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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 2323/90**of 7 August 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 1340/90⁽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 2205/90⁽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 1801/90⁽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 6 August 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 1801/90 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 8 August 1990.

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

Done at Brussels, 7 August 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 134, 28. 5. 1990, p. 1.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 201, 31. 7. 1990, p. 9.

⁽⁵⁾ OJ No L 167, 30. 6. 1990, p. 8.

ANNEX

to the Commission Regulation of 7 August 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	36,66	144,85 ⁽²⁾ ⁽³⁾
0712 90 19	36,66	144,85 ⁽²⁾ ⁽³⁾
1001 10 10	14,02	181,85 ⁽¹⁾ ⁽³⁾
1001 10 90	14,02	181,85 ⁽¹⁾ ⁽³⁾
1001 90 91	21,81	158,51
1001 90 99	21,81	158,51
1002 00 00	47,31	124,72 ⁽⁶⁾
1003 00 10	38,54	136,77
1003 00 90	38,54	136,77
1004 00 10	30,18	116,36
1004 00 90	30,18	116,36
1005 10 90	36,66	144,85 ⁽²⁾ ⁽³⁾
1005 90 00	36,66	144,85 ⁽²⁾ ⁽³⁾
1007 00 90	53,63	152,62 ⁽⁴⁾
1008 10 00	38,54	47,71
1008 20 00	38,54	101,29 ⁽⁴⁾
1008 30 00	38,54	8,23 ⁽⁷⁾
1008 90 10	(7)	(7)
1008 90 90	38,54	8,23
1101 00 00	43,70	235,08
1102 10 00	79,41	187,78
1103 11 10	34,80	294,94
1103 11 90	47,01	253,70

(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 715/90 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 applied in accordance with Regulation (EEC) No 715/90.

(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 2324/90

of 7 August 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 1340/90⁽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 2205/90⁽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 1802/90⁽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 6 August 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 8 August 1990.

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

Done at Brussels, 7 August 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 134, 28. 5. 1990, p. 1.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 201, 31. 7. 1990, p. 9.

⁽⁵⁾ OJ No L 167, 30. 6. 1990, p. 11.

ANNEX

to the Commission Regulation of 7 August 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 8	1st period 9	2nd period 10	3rd period 11
0709 90 60	0	0	0	1,07
0712 90 19	0	0	0	1,07
1001 10 10	0	4,37	4,37	4,37
1001 10 90	0	4,37	4,37	4,37
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	2,06	2,07	3,44
1004 00 90	0	2,06	2,07	3,44
1005 10 90	0	0	0	1,07
1005 90 00	0	0	0	1,07
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	21,42	21,42	28,12
1008 90 90	0	21,42	21,42	28,12
1101 00 00	0	0	0	0

B. Malt

CN code	(ECU/tonne)				
	Current 8	1st period 9	2nd period 10	3rd period 11	4th period 12
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 2325/90

of 6 August 1990

opening a standing invitation to tender for the export of 100 000 tonnes of feed rye held by the German intervention agency

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EEC) No 1340/90 ⁽²⁾, and in particular Article 7 (5) thereof,

Whereas Article 3 of Council Regulation (EEC) No 1581/86 of 23 May 1986 laying down general rules for intervention on the market in cereals ⁽³⁾, as amended by Regulation (EEC) No 195/89 ⁽⁴⁾, provides that cereals held by the intervention agencies shall be disposed of by invitation to tender;

Whereas Commission Regulation (EEC) No 1836/82 ⁽⁵⁾, as last amended by Regulation (EEC) No 2418/87 ⁽⁶⁾, lays down the procedure and conditions for the disposal of cereals held by intervention agencies;

Whereas on 19 July 1990 Germany notified the Commission that it wished to put up for sale for export to third countries 100 000 tonnes of feed rye held by its intervention agency; whereas it is possible to accede to that request;

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

HAS ADOPTED THIS REGULATION:

Article 1

The German intervention agency may, on the conditions laid down in Regulation (EEC) No 1836/82, open a standing invitation to tender for the export of 100 000 tonnes of feed rye held by it.

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.
⁽²⁾ OJ No L 134, 28. 5. 1990, p. 1.
⁽³⁾ OJ No L 139, 24. 5. 1986, p. 36.
⁽⁴⁾ OJ No L 25, 28. 1. 1989, p. 22.
⁽⁵⁾ OJ No L 202, 9. 7. 1982, p. 23.
⁽⁶⁾ OJ No L 223, 11. 8. 1987, p. 5.

Article 2

1. The invitation to tender shall cover a maximum of 100 000 tonnes of feed rye to be exported to all third countries excluding the German Democratic Republic.

2. The regions in which the 100 000 tonnes of feed rye are stored are stated in Annex I to this Regulation.

Article 3

The export licences shall be valid from their date of issue, within the meaning of Article 9 of Regulation (EEC) No 1836/82, until the end of the fourth month following.

Tenders submitted in response to this invitation to tender may not be accompanied by applications for export certificates under Article 44 of Commission Regulation (EEC) No 3719/88 ⁽⁷⁾.

Article 4

1. The time limit for submission of tenders under the first partial invitation to tender shall expire on 22 August 1990 at 1 p.m. (Brussels time).

2. The time limit for submission of tenders under the subsequent partial invitations to tender shall expire each Wednesday at 1 p.m. (Brussels time).

3. The last partial invitation to tender shall expire on 19 December 1990.

4. The tenders shall be lodged with the German intervention agency.

Article 5

The German intervention agency shall notify the Commission of the tenders received not later than two hours after expiry of the time limit for the submission thereof. Notification shall be given as specified in the table in Annex II to this Regulation.

Article 6

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

⁽⁷⁾ OJ No L 331, 2. 12. 1988, p. 1.

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

Done at Brussels, 6 August 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX I

<i>(tonnes)</i>	
Place of storage	Quantity
Schleswig-Holstein / Hamburg	36 903
Niedersachsen / Bremen	45 480
Nordrhein-Westfalen	2 066
Hessen	3 206
Rheinland-Pfalz	8 541
Baden-Württemberg	412
Saarland	297
Bayern	3 085

ANNEX II

Standing invitation to tender for the export of 100 000 tonnes of feed rye held by the German intervention agency

(Regulation (EEC) No 2325/90)

1	2	3	4	5	6	7
Tender No	Consignment No	Quantity (tonnes)	Offer price (ECU/tonne) (1)	Price increases (+) or reductions (—) (ECU/tonne) p.m.	Commercial costs (ECU/tonne)	Destination
1						
2						
3						
etc.						

(1) This price includes the increases or reductions relating to the lot to which the tender refers.

COMMISSION REGULATION (EEC) No 2326/90

of 7 August 1990

on the issuing of a standing invitation to tender for the resale on the internal market of 40 000 tonnes of maize held by the German intervention agency

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 1340/90⁽²⁾, and in particular Article 7 (6) thereof,

Whereas Article 3 of Council Regulation (EEC) No 1581/86 of 23 May 1986 laying down general rules for intervention on the market in cereals⁽³⁾, amended by Regulation (CEE) No 195/89⁽⁴⁾, provides that cereals held by the intervention agency are to be sold by tender;

Whereas Commission Regulation (EEC) No 1836/82⁽⁵⁾, as last amended by Regulation (EEC) No 2418/87⁽⁶⁾, lays down the procedure and conditions for the disposal of cereals held by intervention agencies;

Whereas, in the present market situation, a standing invitation to tender for the resale on the internal market of 40 000 tonnes of maize held by the German intervention agency should be issued;

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

HAS ADOPTED THIS REGULATION:

Article 1

The German intervention agency shall issue a standing invitation to tender for the resale on the internal market of 40 000 tonnes of maize held by it in accordance with Regulation (EEC) No 1836/82.

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

Done at Brussels, 7 August 1990.

Article 2

1. The final date for the submission of tenders for the first partial invitation to tender shall be on 14 August 1990.

2. The final date for the submission of tenders for the last partial invitation to tender shall expire on 18 September 1990.

3. Tenders must be lodged with the German intervention agency:

Bundesanstalt für landwirtschaftliche Marktordnung
BALM,
Adickesallee 40,
D-6000 Frankfurt am Main,
(Telex: 4-11475, 4-16044).

Article 3

Not later than Tuesday of the week following the final date for the submission of tenders, the German intervention agency shall notify the Commission of the quantities and average prices of the various lots sold.

Article 4

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

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 134, 28. 5. 1990, p. 1.

⁽³⁾ OJ No L 139, 24. 5. 1986, p. 36.

⁽⁴⁾ OJ No L 25, 28. 1. 1989, p. 22.

⁽⁵⁾ OJ No L 202, 9. 7. 1982, p. 23.

⁽⁶⁾ OJ No L 223, 11. 8. 1987, p. 5.

COMMISSION REGULATION (EEC) No 2327/90

of 7 August 1990

on the issuing of a standing invitation to tender for the resale on the internal market of 28 800 tonnes of maize held by the Italian intervention agency

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EEC) No 1340/90 ⁽²⁾, and in particular Article 7 (6) thereof,

Whereas Article 3 of Council Regulation (EEC) No 1581/86 of 23 May 1986 laying down general rules for intervention on the market in cereals ⁽³⁾ as amended by Regulation (EEC) No 195/90 ⁽⁴⁾, provides that cereals held by the intervention agency are to be sold by tender;

Whereas Commission Regulation (EEC) No 1836/82 ⁽⁵⁾, as last amended by Regulation (EEC) No 2418/87 ⁽⁶⁾, lays down the procedure and conditions for the disposal of cereals held by intervention agencies;

Whereas, in the present market situation, a standing invitation to tender for the resale on the internal market of 28 800 tonnes of maize held by the Italian intervention agency should be issued;

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

HAS ADOPTED THIS REGULATION:

Article 1

The Italian intervention agency shall issue a standing invitation to tender for the resale on the internal market

of 28 800 tonnes of maize held by it in accordance with Regulation (EEC) No 1836/82.

Article 2

1. The final date for the submission of tenders for the first partial invitation to tender shall be 14 August 1990.

2. The final date for the submission of tenders for the last partial invitation to tender shall expire on 18 September 1990.

3. Tenders must be lodged with the Italian intervention agency:

Azienda di Stato per gli interventi nel mercato agricolo (AIMA),
via Palestro 81;
I-00100 Roma
(telex: 620331 — tel.: 47 49 91).

Article 3

Not later than Tuesday of the week following the final date for the submission of tenders, the Italian intervention agency shall notify the Commission of the quantities and average prices of the various lots sold.

Article 4

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

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

Done at Brussels, 7 August 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 134, 28. 5. 1990, p. 1.

⁽³⁾ OJ No L 139, 24. 5. 1986, p. 36.

⁽⁴⁾ OJ No L 25, 28. 1. 1989, p. 22.

⁽⁵⁾ OJ No L 202, 9. 7. 1982, p. 23.

⁽⁶⁾ OJ No L 223, 11. 8. 1987, p. 5.

COMMISSION REGULATION (EEC) No 2328/90

of 7 August 1990

amending Regulation (EEC) No 1303/90 and increasing to 823 500 tonnes the amount of maize held by the French intervention agency for which a standing invitation to tender for resale has been opened

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

Having regard to Regulation (EEC) No 2727/75 of the Council of 29 October 1975 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 1340/90⁽²⁾, and in particular Article 7 (6) thereof,

Having regard to Commission Regulation (EEC) No 1836/82 of 7 July 1982 laying down the procedure and conditions for the disposal of cereals held by intervention agencies⁽³⁾, as last amended by Regulation (EEC) No 2418/87⁽⁴⁾,

Whereas Commission Regulation (EEC) No 1303/90⁽⁵⁾, as last amended by Regulation (EEC) No 2044/90⁽⁶⁾, opened a standing invitation to tender for the resale of 700 000 tonnes of maize held by the French intervention agency;

Whereas in the present situation on the market the quantity of maize held by the French intervention agency put up for sale on the internal market of the Community should be increased to 823 500 tonnes and the last partial invitation to tender should be postponed;

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 1303/90 is hereby amended as follows:

1. In Article 1 'of 700 000 tonnes' is replaced by 'of 823 000 tonnes'.
2. Article 2 (2) is replaced by the following:
'2. The final date for the submission of tenders for the last partial invitation to tender shall expire on 20 September 1990'.

Article 2

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

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

Done at Brussels, 7 August 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 134, 28. 5. 1990, p. 1.
⁽³⁾ OJ No L 202, 9. 7. 1982, p. 23.
⁽⁴⁾ OJ No L 223, 11. 8. 1987, p. 5.
⁽⁵⁾ OJ No L 129, 19. 5. 1990, p. 9.
⁽⁶⁾ OJ No L 187, 19. 7. 1990, p. 20.

COMMISSION REGULATION (EEC) No 2329/90

of 7 August 1990

**fixing for Great Britain the level of the variable slaughter premium for sheep
and the amounts to be charged on products leaving region 1**

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 3013/89 of 25 September 1989 on the common organization of the market in sheepmeat and goatmeat⁽¹⁾,Having regard to Commission Regulation (EEC) No 1633/84 of 8 June 1984 laying down detailed rules for applying the variable slaughter premium for sheep and repealing Regulation (EEC) No 2661/80⁽²⁾, as last amended by Regulation (EEC) No 1075/89⁽³⁾, and in particular Articles 3 (1) and 4 (1) thereof,

Whereas the United Kingdom is the only country which grants the variable slaughter premium, in region 5, within the meaning of Article 22 (2) of Regulation (EEC) No 3013/89 whereas it is necessary therefore for the Commission to fix, for the week beginning 16 July 1990, the level of the premium and the amount to be charged on products leaving that region;

Whereas Article 3 (1) of Regulation (EEC) No 1633/84 stipulates that the level of the variable slaughter premium is to be fixed each week by the Commission;

Whereas Article 4 (1) of Regulation (EEC) No 1633/84 lays down that the amount to be charged on products leaving region 1 shall be fixed weekly by the Commission;

Whereas in the Annex to Commission Regulation (EEC) No 3618/89 of 1 December 1989 on the application of the guarantee limitation arrangements for sheepmeat and goatmeat⁽⁴⁾ the weekly amounts of the guide level are set out pursuant to Article 25 of Regulation (EEC) No 3013/89;

Whereas, pursuant to the provisions of Article 24 (2) and (3) of Regulation (EEC) No 3013/89, for the week beginning 16 July 1990, the variable slaughter premium for

sheep certified as eligible in the United Kingdom is to be in accordance with the amounts fixed in the Annexes hereto; whereas, for that week, in the light of the Judgment of the Court of Justice of 9 February 1988 in Case 61/86, the provisions of Article 9 (5) of Regulation (EEC) No 3013/89 and of Article 4 of Regulation (EEC) No 1633/84 lead to the amounts to be charged on products, leaving region 12, being fixed in accordance with those Annexes;

Whereas, as regards the controls necessary for the application of the provisions relating to the said amounts, the system of controls provided for by Regulation (EEC) No 1633/84 should be maintained without prejudice to the preparation of any more specific provisions;

HAS ADOPTED THIS REGULATION:

Article 1

For sheep or sheepmeat certified as eligible in the United Kingdom in region 1, within the meaning of Article 22 (2) of Regulation (EEC) No 3013/89, for the variable slaughter premium during the week beginning 16 July 1990, the level of the premium is fixed at ECU 54,699 per 100 kilograms of estimated or actual dressed carcase weight within the limits laid down by Article 1 (1) (b) of Regulation (EEC) No 1633/84.

Article 2

For products referred to in Article 1 (a) and (c) of Regulation (EEC) No 3013/89 which left the territory of region 1 during the week beginning 16 July 1990, the amounts to be charged shall be equivalent to those fixed in the Annexes hereto.

*Article 3*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 16 July 1990.

⁽¹⁾ OJ No L 289, 7. 10. 1989, p. 1.⁽²⁾ OJ No L 154, 9. 6. 1984, p. 27.⁽³⁾ OJ No L 114, 27. 4. 1989, p. 13.⁽⁴⁾ OJ No L 351, 2. 12. 1989, p. 18.

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

Done at Brussels, 7 August 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX

to the Commission Regulation of 7 August 1990 fixing for Great Britain the level of the variable slaughter premium for sheep and the amounts to be charged on products leaving region 1

(ECU/100 kg)

CN code	Amounts	
	A. Products qualifying for the premium specified in Article 24 of Regulation (EEC) No 3013/89	B. Products specified in Article 4 (4) of Regulation (EEC) No 1633/84 ⁽¹⁾
	Live weight	Live weight
0104 10 90	25,709	0
0104 20 90		0
	Net weight	Net weight
0204 10 00	54,699	0
0204 21 00	54,699	0
0204 50 11		0
0204 22 10	38,289	
0204 22 30	60,169	
0204 22 50	71,109	
0204 22 90	71,109	
0204 23 00	99,552	
0204 30 00	41,024	
0204 41 00	41,024	
0204 42 10	28,717	
0204 42 30	45,126	
0204 42 50	53,331	
0204 42 90	53,331	
0204 43 00	74,664	
0204 50 13		0
0204 50 15		0
0204 50 19		0
0204 50 31		0
0204 50 39		0
0204 50 51		0
0204 50 53		0
0204 50 55		0
0204 50 59		0
0204 50 71		0
0204 50 79		0
0210 90 11	71,109	
0210 90 19	99,552	
1602 90 71 :		
— unboned (bone-in)	71,109	
— boned or boneless	99,552	

⁽¹⁾ Eligibility for these reduced amounts is subject to compliance with the conditions laid down in the second subparagraph of Article 5 (3) of Regulation (EEC) No 1633/84.

COMMISSION REGULATION (EEC) No 2330/90**of 7 August 1990****fixing the import levies on white sugar and raw sugar**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector ⁽¹⁾, as last amended by Regulation (EEC) No 1069/89 ⁽²⁾, and in particular Article 16 (8) thereof,

Whereas the import levies on white sugar and raw sugar were fixed by Commission Regulation (EEC) No 1812/90 ⁽³⁾, as last amended by Regulation (EEC) No 2320/90 ⁽⁴⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 1812/90 to the information known to the Commission that the levies at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 8 August 1990.

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

Done at Brussels, 7 August 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 167, 30. 6. 1990, p. 41.

⁽⁴⁾ OJ No L 208, 7. 8. 1990, p. 25.

ANNEX

to the Commission Regulation of 7 August 1990 fixing the import levies on white sugar and raw sugar

(ECU/100 kg)

CN code	Levy
1701 11 10	36,75 ⁽¹⁾
1701 11 90	36,75 ⁽¹⁾
1701 12 10	36,75 ⁽¹⁾
1701 12 90	36,75 ⁽¹⁾
1701 91 00	39,69
1701 99 10	39,69
1701 99 90	39,69 ⁽²⁾

⁽¹⁾ Applicable to raw sugar with a yield of 92 % ; if the yield is other than 92 %, the levy applicable is calculated in accordance with the provisions of Article 2 of Commission Regulation (EEC) No 837/68 (OJ No L 151, 30. 6. 1968, p. 42).

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

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 13 July 1990

relating to a proceeding under Article 85 of the EEC Treaty

(IV/32.009 — Elopak/Metal Box — Odin)

(Only the English text is authentic)

(90/410/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Having regard to the Treaty establishing the European Economic Community,

Whereas :

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 Article 2 thereof,

I. THE FACTS

A. Subject of the Decision

Having regard to the notification of the agreements hereinafter mentioned and the application for negative clearance jointly submitted on 1 August 1986 by Elopak A/S of Lierstranda, Norway (hereafter 'Elopak'), Elopak Ltd of Hertfordshire, United Kingdom, Metal Box plc of Berkshire, United Kingdom (hereafter 'Metal Box') and Odin Developments Ltd of Hertfordshire, United Kingdom (hereafter 'Odin') concerning the creation of a joint venture company, Odin, which agreements were made on 23 April 1986 and which mainly comprise a shareholders agreement relating to Odin, two know-how licences and two research and development contracts,

- (1) This Decision concerns agreements between Elopak and Metal Box. The object of the agreements is to establish Odin, jointly owned by Elopak and Metal Box, which is to carry out the research and development of a container with a carton base and separate closure that can be filled by an aseptic process with UHT processed foods. Odin will also develop the machinery and technology for filling these new containers and if successful undertake production and distribution of the new containers and their filling machines.
- (2) The object of the notification was to benefit from the procedure provided for in Article 7 of Commission Regulation (EEC) No 418/85 of 19 December 1984 on the application of Article 85 (3) of the Treaty to categories of research and development agreements⁽²⁾. Failing benefit of such procedure the parties sought, pursuant to Articles 2 and 4 of

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

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ No C 215, 13. 8. 1987, p. 3.

⁽³⁾ OJ No L 53, 22. 2. 1985, p. 5.

Regulation No 17, negative clearance or exemption under Article 85 (3) of the Treaty.

B. The parties

(3) *Elopak*

The Elopak group of companies is Norwegian in origin and is engaged primarily in Europe but also in Africa, the Middle East and the United States of America in the manufacture and sale of cartons for use in packaging and distribution in the dairy and food industries. It also supplies and installs integrated systems equipment for filling, packaging and handling these cartons. Until comparatively recently Elopak did not manufacture the filling machines themselves but acted as a distributor for certain filling machine manufacturers. Elopak supplies primarily cartons for milk and to a lesser extent for juice, wine and water. Its milk cartons are almost exclusively for pasteurised (fresh) milk with a shelf-life of several days only. Elopak was a distributor for Liquipak International Inc. (USA) of machines capable of aseptically filling UHT treated milk, giving a shelf-life of several months. However, the distribution agreement has been terminated. In 1988 Elopak acquired Purepak, the packaging-machine division of Excello (USA), for which it acted as distributor for its fresh filling machines. Purepak had also been trying to develop aseptic packaging machines. The consolidated turnover of the Elopak Group (including Elopak Ltd) was $\pm$ ECU 300 million in 1985. Elopak is presently negotiating with the British Technology Group (BTG) for a licence to use the new BTG technology which is ideally suited to sterilizing preformed cartons such as Elopak's gable top which was the technology used in the Liquipak machines⁽¹⁾.

(4) *Metal Box*

The Metal Box Group of companies, British in origin, is active in several industrial activities (packaging, central heating and security printing) on a worldwide basis. Its core business of packaging includes not only traditional cans for foods and liquids but also PET and polythene bottles, general plastic packaging, aerosols, metal and plastic paint cans, plastic packaging for toiletries and cosmetics as well as a variety of other packaging and closures and seals. Most food products in cans are filled by a sterilization process but Metal Box has an aseptically filled 'Milk Can' (polypropylene container with aluminium top) for long shelf-life liquids,

including milk. Metal Box has its own active R & D centre covering a variety of packing materials and processes. The consolidated turnover of the Metal Box Group was $\pm$ ECU 1 520 million in 1985/86. In October 1988 the Commission approved a merger transaction between Metal Box and Carnaud of their packaging activities (metallic and plastic containers). A significant structural change in the European packaging industry occurred following this transaction by which Carnaud and Metal Box agreed to create a new major world packaging company to be called CMB Packaging in which each party will own 25,5 % of the share capital, the rest of the shares being mainly distributed to the public. The combined turnover of the new group is in excess of $\pm$ ECU 3,1 billion. It will own 170 factories in 26 countries and employ approximately 35 000 people worldwide.

C. The agreements

The essential elements of the notified agreements which were made on 23 April 1986 are summarized below.

- (5) Elopak and Metal Box create for an indefinite period a 50/50 jointly owned company, Odin, to research, develop and if successful ultimately exploit (i. e. manufacture and distribute) a new form of paperboard-based package with separate closure (a laminated metal lid) and the filling and sealing machinery and technology associated with this new package. The new package will be for shelf-stable UHT-treated particulate foods (i. e. not liquids) filled aseptically. This new product and the new associated filling, sealing and handling machinery and technology constitutes the field of the agreement. Odin will be controlled by a board composed of equal numbers of Elopak and Metal Box representatives.
- (6) Metal Box and Elopak grant Odin licences to exploit anywhere in the world all their respective intellectual property rights (patented and unpatented) relevant for the field of the agreement. Both parents will grant a similar licence to Odin for any new intellectual property rights they may obtain. Odin will not use these intellectual property rights for any purpose other than in the field of the agreement and will keep such rights confidential. Odin will be the owner of any improvements made by it to the intellectual property rights.
- (7) Within the field of the agreements Odin shall have the exclusive right to exploit the intellectual property rights licensed from the parents and any improvements it may make. As Odin's exclusivity extends only to the field of the agreements it must be seen as a field of use exclusivity. If Odin decides

⁽¹⁾ See Commission Decision 88/501/EEC of 26 July 1988, relating to a proceeding under Articles 85 and 86 of the EEC Treaty [IV/31.043 - Tetra Pak I BTG Licence] (OJ No L 272, 4. 10. 1988, p. 27).

not to exploit the new technology in any particular country, the parents shall have the right to exploit the technology in that country when such opportunity is offered by Odin to third parties.

- (8) The parents can obtain from Odin a non-exclusive licence (without the right to sub-license) for any improvement made by Odin provided that:

— the use or exploitation of such improvements is unlikely to conflict with Odin (i.e. all uses outside the field of the agreement are permissible),

or

— Odin decides not to exploit this technology for the purposes of Odin.

- (9) Elopak and Metal Box are free to carry out R & D or exploitation either independently or with a third party in the field of packaging systems for shelf-stable particulate foods provided they do not use either the know-how of the other partner in Odin or any improvements made by Odin except as specified in the agreements.

- (10) In the event of deadlock, breach or disagreement as to how Odin should continue or exploit the new product, and where these disputes cannot be settled, arrangements are made for one of the parties to buy out the other's shares. In such events it is agreed that one of the parties (the choice determined both by the type of breach or disagreement) will make an offer of its shares to the other party. If this offer is not accepted, the offeror will be obliged to purchase the shares of the other party at the price contained in its original offer.

- (11) At such a break-up or sale of shares the following non-exclusive royalty free licences shall be made:

— Odin shall license the seller of the shares to use all of its improvements,

— the purchaser shall license its own intellectual property rights to the seller for use only in the field of the agreement.

Similar cross-licences will be granted to both parents on liquidation of Odin.

- (12) At such break-up, sale or liquidation, for a period of five years neither Elopak nor Metal Box shall use the proprietary know-how of the other party or any

improvements made by Odin with a competitor of that other party.

- (13) Except as laid down in the agreement neither party can sell or dispose of its shares in Odin without the consent of the other party. Even after break-up and sale described in point 10 above, the purchaser of the shares shall not for five years transfer any shares in Odin to any third party without first offering them to the original seller on the same terms.

- (14) All information received by Odin or by one party from the other under these agreements will be treated confidentially. Elopak and Metal Box will also carry out for a fee on a contract basis research and development work requested by Odin. Odin will be the owner of any intellectual property arising during such contract work. Elopak and Metal Box will keep confidential all information disclosed or developed under such contracts.

D. The products and the market

- (15) It is intended that the new product will be based on Elopak's gable-top carton, made from paper boards coated with polyethylene or aluminium, and will have a separate closure (a laminated metal lid). It will be capable of being aseptically filled and sealed so that it can be used to package UHT-processed food products containing particles. Also to be developed along with the new product are the associated sterilizing, filling, sealing and handling equipment which must all be adapted to suit the new product and the filling and sealing process yet to be developed. Foods packed in the new product will have a shelf-life of several months. It is expected that the UHT process will affect the quality of the packaged foods less than the sterilization used in canning. A prototype filling machine has in fact been developed and Odin intends to invite customers to submit the prototype to a trial.

- (16) The market for the product has not yet been developed nor has consumer acceptance been tested. However, uses for it might include soups, sauces, pie-fillings, fruit, vegetables, baby foods, pasta products and pet foods. That being so the new product, if successfully developed, could constitute an adequate technical substitute to metal cans principally, but also to glass jars and certain 'brick' type cartons capable of being filled with UHT-treated liquids or semi-solids by an aseptic process.

- (17) The markets for the packages with which the new products is likely to compete are oligopolistic in structure : for metal cans — Nacanco, Continental Can, American Can, PLM (Swedish origin), and CMB Packaging referred to above ; for glass jars — Owens Illinois, St Gobain and PLM ; for 'brick' type cartons — Tetrapak and PKL (Germany).
- (18) The cost of transport of metal cans and glass jars but not of 'brick' type cartons limits the geographical extent of the relevant market. The new product, like Elopak's current gable-top carton, will probably be transported as flattened blanks separately from closures. The distance over which it can be economically transported will therefore probably be greater than is currently possible with metal cans and glass jars. The existence of these other competitors even within the oligopolistic structure of the market and the fact that the transport costs of the new product will probably not limit severely the geographical extent of the relevant market means that the creation of Odin will not create any significant foreclosure effects.
- (19) The new product will not compete with Elopak's current gable-top containers used for fresh milk. On this market in any case there are several competitors including Tetrapak which possesses its own technology.

E. Observations of third parties

- (20) No written observations were received within the time period laid down in the Commission's notice published pursuant to Article 19 (3) of Regulation No 17.

II. LEGAL ASSESSMENT

A. Regulation (EEC) No 418/85

- (21) The parties have applied to benefit from the procedure provided for in Article 7 of Regulation (EEC) No 418/85. However, the notified agreements do not fulfil the conditions necessary for this simplified procedure which does not apply to joint undertakings such as Odin which not only extend to production but also distribution. Furthermore, such an application presupposes that the agreements fall within the scope of Article 85 (1), which is not the case here, with the result that the requested compatibility of the notified agreements

must be stated by individual negative clearance decision.

- (a) Odin will undertake distribution of the new products and such joint distribution is not covered by Regulation (EEC) No 418/85 (see Article 1 (2) (d)). In addition Article 2 (e) obliges any joint undertaking charged with manufacture of the products to supply them only to the parties ; an obligation not fulfilled when Odin, and not the parents, is charged solely with distribution. Therefore, since the agreements do not fulfil the conditions of Article 2 the simplified procedure laid down in Article 7 of Regulation (EEC) No 418/85 cannot be applied.
- (b) For the reasons explained below Article 85 (1) is not applicable either to the creation of the joint venture (because the parents are neither competitors nor potential competitors) or to any of the individual provisions of these agreements. Consequently, the agreements do not need any exemption under Article 85 (3), rather the agreements can be granted a formal negative clearance.

B. Article 85 (1)

- (22) Odin is jointly and equally owned and controlled by both parent undertakings. As a result the joint venture must be considered under Article 85 (1).
- (23) Although at the time of notification the product as well as the market for it had yet to be developed it can be expected that the relevant geographical market is the Community. It is difficult to define exactly the relevant product market on which the new product will compete. It is considered that this product may constitute an adequate technical substitute for the packaging of shelf-stable UHT-treated particulate foods (including semi-liquids but not liquids) filled aseptically. Although the product will probably constitute a technical substitute for metal cans, glass jars and certain 'brick' type cartons, consumer preference may give rise to its own special market.
- (24) In this case for the reasons hereafter set out it will be seen that at the time of the conclusion of the agreements :
- Elopak and Metal Box were not competitors, actual or potential, in the relevant product market,
 - and
 - the development of the product by either party on its own was highly unlikely.

- (25) Elopak does not possess a complete range of its own or fully proven technology in the field of packaging UHT-processed foods with an aseptic filling for both machines and cartons. As a distributor of liquipak aseptic machines, it did not have access to the patented technology embodied in these machines which are solely for cartons containing liquids. Elopak's know-how which is principally for cartons containing liquids is not enough to permit it to develop on its own the new product for aseptically filled cartons with a separate closure for particulate foods. Even access to BTG technology will develop only its know-how regarding sterilization of cartons.

Metal Box has no experience with the type of board cartons to be used as the basis for the new product. Special know-how for cartons is necessary if they are to withstand the heat of the filling process whilst still retaining stability and giving a shelf-life of several months. These cartons must in any case be adapted to be capable of accommodating a laminated metal lid.

Neither party could in the short term enter the market alone as such entry would require a knowledge of the other party's technology which could not be developed without significant and time-consuming investment.

Both Metal Box's and Elopak's experience and resources are necessary to develop the new product which will be a combination of their respective technical and commercial know-how. The technical risks involved in carrying out research for a brand new product yet to be proven and which involves a whole new area of technology for each partner, and the risks involved in developing the new filling, sealing and handling machinery necessary, would realistically preclude each party from attempting to carry out research and development on its own. In addition, considerable commercial risks are involved not only in gaining final consumer acceptance for the new carton but also in persuading food processors/packers to reinvest in the expensive new packaging and sealing equipment that will inevitably be necessary for the new product. Moreover, Odin will have to provide a rapid after-sales and maintenance service for filling and sealing equipment which food processors require if they are to be persuaded to re-equip. Back-up services are essential if breakdowns and

delays, which can be very costly in terms of spoiled foods, are to be avoided.

Consequently, combining the know-how of each party reduces considerably the technical risks involved, thus diminishing the financial burden to be borne jointly.

- (26) In activities outside the field of the joint venture the parties are neither competitors nor potential competitors. Elopak is a manufacturer of cartons for fresh or pasteurized liquids — a market in which Metal Box has no interests. Consequently, the creation of Odin will not have any impact on any existing competitive or potentially competitive relationship between the parents. Odin may, however, become a competitor of Metal Box, a point which is dealt with below.
- (27) The creation of Odin is not likely to lead to foreclosure of similar possibilities to potential competitors. As has been stated, until the product is developed and successfully marketed it is difficult to say on which relevant product market it will compete most effectively. Notwithstanding this uncertainty, there are several other very large metal can makers in the EEC who have at least equivalent technical know-how to Metal Box's. In the market for cartons, Elopak is only one of several companies using Excello technology on a non-exclusive basis. In addition, Tetrapak in particular, with a much bigger market share, has not only its own technology equivalent to Elopak's for fresh milk, but also aseptic technology for 'brick' style cartons which are already used to a limited extent for UHT-processed foods. PKL also possess this latter technical ability.
- (28) As the parties could not realistically be regarded as competitors, actual or potential, and the creation of the joint venture entails no foreclosure risk, and the agreement does not involve the creation of a network of competing joint ventures, the agreements to establish Odin do not fall within the terms of Article 85 (1).
- (29) The specific provisions of the agreement must however be examined to ascertain whether such provisions restrict competition within the meaning of Article 85 (1), or whether they are no more than is necessary to ensure the starting up and the proper functioning of the joint venture. In particular, account must be taken of the fact that if successfully developed and marketed, Odin's new product may compete to some extent with Metal Box's current output.

Provision relating to the activities of the parents

closely related and possibly competing products.

(30) The grant to Odin of the exclusive right to exploit the proprietary know-how in the field of the agreement (which is very narrowly defined to include only the highly specific product in question) is a guarantee to each party that its partner will devote its full efforts to the project. As the success of Odin depends on such efforts these provisions will make each of them willing both to bear the financial, technical and commercial risks involved as well as to divulge secret know-how. This is particularly important in this case where a significant proportion of the proprietary know-how involved is not protected by patents. A similar analysis applies to the provisions relating to the non-exclusive licence of improvements which may be granted by Odin to its parents and to those limiting the use of such improvements. These ensure that Odin will be able to exploit exclusively the proprietary know-how in the field of the agreement.

(31) Even though the protection afforded to Odin by the exclusive right to exploit goes beyond any initial starting-up period for new technology and may extend for the life of Odin it cannot realistically be seen how, in view of the following circumstances, it might infringe Article 85 (1):

— both parents' proprietary know-how (and not just that of one parent) plus further R & D work by Odin are necessary to develop not only the new product but also the machinery and technology linked to it; they are also necessary to the manufacture and marketing of the product which, even if successfully developed, must still win consumer acceptance and, after that, be adapted to possible changes in consumers' demand, quality requirements and production technology;

— there are no explicit restrictions in relation to price, quantity, customers or territory placed on Odin's activities, even though its new product may compete to some extent with Metal Box's current output,

— the exclusivity is limited to the field of the agreement which is very narrowly defined; moreover the parents are not restricted in research and development or exploitation of

The exclusivity in this case cannot in the circumstances be compared to exclusive licences of proprietary know-how which is ready for technical exploitation either in a licensor/licensee relationship (see Boussois/Interpane Decision⁽¹⁾) or where the licensor is a partner in a joint venture with which it can compete directly (see Commission Decision Mitchell-Cotts/Sofitra⁽²⁾).

(32) The grant to Odin of a non-exclusive licence to use its parents' know-how and the provisions for updating this know-how and keeping it confidential do not infringe Article 85 (1). These provisions do not restrict the possibility for the parents to conduct R & D in closely related and competing fields. In fact such R & D is expressly permitted as long as each party does not use the other party's know-how or Odin's improvements (although such improvements may be used outside the field of the agreement). These provisions, like those relating to secrecy do no more than guarantee the confidentiality of secret know-how, and prevent the other party from using Odin as a vehicle to obtain know-how to which it would not otherwise have access.

(33) The parties' obligations in relation to licensing technology at dissolution or break-up do not infringe Article 85 (1). In such an event both parties will have access not only on an unlimited basis to improvements made by Odin but also to the use in the field of the agreement of the other party's know-how. Thus, on break-up of Odin or sale by one party, both parties are free to compete using all know-how including that of the other party in the field of the agreement and using their own and Odin's improvements in any field. The limit on the use of the other party's proprietary know-how to the field of the agreement is a necessary consequence of cooperation limited to a specific field of activities. In fact since a break-up or sale can be quite readily brought about by either party, this provision does no more than ensure such an eventuality will not be used as a pretext by one party to obtain the other party's know-how outside the highly specific field of the agreement.

⁽¹⁾ OJ No L 50, 19. 2. 1987, p. 30.

⁽²⁾ OJ No L 41, 11. 2. 1987, p. 31.

Ease of break-up or sale (with the associated access to know-how) also ensures that Metal Box cannot use its joint controlling position in Odin to prevent the new product being fully and actively exploited if it considers that such exploitation might harm the products it currently produces. Similarly Metal Box cannot impose any territorial restrictions on Odin's production or sales without either provoking a break-up if Elopak so wishes or without Elopak being entitled to seek the right to exploit the new product in the territory in which Metal Box opposes exploitation by Odin. Elopak in particular has no incentive to limit Odin's output or the geographical scope of its sales. Neither is there any reason to suppose that Metal Box will use its co-control in Odin in a manner incompatible with Article 85 (1).

- (34) Nor are the following restrictions caught by Article 85 (1): (a) the obligation on each parent, for five years after break-up of Odin (or sale by one party of its shares), not to allow a competitor of the other parent to use that other parent's know-how or improvements made by Odin, and (b) the provision giving the seller right of first refusal in the event of a further sale. Such provisions are a necessary result of the creation of Odin without which the two parents could not reasonably be expected to cooperate. In the absence of such provisions and especially in view of the ease with which a sale or break-up can be brought about, the possibility of a competitor obtaining know-how which is essential if Odin is to develop successfully the new products. Nor should a competitor have immediate access to Odin's improvements without bearing either the risk or the financial investment which each party has borne. Such protection of Odin's improvements is necessary to ensure the parties' willingness to allocate the necessary funds to Odin to develop the new product. A similar analysis applies to the ban on disposing of Odin shares without the other party's consent; this is also an expression of the wish of the parties to undertake a particular project with a specifically qualified partner.

Provisions relating to limitations placed on Odin.

- (35) The provisions which relate to Odin's use of the parents' proprietary know-how and the obligation to keep such know-how secret are both necessary to avoid compromising or undermining Odin's purpose and existence. They are a necessary conse-

quence of the parents' desire to limit cooperation to a specific field and a reflection of the legitimate aim to keep know-how secret. Such provisions have in fact been recognised, in Article 2 of Commission (EEC) No 556/89 (7), as legitimate in the context of know-how licences. Finally, there are no explicit restrictions relating price, quantity or territory imposed on Odin. Consequently in the context of this case the provisions relating to the activities of Odin do not fall within the scope of Article 85 (1).

Implicit restrictions

- (36) The above analysis has shown that neither the establishment of Odin nor any of the detailed provisions fall within the scope of Article 85 (1). In fact the individual provisions are seen to be either:

— provisions not restricting competition in the sense of Article 85 (1),

or

— provisions which in other contexts might restrict competition but which in the context of the present case do not. Since such provisions cannot be disassociated from the creation of Odin without undermining its existence and purpose and since the creation of Odin does not fall within the scope of Article 85 (1), these specific provisions also fall outside the scope of Article 85 (1).

A final examination of any implicit or inevitable anti-competitive consequences is however necessary, particularly as a result of the new potential competition that may be created between Metal Box and Odin if this latter's new product is commercially successful. As explained above there are no explicit provisions limiting competition between Metal Box and Odin and in particular there is no geographical division of the EEC. As has been stated, Elopak in particular has no incentive to limit Odin's output or the geographical scope of its sales. Neither is there any reason to suppose that Metal Box will use its co-control in Odin in a manner incompatible with Article 85 (1). In a case such as the one under consideration there can be no implicit anti-competitive impact on the activities of the parents outside the joint venture because not only were the parties not even potential competitors at the creation of Odin but also

(7) OJ No L 61, 4. 3. 1989, p. 1.

neither party could have realistically developed the new product without the full and active participation of its partner. Finally, any dangers of implicit anti-competitive effects stemming from the potential competition created between Metal Box and Odin are further mitigated by the facility with which a break-up sale of Odin can be brought about and the wide post-term use possibilities for all parties that this implies (see point 11 above).

Conclusions

- (37) Consequently, it may be concluded that the agreements between Metal Box and Elopak to establish Odin and the associated agreements and transfers of technology described in this Decision do not have as their object or effect any appreciable prevention, restriction or distortion of competition within the common market within the meaning of Article 85 (1). It is not therefore necessary to examine whether trade between Member States may be affected. Consequently there are no grounds, on the basis of the facts in the Commission's possession, for action on its part under Article 85 (1). The Commission can therefore grant the agreements in question a negative clearance under Article 2 of Regulation No 17,

and associated with the creation of, Odin Development Ltd by Elopak A/S, Elopak Ltd and Metal Box plc.

Article 2

This Decision is addressed to :

Odin Development Ltd,
PO Box 66,
Stevenage,
UK-Hertfordshire SG1 2 LU,

Elopak A/S,
PO Box 523,
N-3412 Lierstranda,

CMB Packaging SA,
211 rue du Noyer,
B-1040 Bruxelles,

CMB Packaging (UK) Ltd,
Woodside, Perry Wood Walk,
UK-Worcester WR5 1 BQ,

Elopak Ltd,
Gunnels Wood Road,
Stevenage,
UK-Hertfordshire SG1 2BQ.

HAS ADOPTED THIS DECISION :

Done at Brussels, 13 July 1990.

Article 1

On the basis of the facts in its possession, the Commission has no grounds for action to Article 85 (1) of the Treaty in respect of the agreements for the creation of,

For the Commission

Leon BRITTAN

Vice-President

COMMISSION DECISION

of 19 July 1990

concerning the areas referred to in Article 3 (2) of Council Regulation (EEC) No 328/88 instituting a Community programme to assist the conversion of steel areas (Resider programme)

(Only the Spanish text is authentic)

(90/411/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 328/88 of 2 February 1988 instituting a Community programme to assist the conversion of steel areas (Resider programme) ⁽¹⁾, and in particular Article 3 and 4 thereof,

Whereas Article 3 (2) of Regulation (EEC) No 328/88 stipulates that the Community programme shall apply to areas which satisfy the criteria specified in Article 3 (1) and the thresholds laid down by Article 4 (1);

Whereas the Member State concerned must submit an application for approval of the areas to which the Community programme is to apply; whereas Spain has submitted such an application to the Commission in respect of the Autonomous Community of Asturias and areas of the Basque Country;

Whereas these areas satisfy the abovementioned criteria,

HAS ADOPTED THIS DECISION:

Article 1

The Autonomous Community of Asturias and the areas of the Basque Country listed in the Annex are hereby found to satisfy the criteria in Article 3 (1) and the thresholds in Article 4 (1) of Council Regulation (EEC) No 328/88. The Community programme instituted by that Regulation shall therefore apply to those areas.

Article 2

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 19 July 1990.

For the Commission

Bruce MILLAN

Member of the Commission

⁽¹⁾ OJ No L 33, 5. 2. 1988, p. 1.

ANNEX

Geographical coverage of the Resider programme in the Basque Country

List of municipalities in the province of Álava

Amurrio	Llodio
Aramaio	Okondo
Arceniega	Salvatierra
Aspárrena	San Millán
Ayala	Zalduondo

List of municipalities in the province of Vizcaya

Abadiño	Larrabetzu
Abanto y Zierbana	Leioa
Amorebieta-Echano	Lemoa
Arrigorriaga	Lezama
Atxondo	Loiu
Baracaldo	Mallabia
Basauri	Mañaria
Bedia	Muskiz
Bérriz	Orduña
Bilbao	Ortuella
Derio	Portugalete
Durango	Santurtzi
Elorrio	Sestao
Erandio	Sondika
Ermua	Valle de Trápaga-Trapagaran
Echebarría	Zaldívar
Galdakao	Zamudio
Garay	Zarátamo
Izurza	

List of municipalities in the province of Guipúzcoa

Abaltzisketa	Irura
Aduna	Itsasondo
Albiztur	Larraul
Alegia	Lasarte-Oria
Alkiza	Lazkao
Altzo	Leaburu-Gaztelu
Amezketta	Legazpia
Andoáin	Legerreta
Anoeta	Leintz-Gatzaga
Antzuola	Lezo
Arama	Lizartza
Aretxabaleta	Mondragón-Arrasate
Asteasu	Mutiloa
Ataun	Olaberria
Azkoitia	Oñati
Azpeitia	Ordizia
Beasáin	Orexa
Beizama	Ormaiztegui
Belaunza	Oyarzun
Berastegi	Pasaia
Bergara	Placencia
Berrobi	Régil
Bidegoyán	Rentería
Éibar	Segura
Elduyen	Tolosa
Elgeta	Urdeta
Elgóibar	Urretxu
Eskoriatza	Usúrbil
Ezkio-Itsaso	Villabona
Gaínza	Zaldibia
Gabiria	Zegama
Hernialde	Zeráin
Ibarra	Zizurkil
Idiazábal	Zumárraga
Iruerrieta	

COMMISSION DIRECTIVE
of 20 July 1990
amending the Annexes to Council Directive 70/524/EEC concerning additives in
feedingstuffs

(90/412/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Directive 70/524/EEC of 23 November 1970 concerning additives in feedingstuffs⁽¹⁾, as last amended by Commission Directive 90/214/EEC⁽²⁾, and in particular Article 7 thereof,

Whereas Directive 70/524/EEC provides for regular amendment of the content of its Annexes to take account of advances in scientific and technical knowledge; whereas the Annexes were consolidated by Commission Directive 85/429/EEC⁽³⁾;

Whereas the use of various additives has been successfully tested in certain Member States; whereas these new uses should be provisionally authorized, at least at national level until such time as it is permitted at Community level;

Whereas the measures provided for in this Directive are in accordance with the opinion of the Standing Committee for Feedingstuffs,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The Annex II to Directive 70/524/EEC is hereby amended as set out in the Annex hereto.

Article 2

This Directive is addressed to the Member States.

Done at Brussels, 20 July 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 270, 14. 12. 1970, p. 1.

⁽²⁾ OJ No L 113, 4. 5. 1990, p. 39.

⁽³⁾ OJ No L 245, 12. 9. 1985, p. 1.

ANNEX

In Annex II to Directive 70/524/EEC:

1. In part A 'Antibiotics', the following is added to item No 28, 'Avilamycin':

No	Additive	Chemical formula, description	Species or category of animal	Maximum age	Minimum content		Other provisions	Period of authorization
					mg/kg of complete feedstuffs	Maximum content		
			'Chickens for fatten- ing	—	2,5	10	—	30.11.1991'

2. In part D 'Coccidiostats and other medicinal substances', the following items are added:

No	Additive	Chemical formula, description	Species or category of animal	Maximum age	Minimum content		Other provisions	Period of authorization
					mg/kg of complete feedstuffs	Maximum content		
'22	Robenidine	1,3-bis[(4-chlorobenzylidene)- amino] guanidine hydrochloride	Rabbits for breeding purposes	—	50	66	Use prohibited at least five days before slaughter	30.11.1990
23	Narasin / Nicarbazin (mixture of (a) narasin and (b) nicarbazin in a 1/1 ratio)	(a) C ₁₈ H ₂₂ O ₁₁ (polyether of monocarboxylic acid produced by <i>Streptomyces aureofaciens</i>) In granular form (b) Equimolecular complex of 1,3-bis (4-nitrophenyl) urea and 4,6-dimethyl pyrimidin-2-ol In granular form	Chickens for fattening	—	80	100	Use prohibited at least seven days before slaughter. Indicate in the instructions for use: 'Dange- rous for equines'.	30.11.1990'

COMMISSION DECISION

of 1 August 1990

relating to a procedure in application of Article 83 of the Euratom Treaty

(XVII-001 — ANF Lingen)

(Only the German text is authentic)

(90/413/Euratom)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 83 thereof,

Having given Advanced Nuclear Fuels GmbH of Lingen (Federal Republic of Germany) the opportunity to express its point of view on the objections raised by the Commission,

Whereas as follows :

I. THE FACTS

This Decision concerns the undeclared export of nuclear material from the Federal Republic of Germany to the United States of America by Advanced Nuclear Fuels GmbH during the month of May 1990.

Advanced Nuclear Fuels GmbH, hereinafter referred to as 'ANF Lingen', runs a fabrication plant which regularly receives nuclear material from Advanced Nuclear Fuels of Richland (USA), hereinafter referred to as 'ANF Richland'.

Through letters of 18 May, 26 June and 3 July 1990, and the hearing held in Brussels in the offices of the Commission on 13 July 1990, the following facts were established :

- On 8 May 1990, a loading pallet with two containers, each containing two boxes, was moved from the storage area to the material entry lock at the plant for the purpose of removing the box containing uranium pellets enriched to 3,3 %.

Once this operation had been completed the pallet, together with its two containers, was mistakenly placed outside, close to the storage area for empty containers, and forgotten about. The two containers on the pallet now only contained three boxes: one with 49,84 kilogrammes of uranium oxide (UO₂) enriched to 2,7 % and the two others, weighing 49,86 kilogrammes and 47,29 kilogrammes respectively, with uranium enriched to 3,95 %.

- On the morning of 11 May 1990, during preparation of a shipment of 72 empty containers for ANF Richland, the pallet in question was loaded by mistake by another employee on to a lorry belonging to a normal goods transport company.

The employee in charge of the operation observed that the containers on the pallet were marked with the labels stipulated by national law indicating the presence of radioactive materials. Since the containers were standing in this area, he believed them to be empty and destined for shipment, and removed the labels, replacing them with ones indicating that the containers were empty. On the same day, at 7 p.m., the lorry was unloaded at Luxembourg-Findel airport and the consignment packed for transport by air.

- On 12 May 1990, the containers were transported by cargo plane to Seattle (USA), where they arrived at 9.10 p.m. local time.

- On 14 May 1990, the containers were transported by road to ANF Richland, arriving on 15 May 1990.

ANF Lingen was informed that same day by ANF Richmond that, after carrying out a routine dosimetric check, they had established the presence of nuclear material in the two containers which were supposed to be empty. An examination of the seals carried out immediately thereafter revealed that no material could have been removed from the three boxes concerned.

- On 16 May 1990, ANF Lingen notified the Safeguards Directorate at the Commission of the occurrence.
- On 17 May 1990, ANF Lingen also notified the Euratom Supply Agency of the occurrence.

II. LEGAL ASSESSMENT**A. — The legal provisions**

By virtue of its activities, ANF Lingen is an undertaking falling within the terms of Article 196 (b) of the Euratom Treaty. It is therefore subject to the provisions of Chapter VII, Title Two, of the Treaty, to Commission Regulation (Euratom) No 3227/76 of 19 October 1976 concerning the application of the provisions on Euratom safeguards⁽¹⁾, as amended by Regulation (Euratom) No 220/90 of 26 January 1990⁽²⁾, and to the Commission Decision of 5 June 1985 laying down the particular safeguards provisions for this undertaking.

⁽¹⁾ OJ No L 363, 31. 12. 1976, p. 1.

⁽²⁾ OJ No L 22, 27. 1. 1990, p. 56.

In accordance with Article 77 of the Treaty, the Commission must satisfy itself that, in the territories of the Member States:

- (a) ores, source minerals and special fissile materials are not diverted from their intended uses as declared by the users;
- (b) the provisions relating to supply and any particular safeguarding obligations assumed by the Community under an agreement concluded with a third State or an international organization are complied with.

In addition, the Commission also requires, in accordance with Article 79 of the Treaty, that operating records be kept and produced in order to permit accounting for ores, source materials and special fissile materials used or produced. The same requirement applies in the case of the transport of source materials and special fissile materials.

Under Article 10 of Regulation (Euratom) No 3227/76, the undertaking must keep accounting records which show, amongst other information, all inventory changes for each material balance area, so as to permit a determination of the book inventory at any time.

Thus, for all inventory changes, the accounting records must show, in respect of each batch of nuclear material, material identification, batch data and source data. These records must account separately for uranium, thorium and plutonium in each batch of nuclear material. Moreover for each inventory change, the date of the inventory change and, when appropriate, the dispatching material balance area and the receiving material balance area or the recipient, must be indicated.

Article 11 of Regulation (Euratom) No 3227/76 specifies that, for each material balance area, the operating records must include, amongst other information, those operating data which are used to establish changes in the quantities and composition of the nuclear material.

Finally, for export activities, Article 24 of Regulation (Euratom) No 3227/76 lays down that:

- (a) persons and undertakings must give advance notification to the Commission of each export of source or special fissile materials. However, advance notification is required only:
 - (i) where the consignment exceeds one effective kilogramme⁽¹⁾;
 - (ii) where the particular safeguard provisions so specify, in the case of installations habitually transferring large total quantities of materials to the same State, even though no single consignment exceeds one effective kilogramme;
- (b) such notification must be given after the conclusion of the contractual arrangements leading to the transfer and in any case in time to reach the Commission eight

working days before the material is to be prepared for shipment;

- (c) such notification must be given in accordance with the form set out in Annex V of the said Regulation.

As regards the conditions under which advance notification is required for entry and exit operations, the particular safeguards provisions for ANF Lingen established by the Decision of 5 June 1985 lay down that advance notification is also required for exports of less than one effective kilogramme.

In addition to this notification, and to allow cross-checks to be carried out, Article 32 of Regulation (Euratom) No 3227/76 lays down that any person or undertaking engaged, within the territories of the Member States, in carrying or temporarily storing source or special fissile materials during shipment may accept them, or hand them over only against a duly signed and dated receipt. This must state the names of the parties handing over and receiving the materials and the quantities carried, together with the nature, form and compositions of the materials.

B. — The infringements established

Following an examination of the facts acknowledged by ANF Lingen, it has been established that the undeclared export of nuclear material to the United States led to the following infringements being committed:

1. Breach of the provisions on the recording of inventory changes laid down in Article 10 (a) of Regulation (Euratom) No 3227/76.
2. Breach of the provisions on operating records laid down in Article 11 (a) of that Regulation, particularly as regards:
 - data on changes in quantities,
 - and
 - data on changes in the composition of nuclear material.
3. Failure to give advance notification of export as laid down in Article 24 of that Regulation, in conjunction with code 1.3.2 of the particular safeguards provisions.

Lastly, there has also been a breach of Article 32 of the Regulation. Since he was not notified by ANF Lingen of the quantity, nature and composition of the nuclear material, the carrier was not able to issue the acceptance receipt by means of which verification is possible.

C. — The sanction to be applied

Under the terms of Article 83 (1) of the Treaty, in the event of an infringement on the part of persons or undertakings of the obligations imposed on them, the Commission may impose sanctions on such persons or undertakings.

⁽¹⁾ See Article 36 (o) of Regulation (Euratom) No 3227/76.

These sanctions are in order of severity :

- (a) a warning ;
- (b) the withdrawal of special benefits such as financial or technical assistance ;
- (c) the placing of the undertaking for a period not exceeding four months under the administration of a person or boards appointed by common accord of the Commission and the State having jurisdiction over the undertaking ;
- (d) total or partial withdrawal of source materials or special fissile materials.

Given that the determining criterion for application of this Article is the seriousness of the infringement committed, it is first necessary to carry out both an objective and a subjective analysis of the nature of the offences.

From an objective point of view, it appears that the provisions breached are essential elements of Community legislation in the field of safeguards, and that observance of them is essential if the aim set out in Article 77 of the Treaty is to be attained.

Moreover, the facts established made it impossible for the Commission to carry out the task assigned to it in Article 2 (e) of the Treaty, namely to 'make certain, by appropriate supervision, that nuclear materials are not diverted to purposes other than those for which they are intended'.

It should be noted here that the Commission attaches particular importance to the control of exports to nuclear materials.

The serious nature of the infringement is further reinforced by the fact that it involved a significant quantity, in terms of weight, of enriched uranium, which could very easily be further enriched to levels where it would be of strategic value.

From a subjective point of view, it seems, however, that there was no intention behind the actions and that these should not be seen as a form of diversion. This is, moreover, reflected in the fact that the report on the full annual check of the inventory of materials held only showed minimal differences between the physical inventory and the book inventory, corresponding to approximately 0,1 % of the total stock or to 0,023 % of the sum of the stock and its variations between 4 August 1989 and 4 July 1990.

They nevertheless constitute a serious infringement, stemming from a series of instances of negligence, both at the operational and the organizational level, which were made possible primarily by the absence of back-up verification measures.

Given the nature of the mistakes made, the Commission regards it essential that all necessary action be taken to ensure that mistakes of this nature cannot recur in the future, all the more so since ANF Lingen carries out such container transfer operations on a regular basis, and intends to continue doing so.

In order to guarantee that mistakes of this type, which have their origin in the routine nature of the activities concerned, do not recur, the Commission intends to make sure that appropriate measures are clearly drawn up regarding working practices and their implementation.

With this purpose in mind and in view of the serious nature of the mistakes made, the Commission feels that the most effective sanction to impose is that laid down in Article 83 (1) (c) of the Treaty.

Only by placing the undertaking under administration can the Commission be sure that the undertaking will meet all its obligations regarding safeguards, since any recourse to the issue of a warning, as provided for in Paragraph 1 (a) of that Article, is ruled out by the serious nature of the infringements committed.

Even though ANF Lingen has notified the appropriate Euratom safeguards authorities that it intends to enforce the new internal regulations covering the management and handling of materials which it has undertaken to communicate, the Commission feels that the length of time during which the undertaking is under administration must be four months from the date of notification of the name(s) of the person(s) appointed to carry out this task. At the end of this period, an assessment report will be drawn up.

During this period, the task assigned to the person or board appointed by common accord of the Commission and the Federal Republic of Germany will be expressly confined to duties directly connected with safeguards.

It will, in effect, consist of :

- checking and, if necessary, amending internal regulations in this field,
- and,
- supervising their implementation and monitoring their application.

HAS ADOPTED THIS DECISION :

Article 1

Advanced Nuclear Fuels GmbH has infringed Article 79 of the Euratom Treaty as defined in Articles 10, 11 and 24 of Regulation (Euratom) No 3227/76 of 19 October 1976 and in code 3.1.2 of the Commission Decision of 5 June 1985 on particular safeguards provisions, through :

- (a) its failure to give advance notification of an export ;
- (b) its breach of the regulations on recording inventory changes ;
- (c) its breach of the regulations on operating records regarding :
 - changes in quantities,
 - and
 - changes in the composition of nuclear material.

Article 2

1. Advanced Nuclear Fuels GmbH shall be placed under administration for a period of four months, and only as regards aspects connected with the safeguards mentioned in Chapter VII, Title Two, of the Treaty.

2. The placing under administration shall in no way affect the responsibility of the undertaking under national or international law.

Article 3

The task of administration set out in Article 2 shall consist of:

- checking and, if necessary, amending the internal regulations in the field of safeguards,
- supervising their implementation and monitoring their application.

2. In order to perform this administrative task, the person(s) appointed:

- shall have access to all documents and offices,
- shall have the power to give any instructions whatsoever to the management or staff of the undertaking,
- shall have the right to solicit or request any help from outside sources which may be required for the satisfactory performance of the above task.

3. An assessment report shall be presented to the Commission within eight days of the completion of the task.

Article 4

The appointment of the person or the board, as the case may be, assigned the tasks described in Article 3 shall be carried out by common accord of the Commission and the Federal Republic of Germany by 15 August 1990.

The Commission shall notify the undertaking of the name(s) of the person(s) thereby appointed on the day after their appointment.

Article 5

1. This Decision is addressed to Advanced Nuclear Fuels GmbH — Industriepark Süd — Postfach 1465 — D-4450 Lingen (Ems) 1.

2. This Decision shall be communicated to the Federal Republic of Germany.

Done at Brussels, 1 August 1990.

For the Commission

António CARDOSO E CUNHA

Member of the Commission