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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 296/90**of 2 February 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 201/90⁽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 1 February 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 3 February 1990.

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 22, 27. 1. 1990, p. 7.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 153, 13. 6. 1987, p. 1.

⁽⁵⁾ OJ No L 187, 1. 7. 1989, p. 1.

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

Done at Brussels, 2 February 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX

to the Commission Regulation of 2 February 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	34,06	135,48 ⁽²⁾ ⁽³⁾
0712 90 19	34,06	135,48 ⁽²⁾ ⁽³⁾
1001 10 10	41,81	178,15 ⁽¹⁾ ⁽³⁾
1001 10 90	41,81	178,15 ⁽¹⁾ ⁽³⁾
1001 90 91	34,84	139,89
1001 90 99	34,84	139,89
1002 00 00	59,97	128,32 ⁽⁶⁾
1003 00 10	51,14	118,22
1003 00 90	51,14	118,22
1004 00 10	42,54	122,60
1004 00 90	42,54	122,60
1005 10 90	34,06	135,48 ⁽²⁾ ⁽³⁾
1005 90 00	34,06	135,48 ⁽²⁾ ⁽³⁾
1007 00 90	51,14	140,77 ⁽⁴⁾
1008 10 00	51,14	29,40
1008 20 00	51,14	83,58 ⁽⁴⁾
1008 30 00	51,14	0,00 ⁽⁵⁾
1008 90 10	⁽⁷⁾	⁽⁷⁾
1008 90 90	51,14	0,00
1101 00 00	62,80	209,87
1102 10 00	97,98	193,67
1103 11 10	79,49	290,81
1103 11 90	66,72	225,56

⁽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 297/90

of 2 February 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 201/90⁽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 1 February 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 3 February 1990.

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

Done at Brussels, 2 February 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 22, 27. 1. 1990, p. 7.⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.⁽⁴⁾ OJ No L 153, 13. 6. 1987, p. 1.⁽⁵⁾ OJ No L 187, 1. 7. 1989, p. 4.

ANNEX

to the Commission Regulation of 2 February 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 2	1st period 3	2nd period 4	3rd period 5
0709 90 60	0	0	0	1,35
0712 90 19	0	0	0	1,35
1001 10 10	0	0	0	6,51
1001 10 90	0	0	0	6,51
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	1,44
1003 00 90	0	0	0	1,44
1004 00 10	0	0	0	0
1004 00 90	0	0	0	0
1005 10 90	0	0	0	1,35
1005 90 00	0	0	0	1,35
1007 00 90	0	0	0	0
1008 10 00	0	0	0	0
1008 20 00	0	0	0	0
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 2	1st period 3	2nd period 4	3rd period 5	4th period 6
1107 10 11	0	0	0	0	0
1107 10 19	0	0	0	0	0
1107 10 91	0	0	0	2,56	2,56
1107 10 99	0	0	0	1,92	1,92
1107 20 00	0	0	0	2,23	2,23

COMMISSION REGULATION (EEC) No 298/90
of 2 February 1990
fixing the import levies on rice and broken 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 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 11 (2) thereof,

Having regard to Commission Regulation (EEC) No 883/87 of 23 March 1987 laying down detailed rules for the application of Council Regulation (EEC) No 3877/86 on imports rice of the long-grain aromatic Basmati variety falling within CN codes 1006 10, 1006 20 and 1006 30 ⁽³⁾, as amended by Regulation (EEC) No 1546/87 ⁽⁴⁾, and in particular Article 8 thereof,

Whereas the import levies on rice and broken rice were fixed by Commission Regulation (EEC) No 2637/89 ⁽⁵⁾, as last amended by Regulation (EEC) No 255/90 ⁽⁶⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 2637/89 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 the products listed in Article 1 (1) (a) and (b) of Regulation (EEC) No 1418/76 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 5 February 1990.

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

Done at Brussels, 2 February 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽²⁾ OJ No L 177, 24. 6. 1989, p. 1.

⁽³⁾ OJ No L 80, 24. 3. 1987, p. 20.

⁽⁴⁾ OJ No L 144, 4. 6. 1987, p. 10.

⁽⁵⁾ OJ No L 255, 1. 9. 1989, p. 8.

⁽⁶⁾ OJ No L 30, 1. 2. 1990, p. 5.

ANNEX

to the Commission Regulation of 2 February 1990 fixing the import levies on rice and broken rice

(ECU/tonne)

CN code	Portugal	Arrangement in Regulation (EEC) No 3877/86	ACP or OCT (⁽¹⁾) (⁽²⁾)	Third countries (except ACP or OCT) (⁽³⁾)
1006 10 21	—	—	150,98	309,17
1006 10 23	—	217,93	141,68	290,57
1006 10 25	—	217,93	141,68	290,57
1006 10 27	—	217,93	141,68	290,57
1006 10 92	—	—	150,98	309,17
1006 10 94	—	217,93	141,68	290,57
1006 10 96	—	217,93	141,68	290,57
1006 10 98	—	217,93	141,68	290,57
1006 20 11	—	—	189,63	386,46
1006 20 13	—	272,41	178,00	363,21
1006 20 15	—	272,41	178,00	363,21
1006 20 17	—	272,41	178,00	363,21
1006 20 92	—	—	189,63	386,46
1006 20 94	—	272,41	178,00	363,21
1006 20 96	—	272,41	178,00	363,21
1006 20 98	—	272,41	178,00	363,21
1006 30 21	13,05	—	243,83	511,51
1006 30 23	12,97	439,16	280,89	585,55
1006 30 25	12,97	439,16	280,89	585,55
1006 30 27	12,97	439,16	280,89	585,55
1006 30 42	13,05	—	243,83	511,51
1006 30 44	12,97	439,16	280,89	585,55
1006 30 46	12,97	439,16	280,89	585,55
1006 30 48	12,97	439,16	280,89	585,55
1006 30 61	13,90	—	260,03	544,76
1006 30 63	13,90	470,78	301,50	627,71
1006 30 65	13,90	470,78	301,50	627,71
1006 30 67	13,90	470,78	301,50	627,71
1006 30 92	13,90	—	260,03	544,76
1006 30 94	13,90	470,78	301,50	627,71
1006 30 96	13,90	470,78	301,50	627,71
1006 30 98	13,90	470,78	301,50	627,71
1006 40 00	2,17	—	85,70	177,40

(⁽¹⁾) Subject to the application of the provisions of Articles 10 and 11 of Regulation (EEC) No 486/85 and of Regulation No 551/85.

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

(⁽³⁾) The import levy on rice entering the overseas department of Réunion is specified in Article 11a of Regulation (EEC) No 1418/76.

NB: The levies are to be converted into national currencies using the specific agricultural conversion rates fixed in Commission Regulation (EEC) No 3294/86 (OJ No L 304, 30. 10. 1986, p. 25).

COMMISSION REGULATION (EEC) No 299/90**of 2 February 1990****fixing the premiums to be added to the import levies on rice and broken rice**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

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 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 13 (6) thereof,

Whereas the premiums to be added to the levies on rice and broken rice were fixed by Commission Regulation (EEC) No 2638/89 ⁽³⁾, as last amended by Regulation (EEC) No 256/90 ⁽⁴⁾;

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 shown in the Annex hereto,

Article 1

1. The premiums to be added to the import levies fixed in advance in respect of rice and broken rice originating in Portugal shall be zero.

2. The premiums to be added to the import levies fixed in advance in respect of rice and broken rice originating in third countries shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 5 February 1990.

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

Done at Brussels, 2 February 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽²⁾ OJ No L 177, 24. 6. 1989, p. 1.

⁽³⁾ OJ No L 255, 1. 9. 1989, p. 11.

⁽⁴⁾ OJ No L 30, 1. 2. 1990, p. 7.

ANNEX

to the Commission Regulation of 2 February 1990 fixing the premiums to be added to the import levies on rice and broken rice

CN code	(ECU/tonne)			
	Current 2	1st period 3	2nd period 4	3rd period 5
1006 10 21	0	0	0	—
1006 10 23	0	0	0	—
1006 10 25	0	0	0	—
1006 10 27	0	0	0	—
1006 10 92	0	0	0	—
1006 10 94	0	0	0	—
1006 10 96	0	0	0	—
1006 10 98	0	0	0	—
1006 20 11	0	0	0	—
1006 20 13	0	0	0	—
1006 20 15	0	0	0	—
1006 20 17	0	0	0	—
1006 20 92	0	0	0	—
1006 20 94	0	0	0	—
1006 20 96	0	0	0	—
1006 20 98	0	0	0	—
1006 30 21	0	0	0	—
1006 30 23	0	0	0	—
1006 30 25	0	0	0	—
1006 30 27	0	0	0	—
1006 30 42	0	0	0	—
1006 30 44	0	0	0	—
1006 30 46	0	0	0	—
1006 30 48	0	0	0	—
1006 30 61	0	0	0	—
1006 30 63	0	0	0	—
1006 30 65	0	0	0	—
1006 30 67	0	0	0	—
1006 30 92	0	0	0	—
1006 30 94	0	0	0	—
1006 30 96	0	0	0	—
1006 30 98	0	0	0	—
1006 40 00	0	0	0	0

COMMISSION REGULATION (EEC) No 300/90
of 2 February 1990
on the supply of various lots of skimmed-milk powder as food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

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

Whereas following the taking of a number of decisions on the allocation of food aid the Commission has allocated to certain beneficiary organizations 1 315 tonnes of skimmed-milk powder;

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, 2 February 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 370, 30. 12. 1986, p. 1.

⁽²⁾ OJ No L 172, 21. 6. 1989, p. 1.

⁽³⁾ OJ No L 136, 26. 5. 1987, p. 1.

⁽⁴⁾ OJ No L 204, 25. 7. 1987, p. 1.

ANNEX I

LOTS A, B and C

1. **Operation Nos** ⁽¹⁾: 4 to 6/90 — Commission Decision of 29. 5. 1989
2. **Programme**: 1989
3. **Recipient**: World Food Programme, Via Cristoforo Colombo 426, I-00145 Rome, telex 626675 I WFP
4. **Representative of the recipient** ⁽²⁾: see OJ No C 103, 16. 4. 1987
5. **Place or country of destination**: see Annex II
6. **Product to be mobilized**: vitaminized skimmed-milk powder
7. **Characteristics and quality of the goods** ⁽²⁾ ⁽⁶⁾ ⁽⁷⁾: see OJ No C 216, 14. 8. 1987, p. 4 (under I.1.B.1 to I.1.B.3)
8. **Total quantity**: 1 150 tonnes
9. **Number of lots**: three (Lot A: 200 tonnes; Lot B: 850 tonnes; Lot C: 100 tonnes)
10. **Packaging and marking**: 25 kilograms and OJ No C 216, 14. 8. 1987, pp. 4 and 6 (under I.1.B.4 and I.1.B.4.3)
Supplementary markings on packaging: see Annex II, and OJ No C 216, 14. 8. 1987, p. 6 (under I.1.B.5)
11. **Method of mobilization**: the Community market. Lot A: ⁽⁸⁾
The manufacture of the skimmed-milk powder and the incorporation of vitamins must be carried out after the award of the tender
12. **Stage of supply**: free at port of shipment
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: —
16. **Address of the warehouse and, if appropriate, port of landing**: —
17. **Period for making the goods available at the port of shipment**: 10 to 20. 3. 1990
18. **Deadline for the supply**: —
19. **Procedure for determining the costs of supply**: invitation to tender
20. **In the case of an invitation to tender, date of expiry of the period allowed for submission of tenders** ⁽⁴⁾: 19. 2. 1990, at 12 noon
21. **In the case of a second invitation to tender**:
 - (a) deadline for the submission of tenders: 5. 3. 1990, at 12 noon
 - (b) period for making the goods available at the port of shipment: 24. 3 to 4. 4. 1990
 - (c) deadline for the supply: —
22. **Amount of the tendering security**: ECU 20 per tonne
23. **Amount of the delivery security**: 10 % of the amount of the tender in ecus
24. **Address for submission of tenders**: Bureau de l'aide alimentaire, à l'attention de Monsieur N. Arend, Bâtiment Loi 120, bureau 7/58, 200 rue de la Loi, B-1049 Bruxelles, telex AGREC 22037 B or 25670 B
25. **Refund payable on request by the successful tenderer** ⁽⁵⁾: refund applicable on 12. 1. 1990, fixed by Commission Regulation (EEC) No 69/90 (OJ No L 10, 12. 1. 1990, p. 8) ...

LOT D

1. **Operation Nos** ⁽¹⁾: 623, 624, 628 and 629/89 — Commission Decision of 3. 3. 1989
2. **Programme**: 1989
3. **Recipient**: Euronaid, PO Box 77, NL-2340 AB Oegstgeest
4. **Representative of the recipient** ⁽²⁾: see OJ No C 103, 16. 4. 1987
5. **Place or country of destination**: see Annex II
6. **Product to be mobilized**: vitaminized skimmed-milk powder
7. **Characteristics and quality of the goods** ⁽³⁾ ⁽¹⁰⁾ ⁽¹¹⁾: see OJ No C 216, 14. 8. 1987, p. 4 (under I.1.B.1 to I.1.B.3)
8. **Total quantity**: 165 tonnes
9. **Number of lots**: one (in four parts: D1: 60 tonnes; D2: 15 tonnes; D3: 60 tonnes; D4: 30 tonnes)
10. **Packaging and marking** ⁽¹²⁾: 25 kilograms and OJ No C 216, 14. 8. 1987, pp. 4 and 5 (under I.1.B.4)
Supplementary markings on packaging: see Annex II and OJ No C 216, 14. 8. 1987, p. 6 (under I.1.B.5)
11. **Method of mobilization**: the Community market ⁽¹³⁾ ⁽¹⁴⁾:
The manufacture of the skimmed-milk powder and the incorporation of vitamins must be carried out after the award of the tender
12. **Stage of supply**: free at port of shipment
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: —
16. **Address of the warehouse and, if appropriate, port of landing**: —
17. **Period for making the goods available at the port of shipment**: 10 to 20. 3. 1990
18. **Deadline for the supply**: —
19. **Procedure for determining the costs of supply**: invitation to tender
20. **In the case of an invitation to tender, date of expiry of the period allowed for submission of tenders** ⁽⁵⁾: 19. 2. 1990, at 12 noon
21. **In the case of a second invitation to tender**:
 - (a) deadline for the submission of tenders: 5. 3. 1990, at 12 noon
 - (b) period for making the goods available at the port of shipment: 24. 3 to 4. 4. 1990
 - (c) deadline for the supply: —
22. **Amount of the tendering security**: ECU 20 per tonne
23. **Amount of the delivery security**: 10 % of the amount of the tender in ecus
24. **Address for submission of tenders**:
Bureau de l'aide alimentaire,
à l'attention de Monsieur N. Arend,
Bâtiment Loi 120, bureau 7/58,
200 rue de la Loi,
B-1049 Bruxelles,
telex: AGREC 22037 B or 25670 B
25. **Refund payable on request by the successful tenderer** ⁽⁶⁾: refund applicable on 12. 1. 1990, fixed by Commission Regulation (EEC) No 69/90 (OJ No L 10, 12. 1. 1990, p. 8)

Notes :

- (¹) The operation number is to be quoted in all correspondence.
- (²) Upon request from the recipient, the successful tenderer shall deliver to the recipient a certificate from an official entity certifying that, for the product to be delivered, the standards applicable relating to nuclear radiation in the Member State concerned have not been exceeded.
- (³) Commission delegate to be contacted by the successful tenderer : see list published in *Official Journal of the European Communities* No C 227 of 7 September 1985, page 4.
- (⁴) In order not to overload the telex, tenderers are requested to provide, before the date and time laid down in point 20 of this Annex, evidence that the tendering security referred to in Article 7 (4) (a) of Regulation (EEC) No 2200/87 has been lodged, preferably :
- by porter at the office referred to in point 24 of the Annex, or
 - by telecopier on one of the following numbers in Brussels :
 - 235 01 32,
 - 236 10 97,
 - 235 01 30,
 - 236 20 05.
- (⁵) Commission Regulation (EEC) No 2330/87 (OJ No L 210, 1. 8. 1987, p. 56), as last amended by Regulation (EEC) No 2226/89 (OJ No L 214, 24. 7. 1989, p. 10), is applicable as regards the export refund and, where appropriate, the monetary and accession compensatory amounts, the representative rate and the monetary coefficient. The date referred to in Article 2 of the abovementioned Regulation is that referred to in point 25 of this Annex.
- (⁶) The successful tenderer shall give the beneficiaries' representative, at the time of delivery, a health certificate.
- (⁷) The successful tenderer shall give the beneficiaries' representative, at the time of delivery, a certificate of origin.
- (⁸) Analysis certificate must be issued by the authorities of the country of origin and must state that the product is suitable for human consumption.
- Consular invoice required.
- Bill of lading and shipping documents to be endorsed by the Consulate of Paraguay.
- (⁹) At the request of the beneficiary the successful tenderer shall deliver, for each action number/shipping number, a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation in the Member State concerned, have not been exceeded.
- (¹⁰) The successful tenderer shall give the beneficiaries' representative, at the time of delivery, a certificate of origin for each action number/shipping number.
- (¹¹) The successful tenderer shall give the beneficiaries' representative, at the time of delivery, a health certificate for each action number/shipping number.
- (¹²) Shipment to take place in 20-foot containers ; conditions FCL/LCL, shippers-count-load Shippers-count-load and stowage (cls).
- (¹³) Shipment to take place in 20-foot containers, condition FCL/LCL. The supplier shall be responsible for the cost of making the containers available in the stack position at the container terminal at the port of shipment. The recipient shall be responsible for all subsequent loading costs, including the cost of moving the containers from the container terminal.
- The provisions of Article 13 (2), second paragraph, of Regulation (EEC) No 2200/87 shall not apply.
- (¹⁴) The supplier should send a duplicate of the original invoice to :
MM De Keyzer & Schütz BV,
Postbus 1438,
Blaak 16,
NL-3000 BK Rotterdam.

The successful tenderer has to submit to the recipient's agent a complete packing list of each container, specifying the number of bags belonging to each shipping number as specified in the invitation to tender.

The successful tenderer has to seal each container with a numbered locktainer, the number of which is to be provided to the beneficiary's forwarder.

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

Designación de la partida Parti Bezeichnung der Partie Χαρακτηρισμός της παρτίδας Lot Désignation de la partie Designazione della partita Aanduiding van de partij Designação da parte	Cantidad total de la partida (en toneladas) Totalmængde (i tons) Gesamtmenge der Partie (in Tonnen) Συνολική ποσότητα της παρτίδας (σε τόνους) Total quantity (in tonnes) Quantité totale de la partie (en tonnes) Quantità totale della partita (in tonnellate) Totale hoeveelheid van de partij (in ton) Quantidade total (em toneladas)	Cantidades parciales (en toneladas) Delmængde (i tons) Teilmengen (in Tonnen) Μερικές ποσότητες (σε τόνους) Partial quantities (in tonnes) Quantités partielles (en tonnes) Quantitativi parziali (in tonnellate) Deelhoeveelheden (in ton) Quantidades parciais (em toneladas)	Beneficiario Modtager Empfänger Δικαιούχος Beneficiary Bénéficiaire Beneficiario Begunstigde Beneficiário	País destinatario Modtagerland Bestimmungsland Χώρα προορισμού Recipient country Pays destinataire Paese destinatario Bestemmingsland País destinatário	Inscripción en el embalaje Emballagens påtegning Aufschrift auf der Verpackung Ένδειξη επί της συσκευασίας Markings on the packaging Inscription sur l'emballage Iscrizione sull'imballaggio Aanduiding op de verpakking Inscrição na embalagem
A	200		PAM	Paraguay	Acción n° 4/90 / Paraguay / 0237602 / Leche desnatada en polvo / Donación de la Comunidad Económica Europea / Despachado por el Programa Mundial de Alimentos / Asunción
B	850		PAM	Ecuador	Acción n° 5/90 / Ecuador / 0309600 / Leche desnatada en polvo / Donación de la Comunidad Económica Europea / Despachado por el Programa Mundial de Alimentos / Guayaquil
C	100		PAM	Bolivia	Acción n° 6/90 / Bolivia / 0273501 / Leche desnatada en polvo / Donación de la Comunidad Económica Europea / Despachado por el Programa Mundial de Alimentos / Arica / En transito / Hacia Potosí, Bolivia
D	165	D1 : 60	Euronaid	Chile	Acción n° 623/89 / Leche en polvo / 91755 / Coyahique vía Chacabuco / Donación de la Comunidad Económica Europea / Destinado a la distribución gratuita
		D2 : 15	Euronaid	Brasil	Acção n° 624/89 / Leite em pó / 94211 / Belém / Donativo da Comunidade Económica Europeia / Destinado a distribuição gratuita
		D3 : 60	Euronaid	Comores	Action n° 628/89 / Lait en poudre / 90507 / Moroni / Don de la Communauté économique européenne / Pour distribution gratuite
		D4 : 30	Euronaid	Madagascar	Action n° 629/89 / Lait en poudre / 91761 / Toliary / Don de la Communauté économique européenne / Pour distribution gratuite

COMMISSION REGULATION (EEC) No 301/90**of 2 February 1990****amending Regulation (EEC) No 210/89 on communications between Member States and the Commission with regard to milk and milk products**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EEC) No 3879/89 ⁽²⁾, and in particular 28 thereof,Whereas Commission Regulation (EEC) No 210/69 ⁽³⁾, as last amended by Regulation (EEC) No 222/88 ⁽⁴⁾, provides for the Member States to notify to the Commission the data needed for management of the milk sector;

Whereas the provisions of that Regulation should be brought into line with developments in data transmission by telecommunications; whereas in the first instance these changes should affect only notification of Community market prices as stipulated in Article 5 (1) (a) of that Regulation;

Whereas it is desirable at the same time to update the Annex to the said Regulation listing the products for which market prices are to be notified;

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 210/69 is hereby amended as follows:

1. Article 5 (1) is replaced by the following:

‘1. Member States shall notify to the Commission:

(a) by IDES (interactive data entry system), by Thursday of each week at the latest, the prices (exclusive of tax) obtaining in their territory for the products listed in the Annex, stating the marketing stage (ex factory, wholesale, retail) and the product characteristics to which prices apply;

(b) by telex or telefax:

— for the pilot products listed in Annex I to Regulation (EEC) No 2915/79, by the 10th and 25th of each month at the latest, the most recent prices known to them, stating the origin and quantity concerned, for the following prices:

— free-at-frontier offer prices for imports into the Community,

— free-at-frontier prices obtaining for imports into the Community,

— prices obtaining for products imported into non-member countries from other non-member countries,

— by the 25th of each month at the latest, the most recent prices for casein and caseinates obtaining on the world market and in the Community, stating the marketing stage.’;

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.⁽²⁾ OJ No L 378, 27. 12. 1989, p. 1.⁽³⁾ OJ No L 28, 5. 2. 1969, p. 1.⁽⁴⁾ OJ No L 28, 1. 2. 1988, p. 1.

2. The Annex is replaced by the following : ...

'ANNEX

Products referred to in Article 5 (1) (a)

- | | |
|-------------------------------|--------------------------|
| 1. Powdered whey | 17. Provolone |
| 2. Skimmed-milk powder | 18. Asiago |
| 3. Whole milk powder | 19. Gouda |
| 4. Unsweetened condensed milk | 20. Edam |
| 5. Sweetened condensed milk | 21. Danbo, Samsø, Svenbo |
| 6. Butter | 22. Kasseri |
| 7. Butteroil | 23. Mozzarella |
| 8. Emmental | 24. Havarti, Tilsit |
| 9. Blue-veined cheese | 25. Butterkäse |
| 10. Grana padano | 26. Esrom |
| 11. Parmigiano Reggiano | 27. Italico |
| 12. Other types of grana | 28. Saint-Paulin |
| 13. Pecorino (romano, sardo) | 29. Cantal |
| 14. Other types of pecorino | 30. Salted ricotta |
| 15. Manchego | 31. Feta |
| 16. Cheddar | 32. Lactose' |

Article 2

This Regulation shall enter into force on 1 April 1990.

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

Done at Brussels, 2 February 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

COMMISSION REGULATION (EEC) No 302/90**of 2 February 1990****adopting interim protective measures on applications for STM licences in the
beef and veal sector submitted during the period 22 to 26 January 1990**

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, and in particular Article 85 (1) thereof,

Whereas Commission Regulation (EEC) No 4026/89 of 22 December 1989 laying down detailed rules for the application of the supplementary trade mechanism in the beef and veal sector for 1990⁽¹⁾ set the indicative ceilings applicable in the beef and veal sector and the maximum quantities for which STM licences may be issued each quarter;

Whereas Article 85 (1) of the Act of Accession makes provision for the Commission to take the interim protective measures necessary if the indicative ceiling for the year in course or part of it is reached or exceeded;

Whereas the licence applications lodged between 22 and 26 January 1990 are for a quantity in excess of that set for the first quarter for live animals; whereas as an interim protective measure only a percentage of the amounts

applied for in that period should be granted and no further certificates issued for the time being,

HAS ADOPTED THIS REGULATION:

Article 1

For live animals of the bovine species, other than pure-bred breeding animals and animals for bullfights:

1. applications for STM licences for the following products submitted between 22 and 26 January 1990 and notified to the Commission shall be accepted for 55,349 %;
2. the issuing of STM licences in response to applications submitted from 29 January 1990 onwards is suspended for the time being.

Article 2

This Regulation shall enter into force on 5 February 1990.

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

Done at Brussels, 2 February 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 382, 30. 12. 1989, p. 62.

COMMISSION REGULATION (EEC) No 303/90

of 2 February 1990

introducing a countervailing charge on fresh lemons originating in Morocco

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

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

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

Whereas Commission Regulation (EEC) No 1373/89 of 19 May 1989 fixing for the 1989/90 marketing year the reference prices for fresh lemons⁽³⁾ fixed the reference price for products of class I for the period from January to April 1990 at ECU 47,15 per 100 kilograms net;

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

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

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

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

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

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Council Regulation (EEC) No 1676/85⁽⁶⁾, as last amended by Regulation (EEC) No 1636/87⁽⁷⁾,
- for other currencies, an exchange rate based on the arithmetic mean of the spot market rates of each of these currencies recorded over a given period in relation to the Community currencies referred to in the previous indent, and the aforesaid coefficient,

HAS ADOPTED THIS REGULATION:

Article 1

A countervailing charge of ECU 12,25 per 100 kilograms net is applied to fresh lemons (CN code ex 0805 30 10) originating in Morocco.

Article 2

This Regulation shall enter into force on 6 February 1990.

⁽¹⁾ OJ No L 118, 20. 5. 1972, p. 1.

⁽²⁾ OJ No L 118, 29. 4. 1989, p. 12.

⁽³⁾ OJ No L 137, 20. 5. 1989, p. 24.

⁽⁴⁾ OJ No L 220, 10. 8. 1974, p. 20.

⁽⁵⁾ OJ No L 368, 31. 12. 1985, p. 1.

⁽⁶⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁷⁾ OJ No L 153, 13. 6. 1987, p. 1.

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

Done at Brussels, 2 February 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 12 January 1990

relating to a proceeding under Article 85 of the EEC Treaty

(IV/32.006 — Alcatel Espace/ANT Nachrichtentechnik)

(Only the French and German texts are authentic)

(90/46/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 6 and 8 thereof,

Having regard to the application for negative clearance and the notification for exemption, submitted pursuant to Articles 2 and 4 of Regulation No 17 on 28 July 1986 by Alcatel Espace SA, Courbevoie, and ANT Nachrichtentechnik GmbH, Backnang, concerning the agreement between them signed on 11 February 1986,

Having regard to the summary of the application and notification published ⁽²⁾ pursuant to Article 19 (3) of Regulation No 17,

After consultation with the Advisory Committee for Restrictive Practices and Dominant Positions,

Whereas :

I. THE FACTS

A. Introduction

- (1) On 28 July 1986 Alcatel Espace SA, France (hereinafter ATEs) and ANT Nachrichtentechnik

GmbH, Germany (hereinafter ANT) notified an agreement to the Commission.

- (2) The purpose of the agreement is to promote research and development (R&D) of certain space electronic equipment in the field of civil radio communications and broadcasting satellites and data transmission to, from and between satellites and/or space vehicles throughout the world, as well as to promote joint exploitation of the results and a degree of joint marketing.
- (3) The object of the notification was to apply for negative clearance or alternatively to qualify for exemption under Article 85 (3) of the EEC Treaty, pursuant to Articles 2 and 4 of Regulation No 17.

B. The parties

- (4) ATEs is directly controlled by Alcatel Cit (France), a subsidiary of Alcatel NV the world No 2 manufacturer of communication equipment and systems. ATEs is the principal manufacturer, in the Alcatel Group, of space electronic equipment carried on board satellites and/or space vehicles. The 1986 turnover of ATEs was FF 813 million (ECU 120 million). During the same period ATEs's turnover in the field covered by the agreement was FF 481,5 million (ECU 71 million).
- (5) ANT is one of the leading companies in Germany in the field of telecommunication technology. The shareholders of ANT are Robert Bosch GmbH (83 %) and Allianz Versicherungs AG (17 %). In 1986, ANT achieved an overall turnover of DM 1 256 million (ECU 590 million), and during the

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ No C 179, 15. 7. 1989, p. 9.

same period the turnover in the field covered by the agreement was DM 124 million (ECU 58 million).

C. The agreement

(6) The main provisions of the agreement are as follows:

(a) The *field* covered by the agreement is the space segment of communication systems using satellites and/or space vehicles and/or communication subsystems operating on board satellites and/or space vehicles for civilian use in the area of:

- civil satellite radio communication services, and direct broadcast television services,
- data transmission to, from and between satellites and/or space vehicles for the purpose of telemetry, tracking and command, observation or others.

(b) The parties will cooperate in research and development activities in the field, in order to avoid duplication of R&D effort, and will combine their resources for the exploitation of the results through rationalization of manufacturing, servicing and testing of such systems, as well as through cooperation in the bidding and negotiations for contracts in the field. This will normally be achieved by allocation of the development and production of each item of equipment to one or other party. The agreement contains guidelines for the allocation of the various items of equipment between the parties. However, given the large variations in the equipment carried on each individual satellite (or small set of satellites), these guidelines are supplemented by a procedure for allocating the work in any particular satellite project.

Nothing in the agreement prohibits either party from engaging in any activity outside the scope of the agreement which is not incompatible with the parties' obligations.

(c) *Procedures for the cooperation*

(i) Each party will normally make its best effort to specify satellite payloads and subsystems for which it is responsible in such a way that equipment developed by the other party can be used in the best possible conditions.

(ii) Both parties will regularly inform each other of their R&D programme regarding equipment in the field.

(iii) After final allocation, by mutual agreement, to one party of certain equipment, the procedure will be as follows:

- before commencing development of such equipment each party shall consult the other about the objectives to be achieved, in particular performance, cost and delivery schedules,
- the developing party will be responsible for R&D funding,
- the developing party will be responsible for R&D activities and production of its allocated equipment, but will fully inform the other party of the results of its R&D,
- if the developing party subcontracts parts of the R&D or production of its allocated equipment, it will give priority to the other party,
- the other party will not independently develop the same equipment,
- the other party will procure equipment from the developing party. If the developing party's proposal does not meet the requirements in terms of performance, price and delivery schedule, competing proposals may be requested from other suppliers subject to prior consultation and close cooperation.

(d) Relevant patents owned by either party, and patents which a party is entitled to sublicense, will be communicated to the other party and the latter will have a royalty-free and non-exclusive licence to perform its activities in the field.

In the case of inventions conceived jointly by employees of both parties, patent applications for such inventions will be filed in the name of both parties.

(e) Each party agrees to keep secret the confidential information it receives from the other party, and to use and disclose it only for the purposes intended under the agreement. On expiry of the agreement, each party will return its copies of all confidential information it received from the other party. The confidentiality obligations will end five years after expiry of the agreement.

(f) Meetings between appropriate personnel of both parties will take place to discuss matters such as technical aspects, marketing and sales.

In addition, the parties will inform each other regularly of outside developments of a technical or commercial nature that have come to their attention and which may be pertinent to their R&D activities in the field or the exploitation of the results.

(g) (i) *Executive committee*

Each of the parties will appoint three members to an executive committee. The decisions of the executive committee will be taken unanimously and will bind both parties. The executive committee will be responsible for establishing general policies and guidelines relative to performance of the agreement and its future evolution.

(ii) *Steering committee*

The steering committee will also consist of three members representing each party. Its decisions must be taken unanimously and will be binding. If no unanimous decision can be reached, the matter will be submitted to the executive committee.

The role of the steering committee is to take — in compliance with execution committee guidelines — main decisions relating to the marketing, technical and industrial policies. Such decisions will include determination of projects and relevant strategies, cooperation in marketing activities, execution of cooperation in R&D and production activities, and decisions on sharing of equipment.

(h) *Exploitation of results*

The exploitation of results can be carried out in three ways :

- (i) jointly marketed projects — which are activities where both parties manufacture and supply as the result of a successful bid submitted to a customer by both parties acting as co-contractors ;
- (ii) individually marketed projects — which are activities where only one party acts as main contractor/supplier ;
- (iii) independently marketed projects — which are activities where only one party manu-

factures and supplies equipment of its own manufacture.

In each case of jointly or individually marketed projects, including calls for tenders, the strategy and the determination of which party will be the main contractor will be decided by the steering committee.

The party acting as main contractor in any individually marketed projects will ensure as far as possible that the other party will be the subcontractor/supplier for all equipment concerned by the agreement, which the main contractor does not manufacture.

Either party remains free to pursue independently marketed projects.

Each party agrees to supply to the other party any equipment and spare parts thereof which the other party may request.

- (i) The agreement has an initial term of five years. It will be automatically extended for three-year periods, unless terminated by one party giving at least one year's written notice.

After the notice of termination of the agreement, licence rights under patents may be extended by request of the licensed party, subject to the parties agreeing upon reasonable and non-discriminatory conditions.

- (j) Should negotiation fail to resolve any dispute which may arise, the parties agree that it be finally settled by arbitration.
- (k) Appendix 1 to the agreement lists and recommends a division of the following equipment between the parties :

- receiver (RCVR),
- input multiplexer (IMUX),
- channel amplifier (CAMP),
- high power amplifier (HPA),
- output multiplexer (OMUX),
- TTC transponder.

This equipment covers only a relatively small part of the equipment covered by the agreement, and none of it can be considered as a final product, which are complete satellites. The listed devices are incorporated in subsystems such as repeater subsystems, tracking, telemetry and command subsystems. None of the equipment listed above can be used in areas outside space.

D. The product and the market

Nature of demand

- (7) The markets for satellites and their components are unusual in that each satellite (or small set of satellites) is a unique project requiring newly developed, or at least highly adapted, components assembled to an individual design dependent on the particular requirements of the customer. This, when combined with the high technology involved, normally implies that each new satellite project requires a substantial input of R&D, which is closely integrated with the production of the satellite and its components, each of which is close to being a prototype. Moreover satellites obviously need to be robust and reliable, but as lightweight as possible. These factors, taken together, imply that satellite customers and their prime contractors insist on a very high degree of cooperation with all the parties involved in the development of any particular satellite.

Market shares and competitive position

- (8) There are a large number of competitors for manufacturing and sales of the equipment covered by the agreement: about 18 in the EEC, three in Sweden, six in the United States, two in Canada and three in Japan.

The table gives estimates of the worldwide space related turnover of the principal satellite producers in Europe and the rest of the world:

	(million ecus)
<i>Non European</i>	
Hughes	[...] ⁽¹⁾
General Electric	[...]
<i>European</i>	
British Aerospace	[...]
Matra	[...]
Aérospatiale	[...]
MBB	[...]
Selenia Spazio	[...]
Alcatel Espace	[...]
Marconi	[...]
Aeritalia	[...]
ANT	[...]

As can be seen from these figures, Alcatel and ANT's combined turnover in this area is less than

several other European manufacturers and is many times less than that of some non-European manufacturers.

Even if the relevant market is narrowly defined as the items covered by the field of cooperation, and is geographically restricted to EC-based customers, the parties' combined market share is under 20 %. If account is taken of the worldwide market, or of the overall satellite market, their combined market share is much lower.

Moreover, there is thought to be a substantial 'learning curve' for all aspects of satellite production, so that the more similar space projects a firm is involved with (both civil and military), the more effectively it can develop and produce new satellites or their components. This effect particularly benefits the United States space industry, where the number of space projects is higher than in Europe, the overall budgets allocated to space activities in the United States and Europe in 1986 being as follows:

	(billion US \$)
<i>USA</i>	
— Department of Defense	14
— NASA	7
Total	21
<i>Europe</i>	
— National budgets	0,84
— European Space Agency (ESA)	1,36
Total	2,20

(Source: Euroconsult.)

Thus, taking advantage of their strong worldwide positions and of the size of their domestic market, certain non-European space manufacturers can afford R&D budgets and/or financial and commercial resources far exceeding those of their European competitors and can therefore cover a much wider range of activities in space electronic equipment, subsystems and systems.

This may explain why European manufacturers only compete at the subsystem level and at the equipment level, whilst other manufacturers compete at the full final product level, which naturally influences the structure of competition.

The share of the parties of the total cost of a satellite (launch excluded) may vary significantly from a very low percentage when their procurement is limited to a single device to, exceptionally, about half, if they are responsible for the whole payload of a telecommunications satellite.

For all these reasons, Community companies with only relatively small involvement in satellite

⁽¹⁾ In the published version of the Decision, some information has hereinafter been omitted, pursuant to the provisions of Article 21 of Regulation No 17 concerning non-disclosure of business secrets.

technology find it difficult to compete with other larger non-European competitors.

These factors have allowed non-European competitors to win the contracts for a number of recent EC projects such as the Astra/SES and British Satellite Broadcasting direct broadcasting satellites.

The geographical market

- (9) In view of the high prices of the final products, transport costs to the launch site are unimportant. So, except where legal restrictions or national purchasing preferences exist, Community (and other) satellite customers have no particular reason to buy from locally-based manufacturers.

The turnover of the parties in the field covered by the agreement is principally within the common market.

Legal restrictions

- (10) The main legal restrictions existing on the market are as follows:

Cocom export control rules impose severe restrictions on space activities.

Further restrictions result from the 'Buy American Act' and similar regulations.

In Europe, the ESA 'geographical return' principle requires a balance between the financial contribution of each member country to the Agency and industrial share of business awarded under space programmes to manufacturers of those countries.

Main customers

- (11) The main customers for the final products are:

- national telecommunications administrations worldwide (PTTs),
- space agencies and organizations such as:
 - Intelsat,
 - Inmarsat,
 - Eutelsat,
 - NASA,
 - DLR, DARA,
 - ESA,
 - CNES,
 - ISRO (India),
 - Nasda (Japan),
 - CAST (China),
 - Eumetsat,
- direct broadcast satellite consortia such as:
 - Astra/SES,
 - British Satellite Broadcasting.

E. Observations from third parties

The Commission did not receive any observations from third parties following the publication of the notice required by Article 19 (3) of Regulation No 17.

II. LEGAL ASSESSMENT

A. Article 85 (1) of the EEC Treaty

- (12) The agreement signed on 11 February 1986 between Alcatel Espace and ANT Nachrichtentechnik is an agreement between undertakings within the meaning of Article 85 (1) of the Treaty.

The object of the agreement is cooperation in research and development activities and the combination of the parties' resources for the exploitation of these results through rationalization of manufacturing, servicing and testing of such equipment as well as through cooperation in the bidding and negotiation for contracts.

- (13) Both parties have their own research and development divisions which carry out research in the field covered by the agreement and, except for projects that are subject to special legal restrictions, the parties are competitors.

- (14) The following provisions of the agreement have the object and/or effect of restricting competition within the common market.

1. The allocation of devices between the parties for research and development and production purposes, introduces a measure of specialization in that those devices will be developed by one partner only, the other being bound not to develop its own. Although the agreement provides for royalty-free and non-exclusive cross licensing of patent rights and for joint patents in some cases, the consequence is nonetheless a restriction of competition in R&D as now only one of the two parties will undertake any specific R&D project, where previously both might have done this. This is of some significance in an industry in which virtually every new order calls for significant new R&D investment.
2. The procedure under the agreement for the procurement by one party of the equipment manufactured by the other party, although leaving the former the possibility of using another supplier, tends to eliminate the competition of third party suppliers.
3. The provisions of the agreement concerning the exchange of information between the parties on all the marketing possibilities and those assigning to common committees the decision-making process relating to marketing, technical and industrial policies, are also restrictive of competition.

Although provision is made for independently marketed projects, a jointly agreed R&D programme and common committees responsible for marketing decisions will certainly result in the choice of one of the two joint marketing methods whenever possible, hence eliminating one supplier from the market in all these cases.

Consequently, the effect of the agreement is to alter the previously autonomous position of the parties relating to planning, financing, research and development, production and marketing of the equipment covered by the agreement, the parties no longer being able to act independently.

- (15) The parties are incorporated in different Member States and aim under the agreement to market jointly worldwide, hence obviously also at Community level, so the agreement will necessarily have an appreciable effect on trade between Member States.
- (16) The agreement therefore falls within the scope of Article 85 (1) of the Treaty.

B. Regulation (EEC) No 418/85

- (17) Commission Regulation (EEC) No 418/85⁽¹⁾ provides that the categories of research and development agreements the contents of which are in accordance with its conditions, are exempted by category from the prohibition of Article 85 (1) of the Treaty. Moreover, the exemption may be extended to certain agreements containing other restrictions by means of an 'opposition' procedure.

The agreement establishes a cooperation structure between the parties that goes beyond the object and scope of Regulation (EEC) No 418/85 and the parties have not asked the Commission to apply the 'opposition' procedure. In fact, the cooperation between the parties is not limited to R&D and exploitation of the results, but extends to the marketing of the products. So, when they have agreed to bid jointly for the contract for a satellite, they obviously must agree on the bid price and so are restricted in their determination of prices. This implies, *inter alia*, that the agreement falls within the scope of Article 6 (d) of that Regulation. Therefore, even though the parties' Community market share is below 20 %, Regulation (EEC) No 418/85 is not applicable to the present case, nor could it be extended to cover this case by means of the opposition procedure.

C. Article 85 (3) of the EEC Treaty

- (18) The jointly agreed programme of research and development by the contracting parties is such as to promote technical and economic progress.

The equipment covered by the agreement is technically very sophisticated. Its development is extremely costly and requires a high degree of skill. The efforts and risks involved, if they could be supported independently by the parties, would most certainly not lead to results as rapid, efficient and economic as those envisaged.

The level of individual R&D investment is intended to remain the same for each party, which will lead to a more efficient use of this expenditure. The degree of specialization for certain equipment achieved by both parties by means of this optimization of R&D investment will enable the parties to develop a wider product range of equipment to be offered to customers.

Under every space programme each piece of equipment is developed as a prototype and the rationalization expected will lead to the supply of higher-quality equipment at lower costs. Moreover, repetitive development experience, on equipment prototypes belonging to the same class, may result in the parties reaching a level of production comparable to that already achieved by other manufacturers of satellites. Given the number and importance of other competitors in this field it is most unlikely that the reduction of competition between these two competitors will allow them to increase their prices in any significant way.

The cooperation deriving from the agreement is expected to lead not only to improved and more rapid technical solutions, but also to avoid duplication of R&D effort, hence allowing the achievement of cost savings.

The agreement thus contributes to promoting technical progress. This benefit can be expected to be passed on to customers in terms of improved products.

- (19) The agreement only imposes restrictions on the parties which are indispensable to the attainment of these objectives.

The field covered by the agreement and the objectives of the R&D programme are well defined. Nothing under the agreement prohibits either party from engaging in any activity outside the scope of the agreement or constitutes a commitment to a final apportionment of the equipment covered by the agreement.

⁽¹⁾ OJ No L 53, 22. 2. 1985, p. 5.

The slight preference given to the other party in terms of subcontracting is merely an element of the somewhat complex arrangement for specialization of R&D and production.

The fact that each party is bound not to develop certain equipment entrusted to the other flows from that very rationalization which is the reason for their expected improved results and increased competitiveness.

- (20) The nature of demand in this case implies that the option of joint R&D, joint manufacturing, but separate marketing is not practical. This results from the close cooperation that is necessary between the customer, prime contractor and subcontractors (such as the parties). Customers and their prime contractors insist on knowing, in great detail, who has manufactured which items, and all the relevant technical detail as there is normally no way of repairing a satellite once in orbit. Competition normally takes place by customers' calling for tenders which are then submitted by consortia formed on a case-by-case basis. If separate marketing were attempted, then in any project for which both parties wished to bid, each party would have, at the same time, to promote its own package, and to assist the other in promoting that party's rival package to the final customer, either within one consortium or as part of rival consortia. Thus the same technical experts would have, twice over, to describe and promote an identical technical package to the same customer. In this context the customer may have doubts as to whether the two parties, having failed to cooperate commercially on a joint bid, could in fact successfully cooperate technically. This might lead them to buy elsewhere. This implies that, in this particular case, the benefits of joint R&D and joint manufacture can only be achieved if they are combined with a degree of joint marketing.

Moreover, the agreement allows for independent actions (independently marketed projects) and/or usual contractual schemes of relations, e.g. co-contracting (jointly marketed projects), subcontracting and/or purchasing (individually marketed projects). Competitive conditions in terms of performance, price and delivery schedules are required for procurement by and between the parties who are allowed to consider competing proposals from third parties and to purchase from them.

In the case of independently marketed projects, which either party is free to pursue, the party which did not develop an item of equipment can

obtain it either by buying it from the developing party, or by procuring it from third parties who offer better conditions in terms of performance, price and delivery schedules.

The above implies that where, exceptionally, separate marketing is a viable option, the parties may choose it.

- (21) The parties' market share, however defined, is not high, and there are many other large manufacturers both within the Community and elsewhere in the world who are active or potential competitors in the common market. Some of these have a larger range of products and far larger sales than the parties. Thus the agreement, on its own, could not allow the parties to eliminate competition in the common market for these products.
- (22) Accordingly, all the conditions set out in Article 85 (3) of the EEC Treaty are fulfilled.

D. Article 8 of Regulation No 17

- (23) Pursuant to Article 8 (1) of Regulation No 17, a decision in application of Article 85 (3) of the Treaty is to be issued for a specified period and conditions and obligations may be attached thereto.
- (24) The agreement can be authorized under Article 85 (3) from the date of notification, namely 28 July 1986, and until termination of the agreement, but in any case not later than 31 December 1996.
- (25) The conditions for exemption are fulfilled for the stated period, in the light of the special circumstances in this case.
- (26) The exemption relates solely to the notified agreement, and does not cover any extensions in the scope of the agreement. In this case, the structure necessary to obtain the benefits of R&D cooperation and manufacturing specialization requires a much higher degree of coordination between the parties than would be acceptable in more usual specialization or R&D cooperation agreement, and in this respect may be closer to the degree of coordination achieved in a joint venture.

This makes it necessary for the Commission to monitor whether this agreement, in combination with other joint actions by the parties, may lead to a substantial reduction of competition, as such a reduction might imply that the conditions necessary for an exemption would no longer be valid. Accordingly this Decision must be conditional on

the parties promptly informing the Commission of the conclusion of any agreement or contract which modifies, replaces, or cancels the notified agreement; or any important joint activity by the parties relating to space electronic equipment outside the terms of the notified agreement,

to joint activities in the field of electronic space equipment, provided such contracts or agreements relate to major business issues (in volume or in strategic importance) and cannot be considered cooperation in respect of single projects.

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 to the agreement signed on 11 February 1986 between Alcatel Espace SA and ANT Nachrichtentechnik GmbH, and notified on 28 July 1986.

Article 2

The following obligation is attached to the declaration in Article 1:

- the parties shall inform the Commission without delay of contracts or agreements concluded between themselves by which the notified Agreement is modified, replaced or cancelled,
- each party shall further inform the Commission of any other contracts or agreements it concludes, either with third parties or with the other party, which relate

Article 3

This Decision shall apply with effect from 28 July 1986 and shall apply until 31 December 1996.

Article 4

This Decision is addressed to:

1. Alcatel Espace SA, 11 avenue Dubonnet, F-92107 Courbevoie.
2. ANT Nachrichtentechnik GmbH, Gerberstraße 33, D-7150 Backnang.

Done at Brussels, 12 January 1990.

For the Commission

Leon BRITTAN

Vice-President