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Contents

I *Acts whose publication is obligatory*

- ★ **Council Regulation (EEC) No 3499/90 of 27 November 1990 amending Regulation No 136/66/EEC on the establishment of a common organization of the market in oils and fats** 1
- ★ **Council Regulation (EEC) No 3500/90 of 27 November 1990 amending Regulation (EEC) No 2261/84 laying down general rules on the granting of aid for the production of olive oil and of aid to olive oil producer organizations** 3
- ★ **Council Regulation (EEC) No 3501/90 of 27 November 1990 removing olive oil and oil cake from the list of products subject to the STM in Portugal** 7
- Commission Regulation (EEC) No 3502/90 of 4 December 1990 fixing the import levies on cereals and on wheat or rye flour, groats and meal 8
- Commission Regulation (EEC) No 3503/90 of 4 December 1990 fixing the premiums to be added to the import levies on cereals, flour and malt 10
- ★ **Commission Regulation (EEC) No 3504/90 of 3 December 1990 concerning the stopping of fishing for mackerel by vessels flying the flag of France** 12
- ★ **Commission Regulation (EEC) No 3505/90 of 3 December 1990 concerning the stopping of fishing for plaice by vessels flying the flag of the United Kingdom** 13
- ★ **Commission Regulation (EEC) No 3506/90 of 3 December 1990 re-establishing the levying of the customs duties on products falling within CN code 4203, originating in Pakistan, to which the preferential tariff arrangements set out in Council Regulation (EEC) No 3896/89 apply** 14
- Commission Regulation (EEC) No 3507/90 of 4 December 1990 opening a standing invitation to tender for the export of 100 000 tonnes of barley held by the German intervention agency 15

Contents (continued)

★ Commission Regulation (EEC) No 3508/90 of 4 December 1990 fixing, for 1991 the quota for imports into Spain of meat of domestic rabbits from third countries and certain detailed rules for the application thereof	17
Commission Regulation (EEC) No 3509/90 of 4 December 1990 fixing the import levies on white sugar and raw sugar	19

II *Acts whose publication is not obligatory*

Commission

90/627/EEC :

★ Commission Decision of 4 July 1990 on loans granted by the Belgian authorities to two shipowners for the purchase of a 34 000 m³ LPG ship and two refrigerator ships	21
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I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EEC) No 3499/90
of 27 November 1990**

**amending Regulation No 136/66/EEC on the establishment of a common
organization of the market in oils and fats**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 42 and 43 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas a system of maximum guaranteed quantities was introduced by Article 5 (1) of Regulation (EEC) No 136/66/EEC ⁽⁴⁾, as last amended by Regulation (EEC) No 2902/89 ⁽⁵⁾ for production aid; whereas under this system the unit amount of the aid is reduced when the maximum quantity fixed for a given marketing year is exceeded; whereas, in order to ensure better market equilibrium and to curb expenditure on the disposal of olive oil, this system should be extended to cover the intervention price; whereas, however, the intervention price should be reduced only from the following marketing year; whereas a limit to this price reduction should be fixed;

Whereas the quantity of olive oil that producers may not attain in order to benefit from special advantages to compensate for their small size should be revised; whereas a flat-rate amount of additional production aid should be granted to these producers to soften the impact

of the decline in the market price which may result if the maximum guaranteed quantity is exceeded;

Whereas in the interests of sound management and in order to simplify the system of granting production aid, a distinction should be made between two categories of olive growers depending on whether or not production attains a given quantity of olive oil; whereas the unit amount of the aid should be fixed according to a flat rate for producers who do not attain this quantity,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation No 136/66/EEC is hereby amended as follows:

1. the following paragraph is added to Article 4:

‘4a. If for a marketing year:

- the estimated olive oil production exceeds the maximum guaranteed quantity fixed for that year, possibly increased in accordance with Article 5 (1) fifth subparagraph (a), the intervention price for the following year shall be reduced by applying the coefficient referred to in Article 5 (1) fifth subparagraph (b). However such reduction may not exceed 3 %,
- the actual olive oil production is less or greater than the estimated production, the intervention price of the second marketing year following that to which such productions refer shall be correspondingly increased or reduced, without prejudice to the 3 % buffer per marketing year.

The reduction and increase in the intervention price referred to in the first subparagraph shall be made by the Commission each year before the start of the marketing year in question.’;

⁽¹⁾ OJ No C 277, 5. 11. 1990, p. 1.

⁽²⁾ Opinion delivered on 23 November 1990 (not yet published in the Official Journal).

⁽³⁾ Opinion delivered on 19 September 1990 (not yet published in the Official Journal).

⁽⁴⁾ OJ No 172, 30. 9. 1966, p. 3025/66.

⁽⁵⁾ OJ No L 280, 29. 8. 1989, p. 2.

2. in Article 5:

(a) in paragraph 1, second and sixth subparagraphs, '400' is replaced by '500';

(b) paragraph 2 is replaced by the following:

'2. The aid shall be granted:

— to growers who produce on average at least 500 kilograms of olive oil in a given marketing year, on the basis of the quantity of olive oil actually produced,

— to other growers, on the basis of the number and production potential of the olive trees which they grow and of the yields of those trees as fixed according to a flat rate and provided the olives produced have been pressed.';

3. the following Article is inserted:

'Article 5a

1. As from the 1991/92 marketing year for the duration of the period of application of Article 4 (4) (a), additional production aid shall be granted to growers who produce on average less than 500 kg per marketing year. This aid shall amount to ECU 3/100 kilograms.

2. If necessary, detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 38.'

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, 27 November 1990.

For the Council

The President

V. SACCOMANDI

COUNCIL REGULATION (EEC) No 3500/90

of 27 November 1990

amending Regulation (EEC) No 2261/84 laying down general rules on the granting of aid for the production of olive oil and of aid to olive oil producer organizations

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by Regulation (EEC) No 3499/90⁽²⁾, and in particular Article 5 (4) thereof,

Having regard to the proposal from the Commission,

Whereas Article 5 of Regulation No 136/66/EEC provides for aid for the production of olive oil to be granted on the basis of the quantity of oil actually produced to olive growers whose average production is at least 500 kilograms per marketing year, and to other olive growers on the basis of the number and production potential of olive trees and of the yields of such trees, as determined according to a standard method, and provided that the olives produced have actually been processed;

Whereas in order to improve supervision of the overall activities of oil mills and of the quantities eligible for the aid, the grant of aid should be subject in all cases to the condition that the olives be pressed in approved mills and that the applicant present a pressing certificate;

Whereas in order to stabilize the level of support provided by the standard aid by avoiding the large fluctuations in yields from one marketing year to the next, provision should be made for the aid to be paid on the basis of the average yield over the previous four marketing years;

Whereas with regard to olive growers whose production is at least 500 kg per marketing year, it seems fairer to pay the advance on the basis of the quantity produced by each olive grower; whereas provision should also be made for a system of more rapid payment of the advance to associate producers, by reason of the tasks of verifying their dossiers carried out by the organizations;

Whereas in order to improve the management of the aid system, the verification tasks falling to the organizations and the checks to be carried out by the Member States for the purposes of paying the aid should be better defined;

Whereas, taking into account the specific situation of Portugal, the Member State should be authorized to take,

for a limited period, special measures for the approved mills and for cases of olive sales by producers;

Whereas Regulation (EEC) No 2261/84⁽³⁾, as last amended by Regulation (EEC) No 1226/89⁽⁴⁾, should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2261/84 is hereby amended as follows:

1. In Article 2:

(a) paragraph 4 shall be replaced by the following:

'4. In the case of olive growers whose average production is at least 500 kilograms of oil per marketing year, the aid shall be granted in accordance with the first indent of Article 5 (2) of Regulation No 136/66/EEC in respect of the quantity of oil actually produced at an approved mill.

In the case of other growers, the aid shall be granted in accordance with the second indent of Article 5 (2) of Regulation No 136/66/EEC and shall be equal to the amount obtained by applying the average olive yields and oil yields over the previous four marketing years, fixed according to a standard method in accordance with Article 18 of this Regulation, with regard to the number of olive trees in production and provided the olives are processed into oil at an approved mill.'

(b) in paragraph 5, first subparagraph the figure '400' shall be replaced by '500'.

2. In Article 3:

(a) paragraph 3 shall be replaced by the following:

'3. Olive growers who are members of a producer organization shall, by a date to be determined, submit to the organization an individual aid application providing evidence that the olives have been pressed at an approved mill.'

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

⁽²⁾ See page 1 of this Official Journal.

⁽³⁾ OJ No L 208, 3. 8. 1984, p. 3.

⁽⁴⁾ OJ No L 128, 11. 5. 1989, p. 17.

(b) paragraph 6 shall be replaced by the following :

'6. Olive growers who are not members of a producer organization shall, by a date to be determined, submit to the competent authorities of the Member State concerned, an aid application containing evidence that the olives have been pressed at an approved mill.'

3. Article 6 shall be replaced by the following :

Article 6

1. Recognized producer organizations which are not members of an association referred to in Article 20c (2) of Regulation No 136/66/EEC shall :

- lodge, in accordance with Article 3 (1), the crop declarations of all their members,
- submit, once per month, in a standardized form suitable for computer processing as provided for in Article 16 the aid applications of their members. Aid shall be requested for the quantity produced by those members who have completed their oil production, provided that the checks specified in Article 8 (1) have been made and the resulting obligations discharged.

All applications relating to the production of a single marketing year must, on pain of preclusion, be lodged before a date to be specified ;

- shall receive from the Member State concerned advances on the production aid, as mentioned in Article 12, and the balance of the aids, and shall forthwith divide them amongst the olive grower members.

2. In cases where a producer organization belongs to an association of such organizations, the crop declarations and aid applications of the olive grower members must be submitted by the association.'

4. Article 7 shall be repealed.

5. Article 8 shall be replaced by the following :

Article 8

1. Before submitting the aid application each producer organization shall check :

- the compliance of the file submitted by each of its members with the obligations referred to in Article 3, and in particular the existence of evidence that the olives have been pressed in an approved mill,
- with regard to olive growers whose average production is at least 500 kilograms of olive oil per marketing year, that the particulars supplied by each grower as to the quantities of olives pressed and the quantities of oil obtained correspond to the quantities of olives and oil stated in the evidence of pressing.

2. The producer organization shall forward the files on their members to the competent authorities of the Member State concerned when the correspon-

dence referred to in the second indent of paragraph 1 is not established.'

6. In Article 10, the first indent shall be replaced by the following :

'— shall coordinate the activities of the organization of which they are composed and ensure that these activities accord with this Regulation, and in particular shall directly and in accordance with a percentage to be determined verify the manner in which the checks specified in Article 8 have been carried out,'.

7. Article 12 shall be replaced by the following :

Article 12

1. Each olive grower whose average production is at least 500 kilograms of olive oil per marketing year may receive an advance on the amount of the aid requested.

2. For olive growers who are members of a producer organization, the advance :

- shall be equal to the amount obtained by multiplying the unit amount of the aid fixed pursuant to Article 17 a (2) by 90 % of the quantity of oil stated in the aid application,
- may not be granted unless the checks referred to in Article 8 (1) and the on-the-spot checks referred to in Article 14 (3a) second indent, without prejudice to other checks, if necessary, have been carried out.

3. For olive growers who are not members of a producer's organization and for associated olive growers who may not invoke paragraph 2, the advance :

- (a) shall be equal to the sum obtained by multiplying the unit aid fixed in accordance with Article 17 a (2) by the quantity indicated in the aid application ;
- (b) may not be granted unless :
 - the olive yields and oil yields have been fixed for the current marketing year in accordance with Article 18,
 - the checks referred to in Article 8 (1) and the on-the-spot checks referred to in Article 14 (3a) have been carried out.'

8. In Article 14 :

(a) paragraph 2 shall be replaced by the following :

'2. Producer Member States shall verify the activities of each producer organization and association and, in particular, that the checking operations have been carried out by these bodies within the meaning of Article 8 (1) and Article 10, first indent.';

(b) the following paragraph shall be inserted:

'3a. For the purposes of paying aid to olive growers whose average production is at least 500 kilograms of olive oil per marketing year, the producer Member States shall check:

- the accuracy of the crop declarations on the basis of criteria to be determined,
- the correspondence between the quantity of oil entered in the aid application and that stated in the stock records of approved mills,
- the compatibility between the olive production declared by each olive grower as having been pressed in an approved mill and the particulars given in his crop declaration on the basis of criteria to be determined.'

(c) paragraph 4 shall be replaced by the following:

'4. With regard to the olive oil referred to in part 1 of the Annex to Regulation No 136/66/EEC and produced by olive growers whose average production is less than 500 kilograms of olive oil per marketing year, the checks should verify:

- the accuracy of the crop declarations on the basis of criteria to be determined,
- the existence of evidence of the olives having been pressed in an approved mill.'

9. In Article 15, paragraph 3 shall be replaced by the following:

'3. Where the checks specified in Articles 13 and 14 do not confirm the figures in the stock records of an approved mill, the Member State concerned shall, without prejudice to any sanctions which may be imposed on the mill, determine, for each producer whose average production is at least 500 kilograms of olive oil per marketing year and who has had its olive crop pressed in the mill in question, the quantity of oil for which aid shall be given.'

10. Article 17a shall be replaced by the following:

Article 17a

1. The Commission shall determine the average olive yields and oil yields over the four previous marketing years, before 1 December in respect of the current marketing year.

2. The following shall be determined in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC, before 1 April in respect of the current marketing year:

- estimated production,
- the unit amount of the production aid that can be paid in advance. That amount must be such, under the production conditions of the marketing

year in question, as to avoid any risk of unwarranted payment to olive growers.

3. Not more than six months after the end of the marketing year, the following shall be determined in respect of that year in accordance with the procedure referred to in paragraph 2:

- the quantity actually produced in respect of which entitlement to aid has been recognized,
- the unit amount of the production aid provided for under (b) in the fifth subparagraph of Article 5 (1) of Regulation No 136/66/EEC, payable to producers whose average production is at least 500 kilograms per marketing year,
- the quantity to be carried over to the next marketing year, if the quantity produced referred to in the first indent is less than the maximum quantity laid down.

4. Member States shall, not later than 15 March, communicate to the Commission their olive oil production estimates for the current marketing year. The Commission may avail itself of other sources of information and, where necessary, have studies or surveys carried out relating to olive oil production.'

11. In Article 21, the date '1 January 1990' shall be replaced by that of '1 January 1995'.

Article 2

1. In order to ensure a smooth transition from the arrangements currently in force to those established under this Regulation, the Commission may decide on any necessary measures for the 1990/91 marketing year in accordance with the procedure referred to in Article 38 of Regulation No 136/66/EEC.

2. By way of derogation from the provisions of this Regulation and for the 1990/91 and 1991/92 marketing years:

- a provisional approval may be granted by Portugal for mills located on its territory, on condition that their stock records contain at least, for each person who has had olives pressed in such mills, a statement of the quantities of olives pressed and of oil obtained,
- production aid may be granted to an olive grower, in Portugal, in accordance with the second subparagraph of Article 2 (4) of Regulation (EEC) No 2261/84 if, in cases of the total or partial sale of his olive production, that olive grower is unable to provide evidence of pressing in an approved mill, on condition that the sale invoice of the olives is submitted.

Article 3

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, 27 November 1990.

For the Council

The President

V. SACCOMANDI

COUNCIL REGULATION (EEC) No 3501/90

of 27 November 1990

removing olive oil and oil cake from the list of products subject to the STM in Portugal

THE COUNCIL 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 234 (3) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,Having regard to the opinion of the European Parliament ⁽²⁾,Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Article 249 of the Act of Accession provides for olive oil and oil cake to be subject to the supplementary trade mechanism (STM) on importation into Portugal;

Whereas, within the framework of the STM, the Portuguese market in these products has to a great extent been open since accession without any difficulties having arisen;

Whereas the total opening up of the Portuguese market in vegetable oils and fats at the expiry of the standstill period and the introduction at the same date of aid for

the consumption of olive oil in Portugal require the liberalization of imports of Olive oil and oil cakes from the other Member States into Portugal; whereas those products should therefore no longer be subject to the STM,

HAS ADOPTED THIS REGULATION:

Article 1

The following products:

- olive oil falling within CN codes 1509 and 1510 00,
- oil cake falling within CN codes ex 2304 00 00, 2305 00 00 and 2306, with the exception of CN codes ex 2306 90 11 and 2306 90 19,

are hereby removed from the list of products subject to the STM on importation into Portugal from the other Member States.

Article 2

This Regulation shall enter into force on 1 January 1991.

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

Done at Brussels, 27 November 1990.

*For the Council**The President*

V. SACCOMANDI

⁽¹⁾ OJ No C 277, 5. 11. 1990, p. 2.⁽²⁾ Opinion delivered on 23 November 1990 (not yet published in the Official Journal).⁽³⁾ Opinion delivered on 19 September 1990 (not yet published in the Official Journal).

COMMISSION REGULATION (EEC) No 3502/90

of 4 December 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 the other currencies, an exchange rate based on an average of the ecu rates published in the *Official Journal of the European Communities*, C series, over a period to be determined, multiplied by the coefficient referred to in the preceding indent;

Whereas these exchange rates being those recorded on 3 December 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 5 December 1990.

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

Done at Brussels, 4 December 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 4 December 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	29,58	141,44 ⁽²⁾ ⁽³⁾
0712 90 19	29,58	141,44 ⁽²⁾ ⁽³⁾
1001 10 10	24,85	198,89 ⁽¹⁾ ⁽⁵⁾
1001 10 90	24,85	198,89 ⁽¹⁾ ⁽⁵⁾
1001 90 91	29,99	167,72
1001 90 99	29,99	167,72
1002 00 00	55,10	155,43 ⁽⁶⁾
1003 00 10	46,40	148,84
1003 00 90	46,40	148,84
1004 00 10	38,04	145,14
1004 00 90	38,04	145,14
1005 10 90	29,58	141,44 ⁽²⁾ ⁽³⁾
1005 90 00	29,58	141,44 ⁽²⁾ ⁽³⁾
1007 00 90	46,40	146,97 ⁽⁴⁾
1008 10 00	46,40	61,53
1008 20 00	46,40	132,51 ⁽⁴⁾
1008 30 00	46,40	72,41 ⁽⁵⁾
1008 90 10	⁽⁷⁾	⁽⁷⁾
1008 90 90	46,40	72,41
1101 00 00	55,84	248,66
1102 10 00	90,99	231,72
1103 11 10	51,84	321,60
1103 11 90	59,40	267,64

⁽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 3503/90

of 4 December 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 the other currencies, an exchange rate based on an average of the ecu rates published in the *Official Journal of the European Communities*, C series, over a period to be determined, multiplied by the coefficient referred to in the preceding indent;

Whereas these exchange rates being those recorded on 3 December 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 5 December 1990.

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

Done at Brussels, 4 December 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 4 December 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 12	1st period 1	2nd period 2	3rd period 3
0709 90 60	0	0	0	0
0712 90 19	0	0	0	0
1001 10 10	0	0	0	0
1001 10 90	0	0	0	0
1001 90 91	0	21,95	21,95	22,09
1001 90 99	0	21,95	21,95	22,09
1002 00 00	0	0	0	0
1003 00 10	0	0	0	0
1003 00 90	0	0	0	0
1004 00 10	0	0	0	0
1004 00 90	0	0	0	0
1005 10 90	0	0	0	0
1005 90 00	0	0	0	0
1007 00 90	0	0	0	0
1008 10 00	0	0	0	0
1008 20 00	0	0	0	0
1008 30 00	0	0	0	0
1008 90 90	0	0	0	0
1101 00 00	0	30,92	30,92	30,92

B. Malt

CN code	(ECU/tonne)				
	Current 12	1st period 1	2nd period 2	3rd period 3	4th period 4
1107 10 11	0	39,07	39,07	39,32	39,32
1107 10 19	0	29,19	29,19	29,38	29,38
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 3504/90

of 3 December 1990

concerning the stopping of fishing for mackerel by vessels flying the flag of France

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities ⁽¹⁾, as last amended by Regulation (EEC) No 3483/88 ⁽²⁾, and in particular Article 11 (3) thereof,Whereas Council Regulation (EEC) No 4047/89 of 19 December 1989 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1990 and certain conditions under which they may be fished ⁽³⁾, as last amended by Regulation (EEC) No 1887/90 ⁽⁴⁾, provides for mackerel quotas for 1990;

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

Whereas, according to the information communicated to the Commission, catches of mackerel in the waters of ICES divisions II (excluding EC zone), V b (EC zone), VI,

VII, VIII a, b, d, e, XII and XIV by vessels flying the flag of France or registered in France have reached the quota allocated for 1990,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of mackerel in the waters of ICES divisions II (excluding EC zone), V b (EC zone), VI, VII, VIII a, b, d, e, XII and XIV by vessels flying the flag of France or registered in France are deemed to have exhausted the quota allocated to France for 1990.

Fishing for mackerel in the waters of ICES divisions II (excluding EC zone), V b (EC zone), VI, VII, VIII a, b, d, e, XII and XIV by vessels flying the flag of France or registered in France is prohibited, as well as the retention on board, the transshipment and the landing of such stock captured by the abovementioned vessels after the date of application of this Regulation.

Article 2

This Regulation shall enter into force on the day following that 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, 3 December 1990.

For the Commission

Manuel MARÍN

Vice-President

⁽¹⁾ OJ No L 207, 29. 7. 1987, p. 1.

⁽²⁾ OJ No L 306, 11. 11. 1988, p. 2.

⁽³⁾ OJ No L 389, 30. 12. 1989, p. 1.

⁽⁴⁾ OJ No L 172, 5. 7. 1990, p. 1.

COMMISSION REGULATION (EEC) No 3505/90

of 3 December 1990

concerning the stopping of fishing for plaice by vessels flying the flag of the United Kingdom

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

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

Whereas Council Regulation (EEC) No 4047/89 of 19 December 1989 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1990 and certain conditions under which they may be fished ⁽³⁾, as last amended by Regulation (EEC) No 1887/90 ⁽⁴⁾, provides for plaice quotas for 1990;

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

Whereas, according to the information communicated to the Commission, catches of plaice in the waters of ICES division VII f and g by vessels flying the flag of the United Kingdom or registered in the United Kingdom have reached the quota allocated for 1990; whereas the United Kingdom has prohibited fishing for this stock as

from 22 November 1990; whereas it is therefore necessary to abide by that date,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of plaice in the waters of ICES division VII f and g by vessels flying the flag of the United Kingdom or registered in the United Kingdom are deemed to have exhausted the quota allocated to the United Kingdom for 1990.

Fishing for plaice in the waters of ICES division VII f and g by vessels flying the flag of the United Kingdom or registered in the United Kingdom is prohibited, as well as the retention on board, the transshipment and the landing of such stock captured by the abovementioned vessels after the date of application of this Regulation.

Article 2

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

It shall apply with effect from 22 November 1990.

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

Done at Brussels, 3 December 1990.

For the Commission

Manuel MARÍN

Vice-President

⁽¹⁾ OJ No L 207, 29. 7. 1987, p. 1.

⁽²⁾ OJ No L 306, 11. 11. 1988, p. 2.

⁽³⁾ OJ No L 389, 30. 12. 1989, p. 1.

⁽⁴⁾ OJ No L 172, 5. 7. 1990, p. 1.

COMMISSION REGULATION (EEC) No 3506/90
of 3 December 1990

re-establishing the levying of the customs duties on products falling within CN code 4203, originating in Pakistan, to which the preferential tariff arrangements set out in Council Regulation (EEC) No 3896/89 apply

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3896/89 of 18 December 1989 applying generalized tariff preferences for 1990 in respect of certain industrial products originating in developing countries⁽¹⁾, and in particular Article 9 thereof,

Whereas, pursuant to Articles 1 and 6 of Regulation (EEC) No 3896/89, suspension of customs duties shall be accorded to each of the countries or territories listed in Annex III other than those listed in column 4 of Annex I, within the framework of the preferential tariff ceilings fixed in column 6 of Annex I;

Whereas, as provided for in Article 7 of that Regulation, as soon as the individual ceilings in question are reached at Community level, the levying of customs duties on

imports of the products in question originating in each of the countries and territories concerned may at any time be re-established;

Whereas, in the case of products falling within CN code 4203, originating in Pakistan, the individual ceiling was fixed at ECU 6 300 000; whereas, on 31 October 1990, imports of these products into the Community originating in Pakistan reached the ceiling in question after being charged thereagainst; whereas, it is appropriate to re-establish the levying of customs duties in respect of the products in question against Pakistan,

HAS ADOPTED THIS REGULATION:

Article 1

As from 8 December 1990, the levying of customs duties, suspended pursuant to Regulation (EEC) No 3896/89, shall be re-established on imports into the Community of the following products, originating in Pakistan,

Order No	CN code	Description
10.0580	4203 10 00 4203 21 00 4203 29 91 4203 29 99 4203 30 00 4203 40 00	Articles of apparel and clothing accessories, of leather or of composition leather, excluding gloves, mittens, and mitts protective for all trades

Article 2

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

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

Done at Brussels, 3 December 1990.

For the Commission

Christiane SCRIVENER

Member of the Commission

⁽¹⁾ OJ No L 383, 30. 12. 1989, p. 1.

COMMISSION REGULATION (EEC) No 3507/90

of 4 December 1990

opening a standing invitation to tender for the export of 100 000 tonnes of barley
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 2203/90 ⁽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 2619/90 ⁽⁶⁾, lays down the procedure and conditions for the disposal of cereals held by intervention agencies;

Whereas on 27 November 1990 Germany notified the Commission that it wished to put up for sale for export to third countries 100 000 tonnes of barley 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 barley 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 201, 31. 7. 1990, p. 5.

⁽⁵⁾ OJ No L 202, 9. 7. 1982, p. 23.

⁽⁶⁾ OJ No L 249, 12. 9. 1990, p. 8.

Article 2

1. The invitation to tender shall cover a maximum of 100 000 tonnes of barley to be exported to all third countries.

2. The regions in which the 100 000 tonnes of barley 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 third 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 19 December 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 29 May 1991.

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, 4 December 1990.

For the Commission
Ray MAC SHARRY
Member of the Commission

ANNEX I

(tonnes)	
Place of storage	Quantity
Schleswig-Holstein / Hamburg	38 799
Niedersachsen / Bremen	10 743
Bayern	50 328

ANNEX II

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

(Regulation (EEC) No 3507/90)

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 3508/90

of 4 December 1990

fixing, for 1991 the quota for imports into Spain of meat of domestic rabbits from third countries and certain detailed rules for the application thereof

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 491/86 of 25 February 1986 laying down detailed rules concerning quantitative restrictions on imports into Spain of certain agricultural products from third countries⁽¹⁾, as last amended by Regulation (EEC) No 3296/88⁽²⁾ and in particular Article 3 thereof,

Whereas the 1990 quota for imports into Spain of meat of domestic rabbits from third countries is set out in Article 1 of Commission Regulation (EEC) No 3538/89⁽³⁾; whereas this quota should be increased for 1991 by the minimum rate of increase of 10 % laid down in Article 3 of the said Regulation;

Whereas to ensure proper management of the quota, applications for import authorizations should be subject to the lodging of a security to cover, as a primary requirement within the meaning of Article 20 of Commission Regulation (EEC) No 2220/85⁽⁴⁾, as last amended by Regulation (EEC) No 3745/89⁽⁵⁾ the effective importation of the goods; whereas provision should also be made for the quotas to be staggered over the year;

Whereas provision should be made for Spain to communicate information to the Commission on the application of the quota;

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

HAS ADOPTED THIS REGULATION:

Article 1

The quota for 1991 that the Kingdom of Spain may apply, pursuant to Article 77 of the Act of Accession, to

imports of meat and edible meat offal of rabbits falling within CN code 0208 10 10 from third countries shall be 644 tonnes.

Article 2

1. The Spanish authorities shall issue import authorizations so as to ensure a fair allocation of the available quantity between the applicants.

The quota shall be staggered over the year as follows:

- 50 % during the period from 1 January to 30 June 1991,
- 50 % during the period from 1 July to 31 December 1991.

2. Applications for import authorizations shall be subject to the lodging of a security. The primary requirement within the meaning of Article 20 of Regulation (EEC) No 2220/85 covered by the security shall consist in the effective importation of the goods.

Article 3

The minimum rate of progressive increase in the quota shall be 10 % applicable at the beginning of each year.

The increase shall be added to each quota and the next increase calculated on the basis of the figure thus obtained.

Article 4

1. The Spanish authorities shall inform the Commission of the measures which they adopt for the implementation of Article 2 above.

2. They shall transmit, not later than the 15th of each month, the following information concerning the import authorizations issued in the preceding months:

- the quantities covered by the import authorizations issued, by country of provenance,
- the quantities imported, by country of provenance.

Article 5

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

It shall apply with effect from 1 January 1991.

⁽¹⁾ OJ No L 54, 1. 3. 1986, p. 25.

⁽²⁾ OJ No L 293, 27. 10. 1988, p. 7.

⁽³⁾ OJ No L 347, 28. 11. 1989, p. 22.

⁽⁴⁾ OJ No L 205, 3. 8. 1985, p. 5.

⁽⁵⁾ OJ No L 364, 14. 12. 1989, p. 54.

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

Done at Brussels, 4 December 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

COMMISSION REGULATION (EEC) No 3509/90**of 4 December 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 2547/90 ⁽³⁾, as last amended by Regulation (EEC) No 3373/90 ⁽⁴⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 2547/90 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 5 December 1990.

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

Done at Brussels, 4 December 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 237, 1. 9. 1990, p. 102.

⁽⁴⁾ OJ No L 326, 24. 11. 1990, p. 43.

ANNEX

to the Commission Regulation of 4 December 1990 fixing the import levies on white sugar and raw sugar

(ECU/100 kg)

CN code	Levy
1701 11 10	39,06 ⁽¹⁾
1701 11 90	39,06 ⁽¹⁾
1701 12 10	39,06 ⁽¹⁾
1701 12 90	39,06 ⁽¹⁾
1701 91 00	44,97
1701 99 10	44,97
1701 99 90	44,97 ⁽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 4 July 1990

on loans granted by the Belgian authorities to two shipowners for the purchase of a 34 000 m³ LPG ship and two refrigerator ships

(Only the French and Dutch texts are authentic)

(90/627/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to Council Directive 87/167/EEC of 26 January 1987 on aid to shipbuilding⁽¹⁾, and in particular Articles 3 and 4 (1), in conjunction with Article 4 (4) thereof,

Having given notice to the parties concerned in accordance with the first subparagraph of Article 93 (2) and having regard to their comments,

Whereas :

I

As a result of information provided by an association of shipbuilders, the Commission's departments learned that the Boelwerf shipyard received orders for a 34 000 m³ LPG ship for Fertex, a shipping company, and for two refrigerator ships for another shipping company, Europese Transport Maatschappij Crystal Prince. An 18-year loan at 2 % interest with a three-year grace period was granted under the Law of 23 August 1948 on shipping credit in respect of 85 % of the contract price in each case.

In the first case, by letters dated 6 May 1989, the Commission asked the Belgian authorities to confirm the information. The Belgian authorities replied by letter

dated 5 June 1989 that the contract was covered by financing repayable over 15 years, starting three years after the delivery of the ship, without specifying the interest rate, and they stated that in any case the terms of the loan were in line with Directive 87/167/EEC. In addition, the Belgian authorities reminded the Commission of a memorandum sent previously in which they stressed that shipping credit was directed at two objectives, i. e. shipbuilding on the one hand and the high operating costs of ships flying the Belgian flag on the other. Lastly, they stated that they could not follow the Commission departments' calculation of the grant equivalent specified in the Commission's letter of 27 February 1989 terminating Article 93 (2) proceedings in respect of certain measures relating to the shipping sector in Belgium.

Although incomplete, the information was deemed sufficient by the Commission to justify the initiation, on 25 October 1989, of proceedings under Article 93 (2). By letter dated 30 November 1989, the Commission informed the Belgian Government accordingly, inviting it to submit its comments, and the other Member States and parties concerned were informed by means of a notice published in the *Official Journal of the European Communities*⁽²⁾.

In the second case, the Belgian Government replied by letter dated 17 November 1989, confirming that the loan relating to the two ships covered 85 % of the price and

⁽¹⁾ OJ No L 69, 12. 3. 1987, p. 55.

⁽²⁾ OJ No C 20, 27. 1. 1990, p. 6.

was for 15 years at a 2 % interest rate, and that repayment was to commence only 36 months after the date of delivery.

The Commission consequently initiated the procedure laid down in Article 93 (2) on 10 January 1990 and informed the Belgian Government accordingly by letter dated 3 April 1990. The other Member States and other parties concerned were informed by means of a notice published in the *Official Journal of the European Communities*⁽¹⁾.

II

In letters dated 6 February and 15 May 1990, in which it submitted its comments in response to the initiation of proceedings, the Belgian Government began by arguing that the contracts had been signed when the Belgian aid system had just been placed under the authority of the Executive of the Flemish Region and that the latter had merely been applying the rules on the granting of loans in the same way as when the system was administered by the national authorities.

It went on to reiterate that the Belgian scheme was made up solely of facilities granted to shipowners in the form of the advance of funds at a reduced interest rate, the provision of a guarantee and an interest rate subsidy, that the combined application of these measures involved the simultaneous granting of production aid and operating aid and that a memorandum setting out this interpretation had already been sent to the Commission when the aid scheme was examined in the light of Directive 87/167/EEC.

Since the Belgian Government granted interest rate subsidies on loans entered into by Belgian shipowners for the purchase of ships in third countries, it took the view that this involved only aid for the operation of ships and that accordingly this part of the aid scheme established under the Law of 23 August 1948, where applied to contracts for ships built in Belgium, should not be included in the ceiling laid down in Article 4 (1) of Directive 87/167/EEC. It concluded its argument by stating that the Flemish Executive had acted in good faith on the basis of an approach deriving from a misunderstanding which had arisen in the past between the Belgian Central Government and the Commission.

III

The Belgian aid scheme falling under Articles 3 and 4 of Directive 87/167/EEC, as notified to the Commission by letter dated 15 January 1988, is governed by the Law of 23 August 1948, as amended on several occasions and most recently on 30 December 1980, and is intended to ensure the maintenance and development of the

merchant fleet and sea fishing and for this purpose sets up a fund for shipping and shipbuilding.

Article 1 (a) of the Law provides that the fund may grant advances covering up to 70 % of the value of a new ship. Article 1 (b) provides for a State guarantee in respect of supplementary loans contracted at market rates, and Article 1 (c) grants an interest subsidy amounting to half of the interest rate on such loans, but not exceeding 3 %. However, the total amount of the advances and loans provided for in Article 1 (a) and (c) may not exceed 85 % of the price of the ship.

The Law does not, however, stipulate at what rate or over what period the advance provided for in Article 1 (a) must be repaid. During the preparatory work on Directive 87/167/EEC, the Belgian Government informed the Commission of the rules for repayment of advances granted under Article 1 (a) of the Law of 23 August 1948, stating that such advances covered a 15-year period. With a two-year grace period, and an interest rate of 4 to 5 %. These terms confirmed by the Belgian Government by letter dated 21 March 1988 within the framework of the examination of all shipbuilding aid in Belgium under Article 10 of Directive 87/167/EEC.

IV

On the basis of the terms for granting advances, guarantees and interest subsidies as notified to the Commission, and taking account of a market interest rate which at the time the contracts were concluded was 8,25 % in respect of the 34 000 m³ LPG ship and the refrigerator ships, the grant equivalent of the advances granted by the Belgian Government under the Law of 23 August 1948, the calculation of which was duly explained to its authorities, should have been 20,5 %.

V

The contracts in question were in fact accompanied by loans equivalent to 85 % of the price of the ship at a 2 % interest rate for a term of 15 years, with repayment starting only 36 months after the delivery of the ship. These terms mean that the loans granted by the Belgian Government are equivalent to 35 %.

VI

Since responsibility for administration of the fund set up under the Belgian Law of 23 August 1948 has devolved to the Executive of the Flemish Region, the latter body was responsible for the decisions taken as from 1 January 1989 in accordance with the amendments made to the Belgian Constitution in 1988. This transfer of responsibility does not, however, excuse the Belgian Government or allow it to argue that the Executive of the Flemish Region was simply acting in good faith in maintaining continuity in the application of the aid scheme, since Article 5 of the Treaty stipulates clearly that Member States shall take all appropriate measures, whether general or particular, to

⁽¹⁾ OJ No C 67, 17. 3. 1990, p. 11.

ensure fulfilment of the obligations arising out of the Treaty or resulting from action taken by the institutions of the Community.

Nor does the fact that the Belgian Government sent the Commission a memorandum stating that the Belgian aid scheme was partly intended to support shipyards and partly to support the operation of sea transport under the Belgian flag provide any justification for the terms of the loan granted. The arguments set out in the memorandum merely reiterated the points which had been thoroughly discussed with the experts of the Member States during the preparatory work on Directive 81/363/EEC⁽¹⁾, and it was advisedly, in order to ensure full transparency, that the Council of Ministers, with the backing of the Belgian Government, finally decided in adopting Directive 87/167/EEC to include all aid to shipowners, where such aid is linked to the purchase of a ship in the Member States, in the ceiling provided for in Article 4 (1).

It was therefore in full knowledge of the facts that the Belgian Government granted the loan in the case in point, and the fact of granting aid to shipowners in respect of ships built in third countries, under whatever pretext, does not in any way justify the grant equivalent of such aid being deducted where aid is granted in respect of ships built in Belgium.

VII

The aid granted to shipowners in Belgium is aid within the meaning of Article 3 (1) and (2) of Directive 87/167/EEC, which stipulates that all forms of aid to shipowners or to third parties actually used for the building or conversion of ships in Community shipyards (including credit facilities, guarantees and tax concessions) is subject in full to the rules set out in Article 4 of the Directive.

Article 4 (1) states that production aid in favour of shipbuilding may be considered compatible with the common market provided that the total amount of aid granted in support of any individual contract does not exceed, in grant equivalent, a common maximum ceiling which, as stipulated in Article 4 (2), is fixed by the Commission. Article 4 (4) further stipulates that the ceiling applies to aid falling within Article 3 (2).

Since the ceiling was fixed for 1989 at 26 % and since the loan granted by the Belgian Government amounts to

a grant equivalent of 35 %, it is clear that the Belgian Government has not complied with the rules laid down in Directive 87/167/EEC and hence with the rules laid down in the Treaty,

HAS ADOPTED THIS DECISION :

Article 1

The loans having a grant equivalent of 35 % granted by the Belgian Government to the shipping companies Fertex and Europese Transport Maatschappij Crystal Prince for the building, respectively, of a 35 000 m³ LPG ship and two refrigerator ships in the Boelwerf shipyard are incompatible with the common market.

Article 2

Pursuant to Article 93 (2) of the Treaty, the Belgian Government shall revise the terms of the loans so as to reduce them to a maximum level of 26 % in grant equivalent terms, in line with the ceiling fixed by the Commission for 1989 in accordance with Article 4 (2) of Directive 87/167/EEC.

Article 3

The Belgian Government shall inform the Commission of the measures which it has taken in order to comply with this Decision within two months of being notified of it.

Article 4

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 4 July 1990.

For the Commission

Leon BRITTAN

Vice-President

⁽¹⁾ OJ No L 137, 23. 5. 1981, p. 39.