CDPs were provided. Accordingly, the Commission estimated this effect to be the cost of similar goods purchased during the investigation period by the same exporter; this cost was deducted from the domestic selling price.

(21) One Korean exporter claimed that its domestic sales should not be taken as a basis for normal value because its selling quantities were very low in absolute amount and its selling prices were very high and, consequently, should not be considered as reflecting the 'general price situation'. The Council accepts the Commission's position concerning the absolute amount of sales as expressed in recital 27 of the Commission Regulation. The Commission has established that the prices in question have effectively been charged in the normal course of trade by the exporter concerned. Accordingly, the claim could not be accepted.

(b) Categories of customer

(i) *Selective normal value — OEMs*

(22) Separate normal values were established for sales to OEMs because it was accepted that these customers had functions which were clearly distinct from those of other categories of unrelated purchasers and that these different functions were clearly reflected, for the markets concerned, in the quantities sold and in the pattern of prices charged.

(ii) *Selective normal value — own brand sales*

(23) The Council confirms the Commission's findings on establishing normal value for Sony on the basis of the sales of this company to unrelated distribu-

tors as set out in recitals 29 to 31 of the Commission Regulation.

(24) The four exporters mentioned in recital 17 claimed that a distinction had to be made between categories of their first independent buyers. They claimed, in particular, that special categories of unrelated clients had functions clearly distinct from those of other categories of unrelated customers and that these different functions were clearly reflected in the size of the quantities sold, in the pricing policy and in the pattern of prices found on the market. They claimed that those special categories of clients were at the most appropriate level of trade for comparison with export sales and that, accordingly, the normal value for these exporters should be established selectively on the basis of the weighted average domestic prices of their sales to these categories of independent customers.

(25) The Commission carried out additional on-the-spot investigations. For two of the exporters concerned, i.e. Yamaha and Sanyo, it was established that the special categories of unrelated clients concerned, (i.e. independent distributors for Sanyo and independent retailers for Yamaha), had functions which were distinct from all other categories of unrelated clients insofar as these special categories sold only to the other categories of client, i.e. to retailers and end users for Sanyo and to end users for Yamaha. Pioneer and Matsushita claimed the use of selective normal value on the basis of their sales to special categories of clients who, these exporters claimed, were companies which, when purchasing through their centralized purchasing department, behaved like a distributor whilst acting as a retailer when reselling through their distribution network. It was established, for the product concerned, that the purchasing departments of these clients had functions which were distinct from all other categories of unrelated clients insofar as, in their relation with the exporter/producer in question, they assumed distributor functions.

(26) The Commission also compared the quantities sold, the pricing policy and the level of prices charged to these special categories of client with those charged to other categories of unrelated clients. The result of the comparison for three of the exporters concerned showed a clear distinction in quantities sold, a marked difference in pricing policy and a consistent pattern of prices reflecting the distinct functions of these clients compared

with the other independent customers. For the fourth exporter, Sanyo, a distinction could be established for some customers in quantities and even in pricing policy but, for the investigation period, no consistent pattern of prices existed. Sanyo seemed to have a consistent pricing policy of lower prices to independent distributors compared to other categories of independent clients at every moment, for the product concerned. Nevertheless, the decrease of prices of the models concerned during the investigation period and the higher sales realized to customers other than distributors towards the end of this period more than compensated the effect of Sanyo's pricing policy. Thus, in average terms for the investigation period, the prices to independent distributors were higher than the average prices to all clients.

- (27) In view of such evidence, the Commission accepted that for Yamaha, Pioneer and Matsushita, sales to the special categories of clients claimed were made at a level of trade different to the sales made to other categories of clients. The Commission also accepted that domestic sales to these special categories of clients were at the most appropriate level of trade for comparison with export sales and that, accordingly, the normal value for these exporters should be established selectively on the basis of the weighted average domestic prices of their sales to these categories of independent customers. As far as Sanyo is concerned, the Commission concluded that, even if a difference in level of trade existed between the independent distributors and the other categories of customers, this difference did not result in a clear pattern of prices for the product concerned in the investigation period. Consequently, this difference cannot justify any approach other than the establishment of the normal value for Sanyo on the basis of the weighted average domestic of its sales to all independent customers.

- (28) The Council confirms this conclusion.

- (29) Two exporters presented a claim before the imposition of provisional duties alleging that the normal values established for them on the basis of all domestic sales to independent customers were not comparable to the export prices because of a difference in level of trade. No additional evidence was supplied after the imposition of the provisional duty. Consequently, the Council confirms for these exporters the Commission's findings and conclusions as set out in recitals 33 to 35 of the Commission Regulation.

(c) Transfer prices

- (30) It was considered that it would be inappropriate in this case to take account of any transfer price

between related companies or branches of any exporter when establishing normal value by reference to domestic prices. Normal values were, therefore, established on the basis of the prices charged on sales made by the manufacturers' sales departments or their related sales companies to independent buyers.

- (31) One exporter continued to claim that normal value should be determined on the basis of transfer prices because the production company and its related sales subsidiaries did not form one economic entity. The same exporter also continued to claim that Article 2 (7) of Regulation (EEC) No 2423/88 should apply to its transfer prices. Nevertheless, no new evidence or arguments were submitted. The Council, for the reasons stated in recitals 38 to 40 and 43 to 44 of the Commission Regulation, confirms the Commission's conclusions as set out in recitals 41 and 45 of the same Regulation.

F. CONSTRUCTED VALUE

- (32) Where models comparable to those sold for export were not sold or were not sold in sufficient quantities or where such sales were not profitable, during the reference period, the Commission determined normal value on the basis of constructed value.
- (33) The constructed values were calculated by taking all costs, both fixed and variable, in the country of origin, of materials and manufacture plus selling, administrative and other general expenses and a reasonable margin for profit. Where an allocation of costs was necessary, this was generally made on the basis of total CDP turnover. In accordance with the exporters last available audited accounts. Only where the Commission received satisfactory proof that an alternative method would be more appropriate, was such a method used.
- (34) Where there were no or insufficient (i.e. less than 5 % of quantity exported) sales on the domestic market, the amounts used in the constructed values for selling, general and administrative (SGA) expenses and profit were the weighted averages of the expenses incurred and profit realized by the same producer or exporter on its other profitable models sold on the domestic market, or where it did not have sales of other models, by reference to the weighted average of the expenses incurred and profit realized by all other producers and exporters on domestic sales of profitable models of CDPs.

(35) In cases where sales on the domestic market of a model of a producer or exporter were unprofitable but sold in sufficient quantities, the SGA expenses used in its constructed value were those of its domestic sales, the profit being the weighted average calculated on its other profitable models sold on the domestic market, or where it did not have profitable sales of other models, by reference to the weighted average profit for other exporters.

(36) The SGA and profit considered in the calculation of the constructed normal values of the companies for which a selective normal value was used were those established for their sales to the same category of customer which were used as a basis for the calculation of the selective normal value. Two of these exporters submitted SGA amounts calculated on the basis of a different allocation than a direct turnover allocation without substantiating to the satisfaction of the Commission the methods proposed. The Commission made use of turnover allocations for those two exporters.

(37) The Korean exporter referred to in recital 21 also claimed that the Commission should not, in constructing normal values, apply the average profit realized by it on its profitable sales because the quantities, though they exceeded 5 % of export sales, were relatively low in absolute quantities and, consequently, the profit realized was unreliable and not suitable for use. However, it was considered that a low absolute amount of domestic sales realised in the ordinary course of trade cannot, by itself, be a sufficient reason to justify a departure from the general approach concerning profit calculations as outlined in recital 35.

(38) One other Korean exporter requested that the SGA and profit of its domestic sales for products other than CDP's should be used for the normal value instead of the average SGA and profit of all other Korean exporters. Such an approach would be inconsistent with Article 2 (3) (b) of Regulation (EEC) No 2423/88 because average SGA and profit of all other Korean exporters were available and suitable.

(39) Two exporters also claimed that the use, in the constructed OEM normal values, of an OEM profit at a level of 30 % of the brand profit level was inconsistent with the Commission's previous prac-

tice where a 5 % flat margin was used. The Commission, however, considers that, at the level of a specific company, a necessary link exists between expenses incurred and profits realised for own-brand models and those incurred and realised for OEM models (see recital 40). The Commission considered that a profit rate which corresponded to 30 % of the own-brand profit constituted a reasonable estimate to reflect the differences which could exist between own-brand and OEM prices if sales of the latter had taken place on the Korean market. The fact that in some previous proceedings the Commission considered it appropriate to use a flat percentage is not contradictory with a specific approach to a given product that the Commission considers more accurate. Furthermore, this percentage gives for the Korean market, a profit rate which is more favourable to the exporters who have no domestic sales than the flat rate that the Commission has used in previous proceedings.

(40) One Korean exporter claimed that for the constructed OEM normal values, the flat margin 30 % of average brand profit for all Korean exporters should be used instead of 30 % of its own-brand profit. The Commission considers that the link between OEM/Brand profits is to be established first at the level of each exporter if the company concerned has brand sales on the domestic market. Indeed, normal business behaviour for a company that can supply a market with high profits is to try to benefit from these profits instead of supplying with a very low profit an OEM client who, in fact, becomes a competitor. In such circumstances, only if an exporter has no brand domestic sales, a reference to other exporters' profits can be used in accordance with Article 2 (3) (b) of Regulation (EEC) No 2423/88.

G. COMPARISON

(41) For the purpose of a fair comparison between normal value and export price, due allowance in the form of adjustments was made in accordance with Article 2 (9) and (10) of Regulation (EEC) No 2423/88 to both the export price and the normal value for the differences affecting price comparability such as difference in physical characteristics, difference in import charges and indirect taxes and difference in selling expenses, where claims of a

direct relationship of these differences to the sales under consideration could be satisfactorily demonstrated.

(42) Sony claimed allowances for the salaries of salesmen working in their domestic audio sales department. This department sells CDP's only through two sales channels, i.e. independent distributors and sales subsidiaries. Sony claimed that they do not need salesmen to sell to their related sales subsidiaries and, consequently, the salesmen in the audio sales department can only sell to the independent distributors. Nevertheless, no evidence was submitted to the Commission demonstrating any difference between the independent distributors and the sales subsidiaries as far as their distribution functions and their operational relations with Sony are concerned, which could justify the argument presented by Sony that salesmen were not necessary for selling to sales subsidiaries but they were necessary for selling to independent distributors. Consequently, this claim could not be accepted.

(43) As regards salesmen's salaries, several exporters continued to claim costs for salesmen together with costs for personnel other than salesmen, i.e. personnel not wholly engaged in direct selling activities. The amount of the allowance granted was, therefore, estimated in each case on the basis of the facts available.

(44) Sony claimed a bigger allowance for warranty and servicing expenses incurred by related servicing companies. They claimed the full amount of cost of goods as it appears in the profit and loss accounts of these companies. This amount could not be considered in its totality because the spare parts purchased by the servicing companies were sold by Sony. Therefore, overheads and profit and other expenses not related to the sales of CDPs were incorporated in the amount of the allowance requested. Consequently, no additional allowance to that already granted at the provisional stage was accepted.

(45) Funai claimed allowances for freight, insurance and credit terms calculated on a different basis than that used for the SGA expenses included in the cost of production resulting in allowances exceeding the corresponding amounts included in the SGA expenses. Consequently, the amount of the SGA expenses were amended in order to reflect the totality of these expenses and then the requested allowances were granted.

(46) Teac's claims for allowances were rejected because it failed to provide a comprehensible quantification of its claim which could be used as presented or as

a basis to estimate the amount of the expenses for which it was claiming adjustments.

H. DUMPING MARGIN

(47) Normal values were compared with the export prices on a transaction-by-transaction basis. The examination of the facts shows the existence of dumping in respect of compact disc players originating in Japan and Korea for all the exporters investigated, the margin of dumping being equal to the amount by which the normal value as established exceeded the price for export to the Community.

(48) The margins of dumping varied according to the exporter and the weighted average margins were as follows:

Japanese exporters:

	%
Nippon Columbia Co. Ltd (Denon) Tokyo :	17,02
Funai Electric Trading Co. Ltd, Osaka :	8,95
Kenwood Corporation, Tokyo :	23,34
Lux Corporation, Tokyo/Alpine Electronics Inc., Tokyo :	1,54
Marantz Japan Inc., Tokyo :	2,29
Matsushita Electric Industrial Co. Ltd, Osaka :	26,31
Onkyo Corporation, Osaka :	8,57
Pioneer Electronic Corporation, Tokyo :	26,32
Sanyo Electric Co. Ltd, Osaka :	26,58
Sony Corporation, Tokyo :	10,17
Teac Corporation, Tokyo :	18,34
Victor Company of Japan (JVC), Tokyo :	17,99
Nippon Gakki Corporation, Yamaha Hamamatsu :	27,58

Korean exporters:

Inkel Corporation, Seoul :	14,49
GoldStar Co. Ltd, Seoul :	26,11
Samsung Electronics Co. Ltd, Seoul :	10,73
Haital Electronics Co. Ltd, Seoul :	19,42

(49) As regards the companies which did not cooperate fully with the Commission during the preliminary investigation, i.e. Chou-Denki, Hitachi, NEC, Sharp and Toshiba, the circumstances remained unchanged up to the final examination of the facts and, accordingly, the Council confirmed that it would be appropriate that definitive findings for these companies should be made on the basis of the facts available in accordance with the provisions of Article 7 (7) (b) of Regulation (EEC) No 2423/88. In this connection, it was considered that

the results of the Commission's investigation provided the most appropriate basis for determination of the margin of dumping.

- (50) For Chou Denki information submitted by the company and other exporters allowed the specific calculation of a dumping rate of 17,82 %.

- (51) For Toshiba and Sharp, information submitted by the complainants and the parties concerned allowed a specific calculation of dumping rates which were established as follows

Toshiba :	31,00 %
Sharp :	32,00 %

- (52) For Hitachi and NEC the information available was not sufficient to allow a specific calculation of dumping rates.

- (53) It was considered that, in accordance with the provisions of Article 7 (7) (b) of Regulation (EEC) No 2423/88, it would create an opportunity for circumvention of the duty and would constitute a bonus for non-cooperation to hold that the dumping margin for the abovementioned two exporters, those exporters which neither replied to the Commission's questionnaire nor otherwise made themselves known and also for those who made themselves known subsequent to the imposition of the provisional duty, was any lower than the highest dumping margins determined with regard to any exporter who had fully or partially cooperated in the investigation. Consequently, it was considered appropriate to use the dumping margins of 26,11 % for Korea and 32,00 % for Japan for these groups of exporters.

- (54) The Council also considered the problem of companies which started or will start exporting own-produced CDPs to the Community after the end of the investigation period. It came to the conclusion that it would create an opportunity for circumvention of the duty to apply any anti-dumping duty lower than the highest dumping margins determined. However, the Council notes that the Commission is ready to initiate, without delay, a review proceeding whenever the exporting company can show the Commission, and supply to that effect, sufficient evidence that it did not export CDPs to the Community during the period of investigation and that it only started those exports after the said period and that it is not related to or associated with any of the companies subject to the present investigation.

I. INJURY

- (55) In its provisional findings, the Commission concluded that the Community CDP Industry had

experienced material injury. This finding was based mainly on the increase in the market share of the Japanese and Korean exporters, the price undercutting and price underselling, the price depression initiated by them and the development of the profit and loss situation of the complainants.

(a) Evolution of the Community market and market shares of dumped imports

(i) Size of the Community market

- (56) The size of the Community market at the level of sales to traders was established by adding the total imports to the Community to the total Community production and deducting from these figures the total Community exports.

- (57) Further information made available to the Commission confirms its provisional findings of a very rapid increase of the Community market of CDPs covered by the proceeding. From an index 100 in 1984, it increased to 350 in 1985, 1 193 in 1986 and 1 337 in 1987.

- (58) Some Japanese exporters claimed that the stocks of their related importers and also stocks held by the Community industry should also be taken into account in these calculations. However, it was established that, for the product concerned, the stocks of the Community industry were mainly held by their national sales subsidiaries in the Member States. Consequently, the method of establishing the size of the market explained in recital 56 provided a reasonable estimate of the market at the level of sales to related and independent traders (national distributors, big retailers).

(ii) Volume and market shares of dumped imports from Japan and Korea

I. Volume and market shares of dumped imports from Japan

- (59) The volume of CDPs covered by the proceeding and imported from Japan was 97 924 units in 1984, 528 912 units in 1985, around 1 467 400 units in 1986 and around 2 094 500 units in 1987. For the investigation period (May 1986 to June 1987), this volume was around 1 615 400 units.

- (60) When the Japanese producers started exporting CDPs to the Community in 1984, they achieved a less than 50 % share of the Community market. In 1985 this reached around 68 % and in 1987 it reached around 70 % of the total Community market.

II. Volume and market share of dumped imports from Korea

- (61) The volume of CDPs imported from Korea was 12 units in 1984, 1 526 units in 1985, 33 934 units in 1986 and 148 352 units in 1987. For the investigation period this volume was 89 478 units.
- (62) When the Korean producers started exporting CDPs to the Community in 1985, they achieved a share of less than 1 % of the Community market. In 1986, this share increased to around 1,5 %, in 1987 it increased to almost 5 % of the total Community market.

III. Market share of total dumped imports from both Japan and Korea

- (63) The market share of all exporters concerned was less than 50 % in 1984, around 70 % in 1985 and around 80 % in 1987.

(iii) *Volume and market shares of Community industry*

- (64) The number of CDPs produced in the Community increased from an index 100 in 1984 to an index 789 in 1986 and decreased in 1987 to an index 552. This increase is by far inferior to the market size increase (see recital 57).
- (65) On the basis of quantities sold it was estimated that market share dropped from more than 50 % in 1984 to less than one third in 1985. In 1986, market share increased slightly compared with 1985. In 1987, a substantial fall brought the market share of the Community industry to around 18 % of the Community market.

(iv) *Production capacity, utilization and stocks*

- (66) The Commission found that the actual production capacity rose from an index 100 in 1984 to an index 767 in 1987 with a capacity utilization rate which decreased by approximately 25 % between 1983 and 1987.
- (67) Stocks also rose from an index 10 in 1984 to an index 133 in 1985 and 1 633 in 1986. Community producers did not increase production capacity for 1987. Nevertheless, capacity utilization decreased from more than 50 % in 1986 to less than 40 % in 1987. The increase of exports from an index of 100 in 1984 to an index 755 in 1987 did not succeed in reversing the decrease in the capacity utilization rate.

(b) *Price undercutting, price underselling and price depression*

- (68) Following a claim received by a Korean exporter for the assessment of the price undercutting, the

Commission also compared the prices of the Community producers with those of the Korean exporters at the level of sales to OEM companies in the Community. Seven Korean models were compared, each one with the most comparable Community produced OEM model. These comparisons showed that all seven Korean models were sold at prices from 28,6 % to 36 % lower than the prices of the comparable Community models. When the target prices were used in the comparison, the resulting underselling ranged from 49,84 % to 55,04 %.

- (69) One Korean exporter claimed that, in order to assess undercutting, the Commission should make adjustments for differences in physical characteristics. Nevertheless, no quantification of such differences was provided. The undercutting established for this particular exporter for its OEM exports was 28,6 % and the underselling was 49,84 %. For its brand exports, the undercutting was 19,72 % and the underselling was 44,51 %. Even if the full difference in the cost of manufacture were granted as an adjustment, the undercutting for this exporter would be 11,5 % and the underselling 37,83 % for its OEM exports, and 5,01 % and 35,73 % respectively for its brand exports.
- (70) No new evidence or arguments were submitted concerning price undercutting, price underselling and price depression initiated by dumped imports.

(c) Profitability and employment

- (71) In recital 100 of its Regulation the Commission has established that the Community industry suffered severe financial losses during the reference period. No new arguments or evidence were submitted concerning the Commission's findings on profitability of the Community industry nor on employment (recital 101 of that Regulation) in the Community.

(d) Conclusion

- (72) These reasons, in addition to those set down in recitals 83 to 101 of the Commission Regulation, led the Council to consider that the market position and financial performances of the Community industry are on a declining trend and that the Community industry is suffering material injury.

J. CAUSATION OF INJURY BY DUMPED IMPORTS

- (73) The Commission concluded in recitals 104 and 105 of its Regulation that the effects of exports of individual exporters and also the effect of Korean and Japanese imports had to be analyzed cumulatively and in recitals 106 to 120 that the effects of

dumped imports of CDPs originating in Japan and Korea, taken in isolation, have to be considered as causing material injury to the Community industry.

(a) Cumulation

(74) Several Korean exporters continued to claim that the effects of Korean exports should not be considered cumulatively with the effects of the Japanese exports. Since the Korean and Japanese CDPs compete with each other and with the Community production and since the volume and market shares of Korean exports are not negligible and for the other reasons given in recital 105 of the Commission Regulation, the Council confirms the Commission's conclusions on this issue.

(75) Several exporters continued to claim that the Commission failed to show the specific injurious effect of dumped imports of the individual exporters. However, the Council cannot accept these arguments. In accordance with its position in previous cases and with the jurisprudence of the Court of Justice, the Council considers that the injurious effects of the dumped imports of individual exporters concerned have to be assessed together.

(b) Dumped prices, market shares and profitability

(76) No new arguments were presented to contest the Commission's conclusions concerning the relation between dumped prices, market shares and profitability of the Community industry.

(c) Other factors

(77) One exporter continued to argue that the Community industry made wrong commercial decisions in lowering its market price to levels below cost and in accumulating much higher stocks than its Japanese competitors.

(78) The pricing policy of the Community industry was aimed at the defence of market shares as a reaction to the price depression initiated by the dumped imports. Such a policy cannot be regarded as wrong business decisions. As far as stocks are concerned, the Community industry claimed that higher stocks were accumulated after dumping by Japanese exporters had started and affected Community industry's sales and market shares. Consequently, such accumulation of stocks cannot be attributable to wrong policy decisions.

(79) Some exporters claimed that the loss of market share of the Community industry is due to the tendency observed among consumers to buy hi-fi equipment, including CDPs, as a package which together offers all the required features and performs the necessary functions of a sound system. A high proportion of consumers allegedly buy individual hi-fi products of the same brand as the ones they already possess, even if they do not buy an entire 'stack' of equipment on one occasion. Consequently, it was alleged, the CDP market share would have a tendency to reach the level of market share in other hi-fi products and the CDP market share of the Community industry should be reduced to the benefit of those producers who have a strong presence across the entire range of hi-fi products.

(80) One of these exporters argued that the depression of Japanese export prices was not caused by dumping but by reduced manufacturing costs of CDPs and supplied some evidence to demonstrate that its own export prices were lowered by less than the reduction of its manufacturing costs.

(81) As far as the arguments concerning the evolution of prices and the consumer's behaviour are concerned, it is clear that, in a complex market, like the Community CDP market, the general price level can fall rapidly for reasons other than dumping (recital 83 of the Commission Regulation) and the evolution of market shares results from complex consumer considerations which are not necessarily only price related (recital 108 of the Commission Regulation).

(82) However, the issue involved is whether the normal evolution of the market was affected by the dumping practices of Japanese and Korean exporters in a way that it caused injury to the Community industry. In this respect, the results of the Commission's investigation show a clear parallel between the increase of the dumped exports and a decrease of the Community industry's market share, capacity utilization and profitability.

(83) Furthermore, as far as the evolution of prices is concerned, the Commission has established on the basis of evidence submitted by the Community industry, that in April/May 1986 the prices of the Japanese models decreased more rapidly than the average price of Community models. The Community industry has partially reacted to the loss of its market shares by decreasing its own prices and this decrease brought, in most cases, selling prices

below cost of production and generated losses. No evidence or arguments were submitted to contest this conclusion.

- (84) As far as evidence on the relation between the specific exporter's export prices and manufacturing costs is concerned, the Council considers that this relation at the level of an individual exporter cannot, in the present case, be considered sufficient evidence of the reasons which caused the general price depression referred to above. Furthermore, even the evidence submitted by the exporter does not provide any explanation for the quicker price decrease of Japanese export prices in April/May 1986.

(d) Conclusion

- (85) The Council is of the opinion that, even if it were correct that the Community industry is facing difficulties attributable in part to causes other than the dumping, the difficulties resulting from the dumped imports taken in isolation have to be qualified as material injury.
- (86) In conclusion, the Council confirms the Commission's findings that the volume of the dumped imports, their market penetration and the prices at which the dumped compact disc players have been sold in the Community have caused material injury to the Community industry.

K. COMMUNITY INTEREST

- (87) In its provisional findings, the Commission considered the general Community's interest, the interests of the Community's CDP industry, of the consumers and end users and also of other industries and activities concerned i.e. CD producers, musicians, artists, etc. For the reasons given in recitals 121 to 137 of the Commission Regulation, it concluded that the Community interests call, on balance, for granting protection to the Community industry.
- (88) In addition to the findings concerning the consumers' interest developed in recitals 134 to 136 of the Commission Regulation, evidence available to the Commission confirms that the imposition of duties should not affect adversely to any significant extent, the range and prices of CDPs available to the consumer, all the more since at least eight of the Japanese companies who cooperated in the proceeding representing, during the investigation period, 89,95 % of total exports of all Japanese companies that cooperated, are already engaged in production of CDPs at plants within the Community or have announced plans to do so.

- (89) No new arguments have been submitted concerning Community interest. Therefore, for the above-mentioned reasons and for those expressed in recitals 121 to 137 of the Commission Regulation, the Council concludes that it is in the overriding interest of the Community that the injury due to dumping be eliminated and that the Community industry be accorded protection against dumped imports of CDPs from Japan and Korea

L. DUTY

(a) Amounts of the duty

- (90) In order to eliminate the injury suffered by the Community producers, the duty should be such as to allow them to eliminate their losses and obtain a sufficient return on sales by permitting them to increase substantially the selling prices of their own produced CDPs without losing, perhaps even regaining, their market shares in the Community.

(i) Method of calculation

- (91) The method of calculation was explained in recitals 140 to 149 of the Commission Regulation. Following comments received by the parties concerned, three elements have changed. Firstly, considering the claim of the Community producers that a return on sales of 15 % was required to operate competitively taking account of all relevant economic factors, the evidence submitted to support this claim and the absence of any substantive comments from the exporters, it was decided that a 12 % return on sales can be regarded as appropriate. Secondly, the calculations which, for the purpose of the provisional duty were limited to OEM sales and the German market alone for brand sales were extended to include also the brand sales in the French and UK markets. Thirdly, following a substantiated claim received from an exporter, the Commission accepted to increase his export prices to independent distributors by actual amounts instead of the 25,86 % average increase applied to other exporters.

(ii) Arguments of the Community industry

- (92) The Community industry claimed that, in order to remove injury, the elimination of losses and the restoration of profitability cannot be enough. The recapture of lost market shares and the necessary expenses in research and development, advertising, distribution and investments, should also be considered in the calculation of the amount of duty necessary to remove the injury. In order to cover this additional aspect, it was claimed that the return on sales of the Community industry should be 25 %.

(93) The Council accepts that in cases where high market share losses have occurred like those suffered by the Community CDP industry, it might be appropriate in order to eliminate injury to take into consideration the additional costs for the Community industry necessary to recapture market shares. However, looking to the specific circumstances of the present proceeding and the CDP's Community market, it was concluded that this claim could not be accepted, mainly for two reasons. Firstly, the Community industry did not provide a quantification of such additional expenses to the satisfaction of the Commission. Secondly, the level of injury established for the Community CDP industry was very high. Consequently, for almost all significant exporters, the results of these calculations show that the duties have to be at the level of the dumping margins found. An additional increase of the return on sales of the Community industry would affect only some small producers occupying specialised segments of the market and causing limited injury. Consequently, it cannot be anticipated that such an increase will result in an increase of market shares for the Community Industry.

(iii) *Arguments of the exporters*

(94) Several exporters claimed that, because some or all of their CDP models were sold at prices higher than the comparable Community models, their sales did not cause any injury to the Community industry.

(95) In order to assess if these claims are justified, the Council examined the Commission's findings and conclusions concerning the relations between prices of imported CDP models and prices and market shares of the Community Industry.

(96) The Commission has established (recital 11 of its Regulation) that all models of stand-alone CDPs have a high degree of interchangeability from the consumer's point of view. It results from recitals 91, 92 and 143 to 145 that the Commission considered that this interchangeability reaches its higher degrees when the physical characteristics of the models concerned are similar enough. In other words, the Commission considered that the injurious effect of an individual dumped imported CDP model is primarily felt on the most similar Community model or models with which the imported model is in direct competition from the consumer's point of view. Furthermore, the Commission established in recitals 108 and 109 and also 115 and 116 of its Regulation that a rela-

tion exists between prices and market shares of directly competing models and that the Community industry had to defend its market shares against not only price undercutting but also a general lowering of prices of directly competing models. The Council considers the exporters mentioned in recital 94 above have not presented any arguments or evidence capable of modifying the Commission's findings and conclusions. Under such circumstances, the claim has to be rejected because it takes no account of these considerations.

(97) Several exporters claimed that the group of models in direct competition, as established by the expert mentioned in recital 92 of the Commission Regulation was not satisfactory. New criteria and/or new weighting of the criteria used by the expert were proposed after the imposition of provisional duties and, in some cases, after the final disclosure of the Commission's intention for the definitive measures in accordance with Article 7 (4) of Regulation (EEC) No 2423/88, different groups of models were proposed.

(98) The Commission recalls firstly that the expert was chosen in agreement with all the exporters concerned; secondly that he has established his model comparison on the basis of objective criteria subsequently applied to all companies involved in this proceeding, thirdly that the exporters concerned were given a reasonable opportunity to comment on these criteria and their weighting and that these comments were taken into consideration. Because the model comparison is a complicated exercise and involved the external expert, in cases where alternative groups of models were proposed, the Commission first calculated the resulting influence on the duty level of the exporter concerned. If the level of injury on the basis of the Commission comparison was higher than the dumping margin established for an exporter and continued to be so if calculated on the basis of the model comparison proposed by him, the Commission did not consider it appropriate to establish whether the specific claim was founded or not. Only in one case could such a claim have an influence on the amount of duty. In this case, the claim had to be rejected because the exporter concerned proposed an alternative weighting of the criteria used by the expert which was not substantiated to the satisfaction of the Commission.

(99) Finally, some exporters claimed that adjustments for differences in physical characteristics between Community and imported models should be introduced to the calculation of the amount of duty necessary to remove the injury.

- (100) It was first considered that these groups of models resulted from the general method criteria and weighting applied by the expert. Consequently, for the exporters who exported many models to the Community, even if significant physical differences existed between compared models, no evidence was submitted to show that the general method applied resulted, on average, in a significant overestimation or underestimation of the features and quality of their models. Furthermore, the method applied by the Commission implies that were the adjustments to have an effect on the resulting duty they should be made to the selling prices of the imported models. Such a modification of prices would only influence the basis of the calculation of the percentage increase mentioned in recital 145 of the Commission Regulation. The difference would be marginal and certainly not enough to modify the resulting level of duties for all exporters mentioned in recitals 105 and 106 below. Furthermore, for those of these exporters who have claimed an alternative model comparison, with the exception of the one mentioned in recital 98, the calculation made by the Commission on the basis of the model comparison proposed by themselves gave a result higher than their dumping margin.

- (101) For the three companies mentioned in recitals 50 and 51, the evidence available was not sufficient to allow a specific calculation of the amount of duty necessary to remove the injury. It was therefore considered appropriate that the duty for these exporters should be established at the level of the dumping margin.

(b) Conclusion

- (102) The Council concludes that on the basis of the injury calculation threshold method described in recitals 145 to 148 of the Commission Regulation and for the abovementioned reasons, the duty to be imposed should be at the level of the dumping margin for all exporters mentioned in recitals 48 and 50 above, with the exception of Teac, Lux Corporation, Alpine Electronics Inc. and Marantz Japan Inc.
- (103) For Teac, the duty should be the injury threshold. For Lux Corporation, Alpine Electronics Inc. and Marantz Japan Inc., the amount of duty thus established was *de minimis* and thus does not justify the adoption of protective measures.
- (104) For other companies which neither replied to the Commission's questionnaire nor otherwise made themselves known or refused full access to information deemed to be necessary by the Commission for its verification of the company's records, the Council considers it appropriate to impose the highest duty calculated, i.e. 32 % for products originating in Japan and 26,11 % for products

originating in Korea. Indeed, it would constitute a bonus for non-cooperation to hold that the duties for these producers/exporters were any lower than the highest anti-dumping duty determined.

- (105) The duty to be imposed should apply to all CDPs as defined in recital 8 above from Japan and Korea.

M. UNDERTAKINGS

- (106) Several exporters have offered price undertakings. It was, however, considered that, in view of the number of these exporters, the number of models exported by them, the number of possible features of the product concerned and the frequent renewal of models, an undertaking would be difficult to implement and would require extensive resources to be monitored. Thus, after consultations with the Advisory Committee, these undertakings were rejected.

N. COLLECTION OF PROVISIONAL DUTIES

- (107) In view of the dumping margins established, and the seriousness of the injury caused to the Community industry, the Council considers it necessary that amounts collected by way of provisional anti-dumping duties should be definitively collected to the extent of the amount of the duty definitively imposed,

HAS ADOPTED THIS REGULATION :

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of certain compact disc players falling within Taric code 8519 99 10⁽¹⁾, i.e. stand-alone sound reproducers with a laser optical reading system and with external dimensions of at least 216 × 45 × 150 mm, equipped to accommodate up to a maximum of 10 compact discs, including sound reproducers which may be incorporated in a 'rack' system but can nevertheless operate alone separately from the 'rack' system with their own power supply and commands, functioning with AC mains supply of usually 110/120/220/240V and not capable of operating with a power supply of 12 V DC or less, originating in Japan and in the Republic of Korea.

2. The rate of the duty shall be 32 % for products originating in Japan (Taric additional code : 8279) and 26,1 % for products originating in Korea (Taric additional code : 8285) of the net free-at-Community-frontier price before duty with the exception of imports of the products specified in paragraph which are produced or sold for export by the following companies, the rates of duty applicable to which are set out below :

(¹) The Taric code shown is that applicable on the date on which this Regulation enters into force.

Japanese exporters:

	<i>Rate of duty %</i>	<i>Taric additional code</i>
Nippon Columbia Co. Ltd (Denon) Tokyo:	17,0	8267
Funai Electric Trading Co. Ltd, Osaka:	8,9	8268
Kenwood Corporation, Tokyo:	23,3	8269
Matsushita Electric Industrial Co. Ltd, Osaka:	26,3	8270
Onkyo Corporation, Osaka:	8,3	8271
Pioneer Electronic Corporation, Tokyo:	26,3	8272
Sanyo Electric Co. Ltd, Osaka:	26,5	8273
Sony Corporation, Tokyo:	10,1	8274
Teac Corporation, Tokyo:	12,7	8275
Victor Company of Japan (JVC), Tokyo:	17,9	8276
Nippon Gakki Corporation, (Yamaha) Hamamatsu:	27,5	8277
Sharp Corporation, Osaka	32,0	8280
Toshiba Corporation, Tokyo	31,0	8287
Chou-Denki Co. Ltd, Saitama	17,8	8288

Korean exporters:

Inkei Corporation, Seoul:	14,4	8281
GoldStar:	26,1	8282

Samsung Electronics Co. Ltd, Seoul: 10,7 8283
 Haitai Electronics Co. Ltd, Seoul: 19,4 8284

of the net free-at-Community-frontier price before duty.

In cases where the exporting company is not the thame as the producing company the rate applicable to the producing company shall apply.

3. The duty shall not apply to imports of the products specified in paragraph 1 manufactured by Lux Corporation Tokyo, Alpine Electronics Inc., Tokyo and Marantz Japan Inc., Tokyo (Taric additional code: 8278).

4. The provisions in force concerning customs duties shall apply.

Article 2

The amounts collected or secured by way of provisional anti-dumping duty pursuant to Regulation (EEC) No 2140/89 shall be collected at the rates of duty definitively imposed where the definitive rate of duty is lower than the provisional antidumping duty and at the rates of provisional duty in all other cases. Secured amounts which are not covered by the rates of duty definitively imposed shall be released.

Article 3

This Regulation shall enter 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, 16 January 1990.

For the Council

The President

M. O'KENNEDY

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 20 December 1989

relating to a proceeding under Article 85 of the EEC Treaty
(IV/32.408 — TEKO)

(Only the German text is authentic)

(90/22/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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 4, 6 and 8 thereof,

Having regard to the application submitted on 11 August 1987 by the Technisches Kontor für die Maschinen-B-U-Versicherung GmbH for negative clearance or for exemption under Article 85 (3) of the EEC Treaty of the agreement and the cooperation put into effect relating to machinery loss of profits insurance and of the addendum on the inclusion of space insurance,

Having published a summary of the agreement and of the cooperation put into effect between the relevant undertakings based thereon⁽²⁾ pursuant to Article 19 (3) of Regulation No 17,

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

Whereas :

I. THE FACTS

- (1) On 11 August 1987, the Technisches Kontor für die Maschinen-B-U-Versicherung (TEKO) notified

an agreement on cooperation in machinery loss of profits insurance concluded on 6 March 1981 by 17 of the companies concerned (three companies joined later) initially for one year, but automatically renewed from year to year unless express notice of termination is given (six months before expiry). As from 1 June 1988, space insurance was included in the agreement by an addendum dated 11 August 88.

- (2) TEKO is a limited company, the registered office of which is in Düsseldorf. Its shareholders are six insurance undertakings. In addition, TEKO cooperates with three other pool members and 11 other so-called 'friendly' companies. TEKO has a small staff. There are no staffing links with the various companies.

1. Cooperation in machinery loss of profits insurance

- (3) TEKO was established in 1954 for the purpose of joint and mutual reinsurance of machinery loss of profits insurance risks and the advising of the companies concerned in the conclusion and handling of such insurance. Machinery loss of profits insurance is insurance against financial loss incurred through the interruption of business due to the failure of technical equipment and machinery as a result of unforeseen occurrences (technical defects). There are 49 undertakings operating in the machinery loss of profits insurance market in the Federal Republic of Germany. In 1988, there were

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ No C 203, 8. 8. 1989, p. 2.

4 462 contracts, 1 049 of which were processed through TEKO (including 186 new contracts in 1988). Total premium income amounted to DM 74,192 million in 1988. Of this, DM 14,879 million was accounted for by TEKO, giving it a market share of approximately 20 %.

concerned. However, the companies may also decide not to make such a request and may calculate the premium themselves, although in practice they do so only in exceptional cases. In such cases, TEKO is free to refuse the bringing in of a policy into the joint reinsurance if the conditions agreed by a company or the premium appear insufficient.

- (4) The TEKO companies (pool members and 'friendly' companies) may, if they wish, bring the policies concluded by them into TEKO for reinsurance. There is no obligation to bring such policies in; the companies are free to reinsure themselves individually outside TEKO. They may also participate in other similar reinsurance pools. However, as a general rule they make use of the joint reinsurance and seek reinsurance outside TEKO only in exceptional cases. For the purposes of the joint reinsurance of all the business brought in, two reinsurance treaties were concluded on the open market on behalf of the TEKO companies. These two treaties are administered by TEKO.
 - (5) Under the reinsurance treaties the TEKO companies have to assume a retained portion of liability (graduated in accordance with possible maximum loss). This retention is (mutually) reinsured among the pool members in accordance with an agreed formula. The 'friendly' companies are not involved in this. They merely bring policies to TEKO for reinsurance, retaining an amount of liability themselves (at least DM 25 000 per risk, up to 10 % of possible maximum loss), while the pool members bring 100 % of their policies into TEKO.
 - (6) The individual TEKO companies receive from the reinsurers a reinsurance commission amounting to a given percentage of that portion of the direct insurance premium brought in by them which accrues to the reinsurers. With regard to the part of the premium corresponding to the amount of liability retained by the TEKO companies, the ceding companies also receive a reinsurance commission amounting to a given percentage of the premium.
 - (7) There are no joint premiums and conditions. The individual companies are free to calculate the direct insurance premium and to decide on the insurance conditions for the policies concluded by them. They may, if they so wish, ask TEKO to carry out a risk assessment and premium calculation (gross premium) in each individual case. In such cases, TEKO's staff examines the available documents on behalf of the companies and, if necessary, carries out a visit to the plant or works with the company concerned. However, the companies may also decide not to make such a request and may calculate the premium themselves, although in practice they do so only in exceptional cases. In such cases, TEKO is free to refuse the bringing in of a policy into the joint reinsurance if the conditions agreed by a company or the premium appear insufficient.
 - (8) Risk assessment and premium calculation carried out by TEKO at the request of the companies in individual cases are predominantly based on a comparison with previous contracts which have been brought into TEKO and which concern similar risks. Due to the small number of contracts which are spread among various branches of industry and a great number of different machines there is insufficient statistical material for the calculation of rates of premium and different premium components. The only references are therefore the (gross) premiums and conditions agreed in similar contracts and the development of claims in these contracts.
 - (9) If a company requests a premium calculation by TEKO, it must apply the premium determined by TEKO (this is a minimum premium, which may be exceeded) and the conditions stipulated by it, if it wishes to make use of the joint reinsurance. However, it is free to pass on to the policy holder in full or in part the reinsurance commission. It is also possible for the companies to pay part of the premium back to policy holders if loss experience is favourable. They are also free to reject the offer drawn up by TEKO and to go elsewhere for their reinsurance.
 - (10) The individual companies carry out claims processing themselves, but must report the claims to TEKO, which may, if so requested by the companies, assist in claims processing in individual cases. TEKO's main activity in this respect consists in taking measures to minimize claims such as having damaged machinery repaired or obtaining replacement machinery.
- ## 2. Cooperation in space insurance
- (11) As from 1 June 1988, space insurance (satellite insurance) was included in the cooperation arrangements by an addendum dated 11 August 1988, and the original agreement was extended, although only four of the TEKO companies (Albingia Versicherungs-Aktiengesellschaft, Victoria-Feuer-Versicherungs-Aktiengesellschaft, The Northern

Assurance Company Limited and Haftpflichtverband der Deutschen Industrie VAG) are involved in this aspect. This additional agreement runs until 31 December 1989 and is extended automatically from year to year unless six months' notice is given before expiry.

- (12) Previously the companies concerned had not so far operated on the market as providers of space insurance and did not have any market shares. They will insure space risks (mainly from the Federal Republic of Germany and from France, but also from elsewhere in Europe) on the basis of co-insurance, with each having a share of 25 %. The total capacity amounts to DM 11,5 million. Consequently, insurance can be envisaged only with or in addition to other insurance companies. Four contracts have subsequently been concluded since the start of the cooperation arrangement.
- (13) The insurance contracts are concluded either by the companies themselves or by TEKO in the name and for the account of the companies. If so requested by the companies, TEKO carries out premium calculation and risk assessment, in agreement with the reinsurers as far as premiums are concerned.
- (14) TEKO settles the reinsurance for the companies and concludes facultative reinsurance contracts on the market in their name. Such contracts are administered by TEKO. Any claims must be notified immediately to the reinsurers and may be settled only in agreement with them.
- (15) No comments were received from third parties following publication of a notice pursuant to Article 19 (3) of Regulation No 17.

II. LEGAL ASSESSMENT

A. Article 85 (1) of the Treaty

1. *Agreement and concerted practice between undertakings*

- (16) The notified agreement on cooperation in machinery loss of profits insurance, supplemented by the addendum on the inclusion of space insurance, is an agreement between undertakings within the meaning of Article 85 (1) of the Treaty. In so far as the companies actually cooperate on the basis of the agreement, and in particular as a rule basis their direct insurance contracts on the premiums and conditions calculated by TEKO, and bring the contracts into the joint reinsurance arrangements, what is involved is also a concerted practice.

2. *Restriction of competition*

- (17) The agreement and the cooperation put into effect between the companies based on the agreement

have as their object and effect the restriction of competition in machinery loss of profits insurance and in space insurance, with regard to both direct insurance and reinsurance.

(a) *Machinery loss of profits insurance*

(aa) *Restriction of competition with regard to direct insurance*

- (18) As far as direct insurance is concerned, the restriction of competition arises from the organization of TEKO as a joint information and advisory body, and in particular from the risk assessment and premium calculation carried out by TEKO, which in practice results in coordination of the market behaviour of the companies concerned. Since it is only in exceptional cases that the companies calculate their own premiums and conditions and since contract negotiations are usually based on an offer established by TEKO, they apply identical or comparable premiums and terms in identical or comparable situations, with the result that they do not in this respect enter into competition with one another.
- (19) The finding of a restriction of competition is not invalidated by the fact that TEKO is also involved in joint reinsurance and that, in view of the link between direct insurance and reinsurance, it is usual for reinsurers to have some influence over the market behaviour of direct insurers. TEKO's coordination activity goes well beyond the influence of reinsurers that is otherwise customary on the market, since reinsurers generally confine themselves to checking the premiums and the terms and conditions worked out by direct insurers and neither calculate the direct insurers' offers for them at the outset nor serve as a permanent joint information and advisory body for a specific group of undertakings.

- (20) Furthermore it is not possible to argue, in rebuttal of the finding of a restriction of competition, that without recourse to TEKO, particularly for the purpose of risk assessment and premium calculation, the companies concerned would not be able to offer machinery loss of profits insurance. It is true that the assistance provided by TEKO saves the companies concerned labour and costs and that this makes it easier for the smaller companies in particular to insure the relevant risks. However, in view of the fact that quite a number of other companies, including smaller companies, also operate on the market, it must be assumed that the companies could carry out at least a substantial proportion of the business alone, or that other informal means of cooperation and of exchanging experience would be possible on a case-by-case basis.

(bb) Restriction of competition with regard to reinsurance

- (21) As far as reinsurance is concerned, the restriction of competition results from the fact that joint reinsurance contracts are concluded on the market for all the contracts brought into TEKÖ. Since the companies concerned bring virtually all the direct insurance contracts concluded by them into the joint reinsurance arrangements and in only very limited exceptional cases take out reinsurance outside TEKÖ, they do not as a rule enter into competition with one another as regards demand for reinsurance protection.

(b) Space insurance

(aa) Restriction of competition with regard to direct insurance

- (22) The agreement on cooperation in space insurance, under which the companies concerned insure space risks on a co-insurance basis and thus apply uniform premiums and terms and conditions, also means that the companies do not enter into competition with one another. Even if, in view of the particular nature of the risks and the level of the sums insured, space risks can in general be underwritten only on a co-insurance basis, it would be possible for the individual companies to participate on a case-by-case basis in co-insurance contracts with various third party undertakings on the basis of differing premiums and terms and conditions and thus to enter into competition with one another. They do not do so and rely instead on cooperation in the form of a permanent and institutionalized co-insurance pool.

(bb) Restriction of competition with regard to reinsurance

- (23) As far as reinsurance is concerned, the restriction of competition arises once again from the conclusion of joint reinsurance contracts, as a result of which the companies concerned refrain from seeking individually and independently of one another reinsurance for the part of the risks underwritten that is apportionable to them and accordingly from entering into competition with one another.

3. *Appreciability of the restriction of competition*

- (24) The appreciability of the restriction of competition ascertained is evident, as far as machinery loss of profits insurance is concerned, from the combined market share of 20 % held by the undertakings concerned. As far as space insurance is concerned, despite the small market share involved, it cannot be ruled out that the restriction of competition is appreciable in view of the aggregate turnover of the

four companies concerned, which amounts to approximately DM 4 000 million and thus far exceeds the threshold value of ECU 200 million specified in the notice on agreements of minor importance which do not fall under Article 85 (1) of the Treaty⁽¹⁾.

4. *Effect on trade between Member States*

- (25) The agreement and the practice based thereon are liable to affect trade between Member States, since both reinsurance and space insurance are provided on a cross-frontier basis at European or international level and since a large proportion of the contracts is generally placed on the London market. Furthermore, a branch of a company having its head office in another Member State of the Community is involved in the agreement.

B. Article 85 (3) of the Treaty

- (26) The agreement notified and the concerted practice based thereon fulfil the conditions for exemption under Article 85 (3) of the Treaty.

1. *Improvement in the distribution of goods*

The Cooperation between the companies concerned within the framework of TEKÖ results in substantial rationalization and cost-saving in machinery loss of profits insurance. In view of the small number of contracts, the individual companies do not have staff with the specialized experience required for the conclusion and processing of direct insurance contracts in this sphere nor are they able individually to negotiate favourable terms and conditions for reinsurance. Without the cooperation, insurance of such risks would therefore entail much higher expenditure and costs for them. By cooperating through TEKÖ, by contrast, they are able to make use of the specialized knowledge and experience of TEKÖ's staff and at the same time, by jointly concluding reinsurance contracts, obtain more favourable terms and conditions. For the smaller companies in particular, which themselves conclude only a few contracts per year, the insurance of the relevant risks is thus made considerably easier. In addition, the partial assumption of the reinsurance allows the individual pool members to participate to a certain extent in the contracts of all the other companies and hence to broaden and spread evenly their portfolio.

- (27) The recent cooperation in space insurance similarly results in rationalization, since, through the cooperation within TEKÖ, the TEKÖ staff can now also

⁽¹⁾ OJ No C 231, 12. 9. 1986, p. 2.

develop know-how in space insurance, know-how which will be available to the companies concerned. At the same time, more favourable terms and conditions for reinsurance can be negotiated jointly through TEKÖ.

2. Fair share of the resulting benefit for consumers

- (28) The rationalization achieved through the cooperation, in particular the know-how acquired by TEKÖ's staff, also benefits consumers, i.e. parties contracting insurance. It ensures that appropriate insurance arrangements are found for individual risks and in particular, apart from premium calculation and risk assessment, that proper thought is given to loss prevention, which is often difficult because of the differing nature of individual risks. The involvement of TEKÖ's staff in claims adjustment also means that appropriate measures are taken to minimize losses. Furthermore, in view of the keen competition on the markets in question, it may be assumed that the resulting cost advantages are passed on at least in part to policy holders in the form of lower premiums, or by passing on part of the reinsurance commission or through premium refunds where loss experience is favourable.

3. Indispensability of the restriction of competition

- (29) The agreement notified and the practice based thereon do not contain any restrictions that are not indispensable to the attainment of the abovementioned objectives. As far as machinery loss of profits insurance is concerned, it should be emphasized that the companies concerned are required neither to request risk assessment and premium calculation by TEKÖ nor to bring the direct insurance contracts concluded by them into the reinsurance, and that they are free to calculate premiums and terms themselves and/or to reinsure themselves outside TEKÖ, as indeed they do in exceptional cases. The rule that TEKÖ may refuse the bringing in of a policy into the joint reinsurance if the premium and terms agreed by a company appear to be inadequate, and in particular if they differ from an offer previously calculated by TEKÖ, is indispensable to the proper implementation of the joint (mutual) reinsurance. Since the companies concerned share risks and premiums to some extent, it must be ensured that premiums and terms are appropriate and that individual companies do not engage in loss-making business at the expense of the others.
- (30) Lastly in view of the particularities of the relevant market and the way in which TEKÖ operates, the calculation of premiums is also necessary. While

with respect to general premium recommendations issued by federations or associations of undertakings only net premium rates are necessary and justified, the calculation carried out by TEKÖ in individual cases for the companies concerned has to be judged in a different way. TEKÖ does not issue recommendations on tariffs but indicates in every individual case the premium at which a risk can be brought into the common reinsurance. Because of the small number of contracts and the diversity of risks there is insufficient statistical material for the calculation of net premium rates and other premium components, and since the calculation is therefore based on previous contracts and the (gross) premiums agreed under them, a calculation of net premiums would not be possible. It has also to be taken into consideration that, even where they apply the premium calculated by TEKÖ, the companies are free to pass the reinsurance commission on in whole or in part to the policy holder or to refund part of the premium where loss experience is favourable, which from the policy holder's point of view is equivalent in effect to a reduction in the premium calculated by TEKÖ.

4. No possibility of eliminating competition

- (31) The companies concerned do not, in view of their market share, have the possibility of eliminating competition in respect of a substantial part of the insurance in question, since there is sufficient competition from other undertakings. Furthermore, competition is also possible between the companies concerned to a certain extent, particularly in so far as they are able to pass on part of the reinsurance commission to policy holders or refund them part of the premium.

C. Articles 6 and 8 of Regulation No 17

- (32) In accordance with Article 6 (1) of Regulation No 17, this Decision is applicable from the day of notification, i.e. 11 August 1987.

Given the structures of the relevant markets and the effects of the cooperation by the companies concerned within the framework of TEKÖ, exemption is granted pursuant to Article 8 (1) of Regulation No 17 for 10 years.

- (33) In order that the Commission may during the exemption period check whether the conditions for exemption continue to be fulfilled, TEKÖ must be required to inform the Commission of all amendments and additions to the agreement notified and of the involvement of any other companies,

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 for the period from 11 August 1987 up to and including 10 August 1997 to the agreement notified on 11 August 1987 and the concerted practice concerning cooperation in machinery loss of profits insurance and to the addendum on the inclusion of space insurance.

Article 2

The Technisches Kontor für die Maschinen-B-U-Versicherung shall inform the Commission of any amendments and additions to the agreement notified and of the involvement of any other companies.

Article 3

This Decision is addressed to the following undertakings:

Technisches Kontor für die Maschinen-B-U-Versicherung,
Hüttenstraße 1,
D-4000 Düsseldorf 1;

Agrippina Versicherung Aktiengesellschaft,
Riehler Straße 90,
D-5000 Köln 1;

Albingia Versicherungs-Aktiengesellschaft,
Ballindamm 39, Europahaus,
D-2000 Hamburg 1;

Bayerische Versicherungskammer,
Bayer. Versicherungsverband,
Tattenbachstraße 2,
D-8000 München 22;

Colonia Versicherung Aktiengesellschaft,
Colonia-Allee 10-20,
D-5000 Köln 80;

Erste Allgemeine Versicherungs-AG,
Direktion für Deutschland,
Sonnenstraße 31,
D-8000 München 2;

Haftpflichtverband der Deutschen Industrie VAG,
Riethorst 2,
D-3000 Hannover 51;

Hessen-Nassauische Versicherungsanstalt,
Bahnhofstraße 69,
D-6200 Wiesbaden;

Iduna Allgemeine Versicherung Aktiengesellschaft,
Neue Rabenstraße 15-19,
D-2000 Hamburg 36;

Mannheimer Versicherung Aktiengesellschaft,
Augusta-Anlage 65,
D-6800 Mannheim 1;

Nordstern Allgemeine Versicherungs-Aktiengesellschaft,
Gereonstraße 43-65,
D-5000 Köln 1;

The Northern Assurance Company Ltd,
Direktion für Deutschland,
Herrlichkeit 6,
D-2800 Bremen 1;

Nürnberger Allgemeine Versicherungs-AG,
Rathenauplatz 16-18,
D-8500 Nürnberg 21;

Provinzial Feuerversicherungs-Anstalt der Rheinprovinz,
Friedrichstraße 62-80,
D-4000 Düsseldorf 1;

R+V Allgemeine Versicherung AG im Raiffeisen-Volksbankenverband,
Taunusstraße 1,
D-6200 Wiesbaden 1;

Sparkassen-Versicherung Allgemeine Versicherung AG,
Löwentorstraße 65,
D-7000 Stuttgart 50;

Thuringia Versicherungs-Aktiengesellschaft,
Adenauerring 7,
D-8000 München 83;

UAP International Allgemeine Versicherung-AG,
Neumarkt 15,
D-6600 Saarbrücken 1;

Victoria Feuer-Versicherungs-Aktiengesellschaft,
Victoria Platz 1,
D-4000 Düsseldorf 30;

Westfälische Provinzial-Feuersozietät,
Broederichweg 58,
D-4400 Münster;

Württembergische Gemeinde-Versicherung A.G.,
Tübinger Straße 43,
D-7000 Stuttgart 1;

Done at Brussels, 20 December 1989.

For the Commission

Leon BRITTAN

Vice-President