

Official Journal

of the European Communities

ISSN 0378-6978

L 351

Volume 33

15 December 1990

English edition

Legislation

Contents

I *Acts whose publication is obligatory*

- ★ Council Regulation (EEC) No 3609/90 of 11 December 1990 amending Regulation (EEC) No 1678/85 fixing the conversion rates to be applied in agriculture 1
- ★ Council Regulation (EEC) No 3610/90 of 11 December 1990 opening and providing for the administration of Community tariff quotas for certain agricultural, chemical and industrial products (1991) 2
- ★ Council Regulation (EEC) No 3611/90 of 11 December 1990 opening and providing for the administration of an autonomous Community tariff quota for newsprint (1990) and extending this quota to include certain other types of paper 5
- Commission Regulation (EEC) No 3612/90 of 14 December 1990 fixing the import levies on cereals and on wheat or rye flour, groats and meal 7
- Commission Regulation (EEC) No 3613/90 of 14 December 1990 fixing the premiums to be added to the import levies on cereals, flour and malt 9
- Commission Regulation (EEC) No 3614/90 of 14 December 1990 fixing the import levies on rice and broken rice 11
- Commission Regulation (EEC) No 3615/90 of 14 December 1990 fixing the premiums to be added to the import levies on rice and broken rice 13
- Commission Regulation (EEC) No 3616/90 of 14 December 1990 adjusting the agricultural conversion rates for the pigmeat sector in the United Kingdom and Spain 15
- ★ Commission Regulation (EEC) No 3617/90 of 11 December 1990 imposing a provisional anti-dumping duty on imports of certain welded tubes of iron or non-alloy steel, originating in Turkey or in Venezuela and accepting undertakings offered in connection with such imports 17

* Commission Regulation (EEC) No 3618/90 of 13 December 1990 reintroducing the levying of the customs duties applicable to the products of the CN code 3901 20 00 originating in Mexico, to which the preferential arrangements of Council Regulation (EEC) No 3896/89 apply	23
Commission Regulation (EEC) No 3619/90 of 13 December 1990 opening invitations to tender for the fixing of aid for the private storage of carcasses and half-carcasses of lamb	24
* Commission Regulation (EEC) No 3620/90 of 14 December 1990 on determining the origin of the meat and offals, fresh, chilled or frozen, of certain domestic animals	25
Commission Regulation (EEC) No 3621/90 of 14 December 1990 fixing the amount of aid for peas, field beans and sweet lupins	26
* Commission Regulation (EEC) No 3622/90 of 14 December 1990 authorizing the conclusion of long-term private storage contracts for table wine, grape must, concentrated grape must and rectified concentrated grape must in respect of the 1990/91 wine year	33
Commission Regulation (EEC) No 3623/90 of 14 December 1990 amending the monetary compensatory amounts applicable in the cereals sector	36
* Commission Regulation (EEC) No 3624/90 of 14 December 1990 amending Regulation (EEC) No 1836/90 adopting measures for the supply of raw sugar from beet harvested in the Community to Portuguese refineries during the 1990/91 marketing year	43
* Commission Regulation (EEC) No 3625/90 of 14 December 1990 amending Regulation (EEC) No 3483/90 on the transitional measures relating to the application of the system of accession compensatory amounts for olive oil	44

II Acts whose publication is not obligatory

Commission

90/645/EEC :

* Commission Decision of 28 November 1990 relating to a proceeding under Article 85 of the EEC Treaty (IV/32.877 — Bayer Dental)	46
--	----

90/646/EEC :

* Commission Decision of 6 December 1990 making an initial allocation to Italy of part of the resources to be charged to the 1991 budget year for the supply of food from intervention stocks to designated organizations for distribution to the most deprived persons in the Community	51
--	----

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 3609/90
of 11 December 1990
amending Regulation (EEC) No 1678/85 fixing the conversion rates to be applied
in agriculture

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy ⁽¹⁾, as last amended by Regulation (EEC) No 2205/90 ⁽²⁾, and in particular Article 2 (3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Monetary Committee,

Whereas the current conversion rates to be applied in agriculture are fixed by Regulation (EEC) No 1678/85 ⁽³⁾, as last amended by Regulation (EEC) No 3578/90 ⁽⁴⁾;

Whereas the standard amounts intended in particular to finance the storage of intervention products referred to in Article 6 of Regulation (EEC) No 1883/78 ⁽⁵⁾, as last amended by Regulation (EEC) No 787/89 ⁽⁶⁾, are fixed uniformly in ecus; whereas, in view of the nature and the purpose of the amounts in question, they should be converted at an agricultural conversion rate having the

same value in all Member States for all the sectors involved; whereas this rate must reflect actual economic conditions,

HAS ADOPTED THIS REGULATION:

Article 1

The following Article shall be inserted in Regulation (EEC) No 1678/85:

Article 2d

The conversion into national currency of the standard amounts referred to in Article 6 of Regulation (EEC) No 1883/78 shall be effected by applying the rates referred to in Article 3 (1) of Regulation (EEC) No 1676/85.

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, 11 December 1990.

For the Council

The President

V. SACCOMANDI

⁽¹⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽²⁾ OJ No L 201, 31. 7. 1990, p. 9.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 11.

⁽⁴⁾ OJ No L 349, 13. 12. 1990, p. 1.

⁽⁵⁾ OJ No L 216, 5. 8. 1978, p. 1.

⁽⁶⁾ OJ No L 85, 30. 3. 1989, p. 1.

COUNCIL REGULATION (EEC) No 3610/90

of 11 December 1990

opening and providing for the administration of Community tariff quotas for certain agricultural, chemical and industrial products (1991)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 28 thereof,

Having regard to the proposal from the Commission,

Whereas production in the Community of certain agricultural, chemical and industrial products will remain in the course of 1991 unable to meet the specific requirements of the user industries in the Community; whereas, consequently, Community supplies of products of this type will depend to a considerable extent on imports from third countries; whereas the most urgent Community requirements for the products in question should be met immediately on the most favourable terms; whereas Community tariff quotas at reduced or at zero duty should therefore be opened within the limits of appropriate volumes for a period up to 31 December 1991 taking account of the need not to disturb the markets for such products nor the starting out or development of Community production;

Whereas it is necessary, in particular, to ensure for all Community importers equal and uninterrupted access to the said quotas and to ensure the uninterrupted application of the rates laid down for the quotas to all imports of the products concerned into all Member States until the quotas have been used up;

Whereas, it is appropriate to take the necessary measures to ensure efficient Community administration of these tariff quotas while offering the Member States the opportunity to draw from the quota volumes the necessary quantities corresponding to actual imports; whereas this method of administration requires close cooperation between the Member States and the Commission and the latter must in particular be able to monitor the rate at which the quotas are used up and inform the Member States accordingly;

Whereas, since the Kingdom of Belgium, the Kingdom of the Netherlands and the Grand Duchy of Luxembourg are united within and jointly represented by the Benelux Economic Union, all transactions concerning the administration of the quantities drawn by that economic union may be carried out by any one of its members,

HAS ADOPTED THIS REGULATION:

Article 1

1. From 1 January to 31 December 1991, the customs duties applicable to imports into the Community of the products listed below shall be suspended at the levels and within the limits of the Community tariff quotas shown below:

Order No	CN code (a)	Description	Amount of quota	Quota duty (%)
09.2713	ex 2008 60 19 ex 2008 60 39	Sweet, clear-fleshed cherries, marinated in alcohol, of a diameter not exceeding 18,9 mm, stoned, intended for the manufacture of chocolate products ⁽¹⁾ : — With a sugar content exceeding 9 % by weight — With a sugar content not exceeding 9 % by weight	2 000 tonnes	10 + AGR 10
09.2707	ex 2933 90 90	2,2-methylene-bis [4-(1,1,3,3-tetra-methyl-buthyl)-6 (2H-benzotriazol-2-yl)-phenol]	40 tonnes	0
09.2727	ex 3902 90 00	Synthetic poly-alpha-olefin having a kinetic viscosity of not less than $38 \times 10^{-6} \text{ m}^2 \text{ s}^{-1}$ (38 centistokes) at 100 °C measured using the ASTM D 445 method, for the manufacture of lubricating oil	4 000 tonnes	0
09.2741	ex 8104 11 00	Unwrought magnesium having a purity of not less than 99,95 % in the form of ingots, intended for the manufacture of elements used in the nuclear industry ⁽¹⁾	1 500 tonnes	0
09.2743	ex 3806 90 00	Extracts of wood rosin, insoluble in aliphatic hydrocarbons, with a content of resin acid not higher than 30 % in weight	1 190 tonnes	0
09.2797	ex 8540 41 00	Magnetrons with a power output of less than 1 000 W, for the manufacture of microwave ovens ⁽¹⁾	1 500 000 pieces	0

(a) See Taric codes in the Annex.

(1) Checks on their prescribed end-use shall be carried out pursuant to the relevant Community provisions.

2. Within the limits of these tariff quotas the Kingdom of Spain and the Portuguese Republic shall apply customs duties calculated in accordance with the relevant provisions of the 1985 Act of Accession.

Article 2

The tariff quotas referred to in Article 1 shall be managed by the Commission, which may take any appropriate administrative measures to ensure that they are managed efficiently.

Article 3

Where an importer presents a product covered by this Regulation for release for free circulation in a Member State, applying to take advantage of the preferential arrangements, and the entry is accepted by the customs authorities, the Member State concerned shall, by notifying the Commission, draw an amount corresponding to its requirements from the appropriate quota volume.

Requests for drawings, indicating the date on which the entries were accepted, must be sent to the Commission without delay.

Drawings shall be granted by the Commission in chronological order of the dates on which the customs authorities of the Member States concerned accepted the entries

for release for free circulation, to the extent that the available balance so permits.

If a Member State does not use a drawing in full it shall return any unused portion to the corresponding quota volume as soon as possible.

If the quantities requested are greater than the available balance of the quota volume, the balance shall be allocated among applicants pro rata. The Commission shall inform the Member States of the drawings made.

Article 4

Each Member State shall ensure that importers of the products in question have equal and continuous access to the quotas for as long as the balance of the relevant quota volume so permits.

Article 5

The Member States and the Commission shall cooperate closely to ensure that this Regulation is complied with.

Article 6

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, 11 December 1990.

For the Council

The President

V. SACCOMANDI

*ANNEX***Taric codes**

Order No	CN code	Taric code
09.2713	ex 2008 60 19	* 10
	ex 2008 60 39	* 10
09.2707	ex 2933 90 90	* 21
09.2727	ex 3902 90 00	* 95
09.2741	ex 8104 11 00	* 30
09.2743	ex 3806 90 00	* 30
09.2797	ex 8540 41 00	* 91

COUNCIL REGULATION (EEC) No 3611/90
of 11 December 1990

**opening and providing for the administration of an autonomous Community
 tariff quota for newsprint (1990) and extending this quota to include certain
 other types of paper**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 28 thereof,

Having regard to the proposal from the Commission,

Whereas by Regulation (EEC) No 3379/89 ⁽¹⁾, the Council opened, for 1990, for newsprint a contractual Community tariff quota, of which the initial amount of 650 000 tonnes was increased by 30 000 tonnes by Regulation (EEC) No 3230/90 ⁽²⁾; whereas, on the basis of the economic data currently available, it is certain that the total amount of this quota will not totally cover the needs for imports from third countries until 31 December 1990; whereas, on that basis and taking account of the supplementary possibilities offered by Community production, the amount of the needs not covered by the quota can be estimated at 50 000 tonnes; whereas it is in the Community's interest to provide for the duty-free admission of this amount, by opening a new autonomous tariff quota;

Whereas equal and continuous access to the quota should be ensured for all Community importers and the rate of levy for the tariff quota should be applied consistently to

all imports until the quota is used up; whereas it is appropriate to take the necessary measures to ensure efficient Community administration of this tariff quota while offering the Member States the opportunity to draw from the quota volume the necessary quantities corresponding to actual imports; whereas this method of administration requires close cooperation between the Member States and the Commission;

Whereas, since the Kingdom of Belgium, the Kingdom of the Netherlands and the Grand Duchy of Luxembourg are united within and jointly represented by the Benelux Economic Union, all transactions concerning the administration of this quota may be carried out by any one of its members,

HAS ADOPTED THIS REGULATION:

Article 1

1. With effect from 1 November 1990 and until 31 December 1990, the customs duty applicable to imports from third countries of the following products shall be suspended at the level indicated and within the limits of the Community tariff quota as shown below:

Order No	CN code	Description	Amount of quota (tonnes)	Rate of duty (%)
09.2801	4801 00 10	Newsprint ⁽¹⁾	50 000	0

⁽¹⁾ Entry under this subheading is subject to conditions determined by the relevant Community provisions.

2. Within the limit of this tariff quota the Kingdom of Spain and the Portuguese Republic shall apply customs duties calculated in accordance with the relevant provisions of the Act of Accession.

newsprint contained in additional note 1 to Chapter 48 and falling within CN code 4801 00 90.

Article 2

3. Imports of newsprint may not be charged against this tariff quota if they are already free of customs duties under other preferential tariff arrangements.

The tariff quota referred to in Article 1 shall be administered by the Commission, which may take all appropriate administrative measures in order to ensure effective administration thereof.

Article 3

4. Member States may charge against this tariff quota the other types of paper corresponding, except as regards the criterion relating to watermarks, to the definition of

If an importer presents, in a Member State, a declaration of entry into free circulation, including a request for preferential benefit for a product covered by this Regulation and if this declaration is accepted by the

⁽¹⁾ OJ No L 326, 11. 11. 1989, p. 1.

⁽²⁾ OJ No L 310, 9. 11. 1990, p. 5.

customs authorities, the Member State concerned shall inform the Commission and draw an amount corresponding to its requirements from the quota amount.

The drawing requests, with indication of the date of acceptance of the said declarations, must be transmitted to the Commission without delay.

The drawings are granted by the Commission by reference to the date of acceptance of the declarations of entry into free circulation by the customs authorities of the Member State concerned to the extent that the available balance so permits.

If a Member State does not use the quantities drawn, it shall return them as soon as possible to the quota amount. If the quantities requested are greater than the available balance of the quota amount, allocation shall be made on a pro rata basis with respect to the requests. Member States shall be informed by the Commission thereof.

Article 4

1. Each Member State shall ensure that importers of the products concerned have equal and continuous access

to the quota for such time as the residual balance of the quota volume so permits.

2. Member States shall take all appropriate measures to make sure that the paper referred to in Article 1 fully meets the criteria for admission to this tariff quota.

Where this is the case, the relevant Community procedures shall be applied in order to monitor use of the paper for the prescribed specific purpose.

Article 5

Member States and the Commission shall collaborate closely in order to ensure that this Regulation is complied with.

Article 6

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, 11 December 1990.

For the Council

The President

V. SACCOMANDI

COMMISSION REGULATION (EEC) No 3612/90

of 14 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 13 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 15 December 1990.

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

Done at Brussels, 14 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 14 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	142,64 ⁽²⁾ ⁽³⁾
0712 90 19	29,58	142,64 ⁽²⁾ ⁽³⁾
1001 10 10	24,85	199,74 ⁽¹⁾ ⁽²⁾
1001 10 90	24,85	199,74 ⁽¹⁾ ⁽²⁾
1001 90 91	29,99	167,45
1001 90 99	29,99	167,45
1002 00 00	55,10	156,16 ⁽⁴⁾
1003 00 10	46,40	149,84
1003 00 90	46,40	149,84
1004 00 10	38,04	145,90
1004 00 90	38,04	145,90
1005 10 90	29,58	142,64 ⁽²⁾ ⁽³⁾
1005 90 00	29,58	142,64 ⁽²⁾ ⁽³⁾
1007 00 90	46,40	146,39 ⁽⁴⁾
1008 10 00	46,40	64,22
1008 20 00	46,40	128,48 ⁽⁴⁾
1008 30 00	46,40	75,10 ⁽²⁾
1008 90 10	⁽⁷⁾	⁽⁷⁾
1008 90 90	46,40	75,10
1101 00 00	55,84	249,29
1102 10 00	90,99	233,30
1103 11 10	51,84	321,80
1103 11 90	59,40	268,32

⁽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 3613/90

of 14 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 13 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 15 December 1990.

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

Done at Brussels, 14 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 14 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	22,06	22,06	21,43
1001 90 99	0	22,06	22,06	21,43
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	30,90	30,90	30,01

B. Malt

CN code	(ECU/tonne)				
	Current 12	1st period 1	2nd period 2	3rd period 3	4th period 4
1107 10 11	0	39,27	39,27	38,15	38,15
1107 10 19	0	29,34	29,34	28,50	28,50
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 3614/90
of 14 December 1990
fixing the import levies on rice and broken rice

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

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

Having regard to Council Regulation (EEC) No 1418/76
of 21 June 1976 on the common organization of the
market in rice ⁽¹⁾, as last amended by Regulation (EEC)
No 1806/89 ⁽²⁾, and in particular Article 11 (2) thereof,

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

Whereas the import levies on rice and broken rice were
fixed by Commission Regulation (EEC) No 3537/90 ⁽⁵⁾,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies to be charged on the products listed in
Article 1 (1) (a) and (b) of Regulation (EEC) No 1418/76
shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 17 December
1990.

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

Done at Brussels, 14 December 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽²⁾ OJ No L 177, 24. 6. 1989, p. 1.

⁽³⁾ OJ No L 80, 24. 3. 1987, p. 20.

⁽⁴⁾ OJ No L 144, 4. 6. 1987, p. 10.

⁽⁵⁾ OJ No L 344, 8. 12. 1990, p. 5.

ANNEX

to the Commission Regulation of 14 December 1990 fixing the import levies on rice and broken rice

(ECU/tonne)

CN code	Portugal	Arrangement in Regulation (EEC) No 3877/86	ACP or OCT (¹)(²)	Third countries (except ACP or OCT) (³)(⁴)
1006 10 21	—	—	156,93	321,07
1006 10 23	—	245,75	160,23	327,66
1006 10 25	—	245,75	160,23	327,66
1006 10 27	—	245,75	160,23	327,66
1006 10 92	—	—	156,93	321,07
1006 10 94	—	245,75	160,23	327,66
1006 10 96	—	245,75	160,23	327,66
1006 10 98	—	245,75	160,23	327,66
1006 20 11	—	—	197,07	401,34
1006 20 13	—	307,19	201,19	409,58
1006 20 15	—	307,19	201,19	409,58
1006 20 17	—	307,19	201,19	409,58
1006 20 92	—	—	197,07	401,34
1006 20 94	—	307,19	201,19	409,58
1006 20 96	—	307,19	201,19	409,58
1006 20 98	—	307,19	201,19	409,58
1006 30 21	13,05	—	244,46	512,78
1006 30 23	12,97	462,30	296,31	616,40
1006 30 25	12,97	462,30	296,31	616,40
1006 30 27	12,97	462,30	296,31	616,40
1006 30 42	13,05	—	244,46	512,78
1006 30 44	12,97	462,30	296,31	616,40
1006 30 46	12,97	462,30	296,31	616,40
1006 30 48	12,97	462,30	296,31	616,40
1006 30 61	13,90	—	260,70	546,11
1006 30 63	13,90	495,59	318,04	660,78
1006 30 65	13,90	495,59	318,04	660,78
1006 30 67	13,90	495,59	318,04	660,78
1006 30 92	13,90	—	260,70	546,11
1006 30 94	13,90	495,59	318,04	660,78
1006 30 96	13,90	495,59	318,04	660,78
1006 30 98	13,90	495,59	318,04	660,78
1006 40 00	0,00	—	94,69	195,38

(¹) Subject to the application of the provisions of Articles 12 and 13 of Regulation (EEC) No 715/90.

(²) In accordance with Regulation (EEC) No 715/90, the levies are not applied to products imported directly into the overseas department of Réunion of products originating in the African, Caribbean and Pacific States or in the overseas countries and territories.

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

(⁴) The import levy on rice originating in Bangladesh is specified in Regulation (EEC) No 3491/90.

COMMISSION REGULATION (EEC) No 3615/90

of 14 December 1990

fixing the premiums to be added to the import levies on rice and broken rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

Having regard to Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice⁽¹⁾, as last amended by Regulation (EEC) No 1806/89⁽²⁾, and in particular Article 13 (6) thereof,Whereas the premiums to be added to the levies on rice and broken rice were fixed by Commission Regulation (EEC) No 2513/90⁽³⁾, as last amended by Regulation (EEC) No 3538/90⁽⁴⁾;

Whereas, on the basis of today's cif prices and cif forward delivery prices, the premiums at present in force, which

are to be added to the levies, should be altered to the amounts shown in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

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

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

Article 2

This Regulation shall enter into force on 17 December 1990.

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

Done at Brussels, 14 December 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽²⁾ OJ No L 177, 24. 6. 1989, p. 1.

⁽³⁾ OJ No L 237, 1. 9. 1990, p. 14.

⁽⁴⁾ OJ No L 344, 8. 12. 1990, p. 8.

ANNEX

to the Commission Regulation of 14 December 1990 fixing the premiums to be added to the import levies on rice and broken rice

CN code	(ECU/tonne)			
	Current 12	1st period 1	2nd period 2	3rd period 3
1006 10 21	0	0	0	—
1006 10 23	0	0	0	—
1006 10 25	0	0	0	—
1006 10 27	0	0	0	—
1006 10 92	0	0	0	—
1006 10 94	0	0	0	—
1006 10 96	0	0	0	—
1006 10 98	0	0	0	—
1006 20 11	0	0	0	—
1006 20 13	0	0	0	—
1006 20 15	0	0	0	—
1006 20 17	0	0	0	—
1006 20 92	0	0	0	—
1006 20 94	0	0	0	—
1006 20 96	0	0	0	—
1006 20 98	0	0	0	—
1006 30 21	0	0	0	—
1006 30 23	0	0	0	—
1006 30 25	0	0	0	—
1006 30 27	0	0	0	—
1006 30 42	0	0	0	—
1006 30 44	0	0	0	—
1006 30 46	0	0	0	—
1006 30 48	0	0	0	—
1006 30 61	0	0	0	—
1006 30 63	0	0	0	—
1006 30 65	0	0	0	—
1006 30 67	0	0	0	—
1006 30 92	0	0	0	—
1006 30 94	0	0	0	—
1006 30 96	0	0	0	—
1006 30 98	0	0	0	—
1006 40 00	0	0	0	0

**COMMISSION REGULATION (EEC) No 3616/90
of 14 December 1990**

adjusting the agricultural conversion rates for the pigmeat sector in the United Kingdom and Spain

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Commission Regulation (EEC) No 3578/88 of 17 November 1988 laying down detailed rules for the application of the system for the automatic dismantlement of negative monetary compensatory amounts ⁽¹⁾, as last amended by Regulation (EEC) No 3219/90 ⁽²⁾, and in particular Article 7 (1) thereof,

Whereas Article 6a of Council Regulation (EEC) No 1677/85 of 11 June 1985 on monetary compensatory amounts in agriculture ⁽³⁾, as last amended by Regulation (EEC) No 2205/90 ⁽⁴⁾, lays down that the agricultural conversion rates of a Member State should be adjusted so as to avoid the creation of new monetary compensatory amounts;

Whereas the movement of the market rate for the pound sterling and Spanish peseta during the reference period 5 to 11 December 1990 should, given the adjustment of the agricultural conversion rate determined by Council Regulation (EEC) No 1678/85 ⁽⁵⁾, as last amended by Regulation (EEC) No 3609/90 ⁽⁶⁾, entail, in accordance with Article 2 of Commission Regulation (EEC) No 3153/85 ⁽⁷⁾, as last amended by Regulation (EEC) No 3672/89 ⁽⁸⁾, an increase in the monetary compensatory amounts applicable in the pigmeat sector in the United Kingdom and Spain, effective from 17 December 1990 order to prevent this it is necessary to adjust the agricultural conversion rate so as to avoid the creation of these new monetary compensatory amounts having regard to the criteria in Article 7 of Regulation (EEC) No 3578/88,

HAS ADOPTED THIS REGULATION:

Article 1

In Annex XI to Regulation (EEC) No 1678/85, the line relating to pigmeat is hereby replaced by the following:

Products	Agricultural conversion rates			
	ECU 1 = £ ...	Applicable until	ECU 1 = £ ...	Applicable from
'Pigmeat	0,794820	16 December 1990	0,800520	17 December 1990'

Article 2

In Annex V to Regulation (EEC) No 1678/85, the line relating to pigmeat is hereby replaced by the following:

Products	Agricultural conversion rates			
	ECU 1 = Pta ...	Applicable until	ECU 1 = Pta ...	Applicable from
'Pigmeat	146,105	16 December 1990	147,393	17 December 1990'

⁽¹⁾ OJ No L 312, 18. 11. 1988, p. 16.

⁽²⁾ OJ No L 308, 8. 11. 1990, p. 21.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 6.

⁽⁴⁾ OJ No L 201, 31. 7. 1990, p. 9.

⁽⁵⁾ OJ No L 164, 24. 6. 1985, p. 11.

⁽⁶⁾ See page 1 of this Official Journal.

⁽⁷⁾ OJ No L 310, 21. 11. 1985, p. 4.

⁽⁸⁾ OJ No L 358, 8. 12. 1989, p. 28.

Article 3

This Regulation shall enter into force on 17 December 1990.

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

Done at Brussels, 14 December 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

COMMISSION REGULATION (EEC) No 3617/90

of 11 December 1990

imposing a provisional anti-dumping duty on imports of certain welded tubes of iron or non-alloy steel, originating in Turkey or in Venezuela and accepting undertakings offered in connection with such imports

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community⁽¹⁾, and in particular Articles 10 and 11 thereof,

After consultations within the Advisory Committee as provided for by the abovementioned Regulation,

Whereas :

A. PROCEDURE

(1) In June 1989 the Commission received a complaint lodged by the Liaison Committee of the European Community Steel Tube Industry on behalf of manufacturers representing the majority of the Community production of the products in question.

(2) The complaint contained evidence of dumping and injury caused thereby which was considered sufficient to justify the initiation of a proceeding.

The Commission accordingly announced, by notice published in the *Official Journal of the European Communities*⁽²⁾ the initiation of an anti-dumping proceeding concerning imports into the Community of certain welded tubes of iron or non-alloy steel falling within CN codes 7306 30 51, 7306 30 59, ex 7306 30 71 and ex 7306 30 79, originating in Turkey and in Venezuela, and commenced an investigation.

(3) The Commission officially so advised the producers/exporters and importers known to the Commission to be concerned, the representatives of the exporting countries and the complainant and gave the parties directly concerned the opportunity

to make known their views in writing and to request a hearing.

During the investigation, all exporters concerned and some importers and Community producers asked for an extension for replying to the Commission's questionnaires. Since these requests were considered justified, the Commission extended the set time limits.

(4) Most of the Community producers, some of the importers, two Turkish producers/exporters, a producer and an exporter of Venezuelan products made known their views in writing. Some of them requested and were granted hearings.

(5) No submissions were made by or on behalf of Community purchasers or processors of the products in question.

(6) The Commission sought and verified all information it deemed to be necessary for the purposes of establishing the facts and carried out investigations at the premises of the following :

(a) *EC producers :*

- Mannesmannröhren-Werke AG, Düsseldorf, Germany,
- Saarstahl Völklingen GmbH, Homburg/Saar, Germany,
- IBS (United Tube Mills) SA, Athens, Greece,
- Dalmine SpA, Dalmine, Italy,
- Arbed SA, Luxembourg, Luxembourg,
- British Steel Tubes, Corby, Northants, United Kingdom ;

(b) *non-EC producers/exporters :*

Turkish products :

- Borusan Salipazari, Istanbul, Turkey,
- Yücel Boru Group Kadıköy, Istanbul, Turkey ;

Venezuelan products :

- producer : C.A. Conduven, Caracas, Venezuela,
- exporter : Connectors Inc., Hauppauge, New York, USA ;

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No C 226, 2. 9. 1989, p. 18.

(c) *EC importers:*

- Leopold Lazarus Ltd, London, United Kingdom,
- Rheinerz, Köln, Germany,
- Coutinho Caro & Co GmbH, Düsseldorf, Germany,
- S.A.L.I.S. SpA, Sassari, Italy.

- (7) The Commission gave the different parties known to be concerned the opportunity to inspect all information made available to the Commission. Furthermore, exporters of the product under investigation were informed in conformity with Article 7 (4) of Regulation (EEC) No 2423/88 of the essential facts under consideration, on the basis of which it was intended to impose measures.
- (8) The investigation of dumping covered the period from 1 July 1988 to 30 June 1989.

B. DUMPING(a) *Normal value:*(9) *Turkey*

The determination of the normal value varied according to the producer/exporter. For Yücel Boru Group, normal value was established on the basis of the comparable prices actually paid or payable in the ordinary course of trade for the like product on the Turkish market.

Domestic sales considered for the calculation of normal value were those made to independent customers at a profit and in substantial quantities. There were no quality differences between the products sold on the domestic market and those for exportation.

Normal value was established on a monthly weighted average basis for the period July 1988 to March 1989 falling within the investigation period, since Yücel Boru had made no exports to the Community between April 1989 and June 1989 (end of the investigation period).

For Borusan, the investigation by the Commission showed that a substantial part of its sales on the Turkish domestic market were made at a loss during the investigation period. Consequently, it was considered that these sales were not made in the ordinary course of trade.

Thus the normal value was based on a constructed value, determined by adding cost of production, a reasonable amount for selling, administrative and

other general expenses and a reasonable margin of profit.

Normal value was calculated for each month of the investigation period.

(10) *Venezuela*

Normal value was based on sales in the ordinary course of trade of comparable like products on the Venezuelan market, net of all discounts and rebates.

Normal values have been established on the basis of the weighted average ex-works sales prices for the tubes concerned.

(b) *Export prices:*(11) *Turkey*

The export prices were determined on the basis of the prices actually paid or payable for the like product sold for export to the Community. Export sales taken into consideration were made to independent customers. The products sold for export were identical to those which were considered for the calculation of normal value. No quantity discounts were granted.

(12) *Venezuela*

All exports to the Community were channelled through Connectors Inc. located in New York. Connectors has the function of an export department of Conduven. It handles no other products and is fully controlled by Conduven. Export contracts, invoicing and collection of payments are made by Connectors; handling and shipping of the goods is carried out by Conduven which ships the goods directly to the Community. The exporting country is therefore Venezuela. The export price was taken to be that invoiced by Connectors since this company merely performed the functions of an export department of Conduven which would otherwise have been carried out in Venezuela.

(c) *Comparison*

- (13) In comparing normal value with export prices the Commission took account, where appropriate and to the extent of evidence available, of differences in conditions and terms of sale, such as transport, insurance, forwarding, handling costs and payment.

All comparisons were made at an ex-works level.

(d) *Dumping margins*

- (14) The above determination of the facts shows the existence of dumping.

The margins of dumping are equal to the amount by which the normal values as established exceed the prices for export to the Community.

The margins of dumping varied according to the producer/exporter and the weighted average margins expressed as a percentage of total cif Community frontier values were as follows:

Yücel Boru Group	18,5 %
Borusan	8,1 %
Conduven	22,1 %

C. INJURY

(a) Cumulation

- (15) Because tubes originating in Turkey and in Venezuela are alike and in competition on the same markets and distributed through similar channels, the Commission considered that the cumulation of the impacts of the dumped imports from Turkey and Venezuela was appropriate.

(b) Volume and market share of dumped imports

- (16) Imports from Turkey and Venezuela rose from 5 874 tonnes in 1986 to 52 835 tonnes during the investigation period, corresponding to a rate of 800 % within less than four years.

The corresponding market share increased from 0,8 % to 5,8 % in the same period. In the most affected Member States, the market shares reached 7,6 % in the Federal Republic of Germany and 11,2 % in the United Kingdom.

(c) Prices

- (17) The evidence available to the Commission also indicates that the prices at which the dumped imports from Turkey and Venezuela were sold in the Community undercut the prices of Community producers during the investigation period significantly.

The weighted average price undercuttings varied according to the producer/exporter and were as follows:

Yücel Boru Group	21,2 %
Borusan	7 %
Conduven	25,8 %

(d) Impact on the Community industry

Production and capacities

- (18) Between 1986 and the investigation period Community consumption increased by 22,9 %, while production destined for the Community market rose by only 9,8 % over the same period.

The considerable inflow of dumped imports prevented Community producers from benefiting adequately from the increase in consumption. Growth of Community production destined to the Community market lagged distinctly behind the development of consumption.

The effect was particularly pronounced in the German market which absorbed a substantial part of the dumped imports from the two countries concerned during the period 1986 to 1989.

In line with the retarded progress of production in connection with the massive inflow of dumped imports, Community producers could achieve only a moderate improvement of their capacity utilization which on average advanced by 5,5 percentage points from 57 % to 62,5 % between 1986 and the investigation period.

The overall capacity utilization in the Community thus remained unsatisfactory and prevented the Community producers from realizing the advantages of decreasing unit cost which they would have obtained if production had followed the expansion of demand. This effect was particularly detrimental in the light of increasing raw material cost following the sharp increase of prices for flat rolled steel products and zinc.

Prices and profitability

- (19) From 1986 to the investigation period, there was a distinct increase in the sales prices of the Community producers. However, the price increases were to a large extent absorbed by the higher purchase prices of the main input materials.

The generally buoyant situation of the steel markets and the strong demand for tubes in the Community also led to an improvement of the financial results of Community producers. However, Community prices remained suppressed and Community producers were prevented from realizing the necessary price increases to recover the rise of raw material cost and to generate satisfactory returns of their sales. Most of the relevant Community producers could not generate positive financial results and have continued to make losses despite the very favourable market situation.

Furthermore, the Commission was informed that a Community producer decided to stop production of welded tubes because of the very low profitability of this sector.

(e) Causality

- (20) In assessing whether dumped imports from Turkey and Venezuela have caused the injury sustained by the Community industry, the Commission took account of the fact that Community producers should have benefited from the recovery in the steel sector. However, the serious difficulties faced by Community producers in extending production and sales, obtaining better prices to cope with the sharp rise in the purchase of raw material persisted, while the volume of dumped imports offered at prices, which undercut significantly those of the injured industry were sharply increasing. In this respect, the import volume of both Turkey and Venezuela (35 660 tonnes and 17 175 tonnes during the investigation period) and the corresponding market share (3,9 % and 1,9 % during the investigation period) were considered as being significant.

Because the buyer's decisions are mainly orientated by the prices at which the products are offered, the Commission concluded that both exporting countries caused injury.

The Commission also examined whether other factors might have contributed to the injury sustained by the community industry.

For this purpose, the Commission took account that dumped imports of the products concerned originating in Romania and Yugoslavia, which also had a negative impact on the Community market, have been subject to protective measures⁽¹⁾.

The Commission established that imports from other third countries not alleged to be dumped had also moderately progressed during the period under consideration leading to an increase of their market share of 2,6 % which is to be measured against an expansion of the market share of the combined dumped imports from Turkey, Venezuela, Romania and Yugoslavia by 7 % over the same period.

As the Commission had no indication that the slight expansion of the market share of other third countries had been achieved by dumping it was considered that the injury inflicted by the Turkish

and Venezuelan exports, taken in isolation, had to be qualified as material.

(f) Conclusion

- (21) In these circumstances the Commission has concluded that the volume of dumped imports from Turkey and Venezuela and the prices at which they were offered for sale in the Community, taken in isolation, have to be considered as having caused material injury to the Community industry.

D. COMMUNITY INTEREST

- (22) In assessing whether the interests of the Community call for intervention, the Commission has considered that the iron and steel tube production is an important basic industry in the Community closely linked upstream with the steel industry and is the most important customer for the transformation of primary ECSC steel products. About 15 % of total EEC raw steel production is absorbed by the manufacture of tubes. The sector has gone through a severe restructuring process because of overcapacity. In 1988, the sector employed 74 500 people in the Community as against 123 500 in 1981. Regionally the plants are located in the vicinity of the steel producing centres which are already suffering from employment problems linked to the downturn in the steel industry.

Downstream the sector is an important supplier of all branches of the manufacturing industry. The most important customer groups are mechanical engineering, vehicle building, construction, structural steel works and the energy sector including nuclear. In order to be in a position to manufacture the whole range of products at competitive costs, the industry depends on a reasonable utilization rate of its equipment. This is principally achieved by the production of standard commercial quality tubes which are in direct competition with the dumped products imported from Turkey, Venezuela, Romania and Yugoslavia and account for a major part of the revenue generated by the industry. In view of these facts, it is considered in the Community's interest to maintain a viable and healthy steel tube manufacturing industry.

⁽¹⁾ Notice of initiation, OJ No C 241, 16. 9. 1988, p. 3; Commission Regulation (EEC) No 3074/89, OJ No L 294, 13. 10. 1989, p. 10; Council Regulation (EEC) No 868/90, OJ No L 91, 6. 4. 1990, p. 8; Commission Decision 90/166/EEC, OJ No L 91, 6. 4. 1990, p. 36.

- (23) The Commission also took into account the interests of the users of Turkish and Venezuelan welded tubes and considered that the secondary effects of the necessary price increases in respect of

the output of the main downstream branches mentioned above will be insignificant. No submissions to the contrary were made by or on behalf of Community purchasers or processors of the welded steel tubes concerned.

E. PROTECTIVE MEASURES

- (24) Given the serious difficulties facing the Community industry concerned, the Commission has concluded that, in order to maintain the effectiveness of the measures already imposed against dumped imports from Romania and Yugoslavia and to avoid discrimination, action should be taken also against dumped imports from Turkey and Venezuela.

The Commission considers that the situation warrants the imposition of provisional measures at this stage of the proceeding in order to prevent further injury being caused during the remainder of the proceeding.

- (25) Having regard to the injury caused, the Commission intended to impose provisional duties at a rate adequate to remove the injury but not exceeding the dumping margins established. Since the injury consists mainly in loss of profitability due to price undercutting, the Commission considered necessary to eliminate price undercutting due to dumping.

Consequently, the duty necessary to remove injury was calculated on the basis of the price undercutting or the dumping margin of each exporter, whichever was the lowest.

F. UNDERTAKINGS

- (26) The Turkish and Venezuelan producers/exporters which cooperated during the investigation having been informed of the preliminary findings of the Commission services with regard to dumping and injury have offered price undertakings.
- (27) The Yücel Boru Group, which was considered as a single economic entity for the purposes of this investigation, has pointed out that it was composed of two producing companies and one exporting company, which may export in the future under its own separate names. Consequently, price undertakings have been offered in the name of each of these three companies.
- (28) The Commission is satisfied that the effect of these undertakings offered by the Turkish and Venezuelan producers/exporters will be an increase of the export prices of the exporters concerned to the extent that the injury will be eliminated in cases where it is lower than the dumping margins and in

other cases the dumping margin will be eliminated in full.

Moreover the Commission notes that in case of violation of these price undertakings it can impose immediate provisional duties and the Council can then impose definitive duties based on the facts established in the present investigation, without carrying out new investigations concerning dumping and injury resulting therefrom.

G. RESIDUAL DUTIES

- (29) In order to cover other companies which did not cooperate during the investigation period and to prevent circumvention, it is considered appropriate to impose provisional anti-dumping duties.

Since the price undercuttings of some exporters exceeded the dumping margin, the rate of these duties should correspond to the highest dumping margin found for each country. It is established at:

18,5 % for Turkey,

22,1 % for Venezuela.

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

H. CONCLUSION

- (30) In the light of the above findings, it is considered that the interests of the Community require the imposition of protective measures.
- (31) The Commission is of the opinion that the price undertakings offered can be accepted for the producers/exporters concerned and that the investigation against these companies may be terminated.
- (32) A provisional duty should be imposed on imports of the product in question originating in Turkey and in Venezuela realized by companies other than these which have offered undertakings.
- (33) The Advisory Committee has been consulted with regard to this course of action and has raised no objection to the proposals.
- (34) A period should be fixed within which the parties concerned may make their views known and request a hearing,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of welded tubes, of iron or non-alloy steel, threaded or threadable, zinc coated or not, of circular cross-section, of an external diameter of not more than

168,3 mm, falling within CN codes 7306 30 51, 7306 30 59, ex 7306 30 71 (Taric code : 7306 30 71*90), ex 7306 30 79 (Taric code : 7306 30 79*90), originating in Turkey and Venezuela.

2. The rate of the duty shall be 18,5 % for products originating in Turkey (Taric additional code : 8511) and 22,1 % for products originating in Venezuela (Taric additional code : 8513). The duty shall be calculated on the net price, free-at-Community-frontier, customs uncleared.

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

4. The release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

Article 2

1. Notwithstanding Article 1, the duties shall not apply for the products concerned

— exported directly to the Community by

- Borusan Birlesik Boru Fabrikalari AS (Taric additional code : 8510),
- Borusan Ihracat Ithalat Ve Dagitim AS. (Taric additional code : 8510),
- Yücel Boru Ve Profil Endüstrisi A.S. (Taric additional code : 8510),

- Cayirova Boru Sanayi Ve Ticaret AS (Taric additional code : 8510),
- Yücel Boru Ihracat Ithalat Ve Pazarlama AS (Taric additional code : 8510),
- produced by Conduven, Caracas, Venezuela and exported by Connectors, New York, USA (Taric additional code : 8512).

2. The undertakings offered by the companies cited in paragraph 1 are hereby accepted.

3. The investigation against the companies cited in paragraph 1 is hereby terminated.

Article 3

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 2423/88, the parties concerned may make known their views in writing and apply to be heard by the Commission within one month of the entry into force of this Regulation.

Article 4

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

Subject to Articles 11, 12 and 13 of Regulation (EEC) No 2423/88, Article 1 shall apply for a period of four months, unless the Council adopts definitive measures before the expiry of that period.

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

Done at Brussels, 11 December 1990.

For the Commission

Frans ANDRIESEN

Vice-President

COMMISSION REGULATION (EEC) No 3618/90

of 13 December 1990

reintroducing the levying of the customs duties applicable to the products of the CN code 3901 20 00 originating in Mexico, to which the preferential arrangements of 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, in pursuance of Articles 1 and 6 of Regulation (EEC) No 3896/89, suspension of customs duties is 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 Article 7 of that Regulation provides that 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 reintroduced as soon as the individual ceilings in question are reached at Community level;

Whereas, in the case of the products of CN code 3901 20 00 originating in Mexico the individual ceiling amounts to ECU 12 500 000; whereas that ceiling was reached on 23 November 1990, by charges of imports into the Community of the products in question originating in Mexico; whereas, it is appropriate to reintroduce the levying of customs duties for the products in question with regard to Mexico,

HAS ADOPTED THIS REGULATION:

Article 1

As from 18 December 1990, the levying of customs duties, suspended in pursuance of Regulation (EEC) No 3896/89, shall be reintroduced on imports into the Community of the following products, originating in Mexico:

Order No	CN code	Description
10.0455	3901 20 00	Polyethylene having a specific gravity of 0,94 or more

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, 13 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 3619/90

of 13 December 1990

opening invitations to tender for the fixing of aid for the private storage of carcasses and half-carcasses of lamb

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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⁾, and in particular Article 7 (5) thereof,Whereas Commission Regulation (EEC) No 3446/90 of 27 November 1990 laying down detailed rules for granting private storage aid for sheepmeat and goatmeat ⁽²⁾, provides in particular for detailed rules on the invitation to tender;Whereas Commission Regulation (EEC) No 3447/90 of 28 November 1990 on special conditions for the granting of private storage aid for sheepmeat and goatmeat ⁽³⁾ provides in particular the minimum quantities in respect of which a tender may be submitted;

Whereas the application of Article 7 (3) of Regulation (EEC) No 3013/89 results in the opening of invitations to tender for private storage aid;

Whereas that Article provides for the application of these measures on the basis of the situation of each quotation zone; whereas it is appropriate consequently to open tenders separately for each of the zones where the conditions are fulfilled;

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

HAS ADOPTED THIS REGULATION:

Article 1

Separate invitations to tender are opened in France, Great Britain, Denmark, Ireland, Northern Ireland, Germany and the Netherlands for aid to private storage for carcasses and half-carcasses of lamb.

Subject to the provisions of Commission Regulation (EEC) No 287/90 ⁽⁴⁾ tenders may be made to the intervention agencies of the Member States concerned.*Article 2*

Tenders must be submitted not later than 2 p.m. on 11 January 1991 to the relevant intervention agency.

*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, 13 December 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission⁽¹⁾ OJ No L 289, 7. 10. 1989, p. 1.⁽²⁾ OJ No L 333, 30. 11. 1990, p. 39.⁽³⁾ OJ No L 333, 30. 11. 1990, p. 46.⁽⁴⁾ OJ No L 31, 2. 2. 1990, p. 11.

COMMISSION REGULATION (EEC) No 3620/90

of 14 December 1990

on determining the origin of the meat and offals, fresh, chilled or frozen, of
certain domestic animals

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation (EEC) No 2658/87
of 23 July 1987 on the common tariff and statistical
nomenclature and on the Common Customs Tariff⁽¹⁾, as
last amended by Commission Regulation (EEC) No
3274/90⁽²⁾, and in particular Article 15 thereof;

Whereas the classification of the goods described in
Commission Regulation (EEC) No 964/71 of 10 May
1971 on determining the origin of the meat and offals,
fresh, chilled or frozen, of certain domestic animals⁽³⁾
uses the Common Customs Tariff nomenclature, which is
itself based on the Customs Cooperation Council nomen-
clature; whereas this has been replaced by the Harmo-
nized Commodity Description and Coding System which
is applied in the Community by means of the combined
nomenclature; whereas, for reasons of clarity, it is prefe-
rable to replace Regulation (EEC) No 964/71 entirely;

Whereas the abovementioned adaptations to the
combined nomenclature constitute simple technical adap-
tations not entailing any amendment concerning the
scope of the rules, which had been previously laid down
in Regulation (EEC) No 964/71,

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

Done at Brussels, 14 December 1990.

For the Commission

Christiane SCRIVENER

Member of the Commission

Article 1

The slaughter of domestic animals falling within CN
codes 0101 to 0104 shall confer the origin of the country
where it took place on the edible meat and offals, fresh,
chilled or frozen, which are thus obtained, only if the
animals in question have been fattened in that country
during a period of at least three months in the case of
horses, asses, mules and bovine animals and of at least
two months in the case of swine, goats and sheep.

Article 2

If the slaughter does not satisfy the conditions laid down
in Article 1, the meat and offals referred to in that Article
shall be considered as originating in the country where
the animals from which they were obtained were fattened
or reared for the longest period.

Article 3

Regulation (EEC) No 964/71 is hereby repealed.

Article 4

This Regulation shall enter into force three days after its
publication in the *Official Journal of the European
Communities*.

⁽¹⁾ OJ No L 256, 7. 9. 1987, p. 1.

⁽²⁾ OJ No L 315, 15. 11. 1990, p. 2.

⁽³⁾ OJ No L 104, 11. 5. 1971, p. 12.

COMMISSION REGULATION (EEC) No 3621/90

of 14 December 1990

fixing the amount of aid for peas, field beans and sweet lupins

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 1431/82 of 18 May 1982 laying down special measures for peas, field beans and sweet lupins ⁽¹⁾, as last amended by Regulation (EEC) No 1104/88 ⁽²⁾, and in particular Article 3 (6) (a) thereof,

Having regard to Commission Regulation (EEC) No 3540/85 of 5 December 1985 laying down detailed rules for the application of the special measures for peas, field beans and sweet lupins ⁽³⁾, as last amended by Regulation (EEC) No 2249/90 ⁽⁴⁾, and in particular Article 26a (7) thereof,

Whereas, as provided for in Article 3 (1) of Regulation (EEC) No 1431/82, aid is granted for peas, field beans and sweet lupins harvested in the Community and used in the manufacture of feedingstuffs where the world market price of soya cake is lower than the activating price; whereas this aid is equal to a proportion of the difference between these prices; whereas this proportion of the price difference was fixed in Article 3a of Council Regulation (EEC) No 2036/82 ⁽⁵⁾, as last amended by Regulation (EEC) No 2206/90 ⁽⁶⁾;

Whereas, in accordance with Article 3 (2) of Regulation (EEC) No 1431/82, aid is granted for peas and field beans harvested in the Community where the world market price for these products is lower than the guide price; whereas this aid is equal to the difference between the two prices;

Whereas the threshold price activating the aid for peas, field beans and sweet lupins for the 1990/91 marketing year was fixed by Council Regulation (EEC) No 1189/90 ⁽⁷⁾; whereas, as provided for in Article 2a of

Regulation (EEC) No 1431/82, the activating price for the aid for peas, field beans and sweet lupins is increased monthly as from the beginning of the third month of the marketing year; whereas the amount of the monthly increases in the threshold price was fixed by Council Regulation (EEC) No 1191/90 ⁽⁸⁾;

Whereas the abatement of the subsidy which arises, where appropriate, from the system of maximum guaranteed quantities for the 1990/91 year, has been fixed by Commission Regulation (EEC) No 2510/90 ⁽⁹⁾;

Whereas the threshold price activating the aid and the minimum price fixed by the Council are to be reduced in accordance with Commission Regulation (EEC) No 1755/90 of 27 June 1990 establishing the activating threshold price for aid, the guide price and the minimum price for peas, field beans and sweet lupins fixed in ecus by the Council and reduced as a result of the monetary realignment of 5 January 1990 ⁽¹⁰⁾;

Whereas, pursuant to Article 4 of Regulation (EEC) No 1431/82, the world market price for soya cake must be determined on the basis of the most favourable purchase possibilities, excepting offers and quotations which cannot be considered representative of the real market trend; whereas account must be taken both of all offers on the world market and of the prices quoted on exchanges that are important for international trade;

Whereas, pursuant to Article 1 of Commission Regulation (EEC) No 2049/82 ⁽¹¹⁾, as last amended by Regulation (EEC) No 1238/87 ⁽¹²⁾, the price must be determined per 100 kilograms of bulk soya cake of the standard quality defined in Article 1 (2) of Council Regulation (EEC) No 1464/86 ⁽¹³⁾ delivered to Rotterdam; whereas the necessary adjustments, notably those referred to in Article 2 of Regulation (EEC) No 2049/82, must be made for offers and quotations not of the type referred to above;

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

⁽¹⁾ OJ No L 162, 12. 6. 1982, p. 28.

⁽²⁾ OJ No L 110, 29. 4. 1988, p. 16.

⁽³⁾ OJ No L 342, 19. 12. 1985, p. 1.

⁽⁴⁾ OJ No L 203, 1. 8. 1990, p. 56.

⁽⁵⁾ OJ No L 219, 28. 7. 1982, p. 1.

⁽⁶⁾ OJ No L 201, 31. 7. 1990, p. 11.

⁽⁷⁾ OJ No L 119, 11. 5. 1990, p. 37.

⁽⁸⁾ OJ No L 119, 11. 5. 1990, p. 40.

⁽⁹⁾ OJ No L 237, 1. 9. 1990, p. 8.

⁽¹⁰⁾ OJ No L 162, 28. 6. 1990, p. 18.

⁽¹¹⁾ OJ No L 219, 28. 7. 1982, p. 36.

⁽¹²⁾ OJ No L 117, 5. 5. 1987, p. 9.

⁽¹³⁾ OJ No L 133, 21. 5. 1986, p. 21.

- in the case of currencies which are maintained in relation to each other at any moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the correcting factor provided for in Article 6 (1) of Council Regulation (EEC) No 1677/85 ⁽¹⁾, as last amended by Regulation (EEC) No 2205/90 ⁽²⁾,
- 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 pursuant to Articles 121 (2) and 307 (2) of the Act of Accession the amount of the aid for products harvested and processed in either of these Member States should be reduced by the customs duty charged on importation of products from third countries;

Whereas the world market price for peas and field beans and the amount of aid referred to in Article 3 (2) of Regulation (EEC) No 1431/82 were fixed by Commission Regulation (EEC) No 1834/90 ⁽³⁾; whereas in terms of Article 2a of Regulation (EEC) No 1431/82 the guide

price is increased monthly as from the beginning of the third month of the marketing year;

Whereas, pursuant to Article 26a of Regulation (EEC) No 3540/85, the gross aid expressed in ecus that results from Article 3 of Regulation (EEC) No 1431/82 shall be weighted by the differential amount referred to in Article 12a of Regulation (EEC) No 2036/82 and then converted into the final aid in the currency of the Member State in which the products are harvested using the agricultural conversion rate of that Member State,

HAS ADOPTED THIS REGULATION:

Article 1

The amounts of aid provided for in Article 3 (1) of Regulation (EEC) No 1431/82 is indicated in the Annexes hereto.

Article 2

This Regulation shall enter into force on 16 December 1990.

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

Done at Brussels, 14 December 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 164, 24. 6. 1985, p. 6.

⁽²⁾ OJ No L 201, 31. 7. 1990, p. 9.

⁽³⁾ OJ No L 167, 30. 6. 1990, p. 94.

ANNEX I

Gross aid

Products intended for human consumption :

(ECU per 100 kg)

	Current 12	1st period 1	2nd period 2	3rd period 3	4th period 4	5th period 5	6th period 6
Peas used :							
— in Spain	5,973	6,131	6,289	6,447	6,605	6,605	6,605
— in Portugal	6,000	6,158	6,316	6,474	6,632	6,632	6,632
— in another Member State	6,202	6,360	6,518	6,676	6,834	6,834	6,834
Field beans used :							
— in Spain	6,202	6,360	6,518	6,676	6,834	6,834	6,834
— in Portugal	6,000	6,158	6,316	6,474	6,632	6,632	6,632
— in another Member State	6,202	6,360	6,518	6,676	6,834	6,834	6,834

Products used in animal feed :

(ECU per 100 kg)

	Current 12	1st period 1	2nd period 2	3rd period 3	4th period 4	5th period 5	6th period 6
A. Peas used :							
— in Spain	9,367	9,237	9,280	9,437	9,624	9,624	9,624
— in Portugal	9,420	9,293	9,337	9,495	9,680	9,680	9,680
— in another Member State	9,420	9,293	9,337	9,495	9,680	9,680	9,680
B. Field beans used :							
— in Spain	9,367	9,237	9,280	9,437	9,624	9,624	9,624
— in Portugal	9,420	9,293	9,337	9,495	9,680	9,680	9,680
— in another Member State	9,420	9,293	9,337	9,495	9,680	9,680	9,680
C. Sweet lupins harvested in Spain and used :							
— in Spain	11,976	11,593	11,440	11,440	11,478	11,478	11,478
— in Portugal	12,047	11,668	11,516	11,516	11,554	11,554	11,554
— in another Member State	12,047	11,668	11,516	11,516	11,554	11,554	11,554
D. Sweet lupins harvested in another Member State and used :							
— in Spain	11,976	11,593	11,440	11,440	11,478	11,478	11,478
— in Portugal	12,047	11,668	11,516	11,516	11,554	11,554	11,554
— in another Member State	12,047	11,668	11,516	11,516	11,554	11,554	11,554

[illegible]

[illegible]

[illegible]

ANNEX VIII

Corrective amount to be added to amounts in Annex VII

(in national currency per 100 kg)

Use of products :	BLEU	DK	DE	EL	ES	FR	IRL	IT	NL	PT	UK
Products harvested in :											
— BLEU (Bfrs/Lfrs)	0,00	0,00	0,00	8,93	0,00	0,00	0,00	0,00	0,00	0,00	0,00
— Denmark (Dkr)	0,00	0,00	0,00	1,65	0,00	0,00	0,00	0,00	0,00	0,00	0,00
— Federal Republic of Germany (DM)	0,00	0,00	0,00	0,43	0,00	0,00	0,00	0,00	0,00	0,00	0,00
— Greece (Dr)	0,00	0,00	0,00	42,19	0,00	0,00	0,00	0,00	0,00	0,00	0,00
— Spain (Pta)	0,00	0,00	0,00	28,22	0,00	0,00	0,00	0,00	0,00	0,00	0,00
— France (FF)	0,00	0,00	0,00	1,45	0,00	0,00	0,00	0,00	0,00	0,00	0,00
— Ireland (£ Irl)	0,000	0,000	0,000	0,162	0,000	0,000	0,000	0,000	0,000	0,000	0,000
— Italy (Lit)	0	0	0	971	0	0	0	0	0	0	0
— Netherlands (Fl)	0,00	0,00	0,00	0,49	0,00	0,00	0,00	0,00	0,00	0,00	0,00
— Portugal (Esc)	0,00	0,00	0,00	38,36	0,00	0,00	0,00	0,00	0,00	0,00	0,00
— United Kingdom (£)	0,000	0,000	0,000	0,143	0,000	0,000	0,000	0,000	0,000	0,000	0,000

ANNEX IX

Exchange rate of the ecu to be used

	BLEU	DK	DE	EL	ES	FR	IRL	IT	NL	PT	UK
In national currency, ECU 1 =	42,4032	7,84195	2,05586	210,143	130,646	6,89509	0,767417	1 538,24	2,31643	181,702	0,709564

COMMISSION REGULATION (EEC) No 3622/90

of 14 December 1990

authorizing the conclusion of long-term private storage contracts for table wine, grape must, concentrated grape must and rectified concentrated grape must in respect of the 1990/91 wine year

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine ⁽¹⁾, as last amended by Regulation (EEC) No 1325/90 ⁽²⁾, and in particular Articles 32 (5) and 81 thereof,

Whereas the forward estimate drawn up for the 1989/90 wine year indicates that the quantities of table wine available at the beginning of the wine year exceeds by more than four months' supply those normally used up over the year; whereas the conditions for authorization of long-term storage contracts specified in Article 32 (4) of Regulation (EEC) No 822/87 are therefore met;

Whereas the abovementioned forward estimate indicates the existence of surpluses for all types of table wine and for table wines which stand in close economic relationship to those types of table wine; whereas it should therefore be made possible for long-term contracts to be concluded for those types of table wine; whereas it is necessary by the same token to open this possibility for grape must, concentrated grape must and rectified concentrated grape must;

Whereas Article 47 of Regulation (EEC) No 822/87 provides that only producers fulfilling the obligations laid down in Article 35 and, where appropriate, Articles 36 and 39 of that Regulation during a reference period to be determined may qualify for the intervention measures; whereas that period must therefore be specified;

Whereas Article 6 (1) of Commission Regulation (EEC) No 1059/83 of 29 April 1983 on storage contracts for table wine, grape must, concentrated grape must and rectified concentrated grape must ⁽³⁾, as last amended by Regulation (EEC) No 2753/89 ⁽⁴⁾, specifies that table wines eligible for long-term storage contracts shall be classified into two categories on the basis of their characteristics with regard to quality; whereas this possibility

need not be used in view of the fairly homogenous characteristics of wines from the 1990 harvest;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. During the period 16 December 1989 to 15 February 1990 private long-term storage contracts may be concluded, in accordance with the provisions of Regulation (EEC) No 1059/83, for:

- table wines, provided that the conditions of Article 6 of that Regulation are met, and
- grape must, concentrated grape must and rectified concentrated grape must.

2. In accordance with Article 47 (1) of Regulation (EEC) No 822/87 producers who, during the 1987/88 wine year, were subject to the obligations laid down in Articles 35, 36 or 39 of Regulation (EEC) No 822/87 wine year shall not be entitled to benefit from the measures provided for in this Regulation unless they provide evidence that they have complied with their obligations during the reference periods laid down in Article 18 of Commission Regulation (EEC) No 3105/88 ⁽⁵⁾, in Regulation (EEC) No 2224/90 ⁽⁶⁾, and Article 22 of Commission Regulation (EEC) No 441/88 ⁽⁷⁾.

Article 2

The minimum quality conditions that must be met by table wines which may be the subject of a storage contract shall be as set out in the Annexes hereto.

Article 3

Producers who, within the limits laid down in the first subparagraph of Article 5 (1) of Regulation (EEC) No 1059/83, wish to conclude a long-term storage contract

⁽¹⁾ OJ No L 84, 27. 3. 1987, p. 1.

⁽²⁾ OJ No L 132, 23. 5. 1990, p. 19.

⁽³⁾ OJ No L 116, 30. 4. 1983, p. 77.

⁽⁴⁾ OJ No L 266, 13. 9. 1989, p. 21.

⁽⁵⁾ OJ No L 277, 8. 10. 1988, p. 21.

⁽⁶⁾ OJ No L 202, 31. 7. 1990, p. 34.

⁽⁷⁾ OJ No L 45, 18. 2. 1988, p. 15.

for a table wine shall, when submitting the application for conclusion of a contract, advise the intervention agency of the total quantity of table wine they have produced during the current wine year.

For this purpose the producer shall submit a copy of the production declaration(s) drawn up pursuant to Article 2 of Commission Regulation (EEC) No 3929/87⁽¹⁾.

Article 4

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 December 1990.

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

Done at Brussels, 14 December 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 369, 29. 12. 1987, p. 59.

ANNEX

MINIMUM QUALITY CONDITIONS FOR TABLE WINES

I. White wines

- | | |
|--|---|
| (a) minimum actual alcoholic strength : | 10,5 % vol ; |
| (b) minimum total acidity (expressed as tartaric acid) : | 5 grams per litre and 4 grams per litre
for table wines produced in Spain ⁽¹⁾ ; |
| (c) maximum volatile acidity : | 9 milliequivalents per litre ; |
| (d) maximum sulphur dioxide content : | 155 milligrams per litre. |

II. Red wines

- | | |
|--|---|
| (a) minimum actual alcoholic strength : | 10,5 % vol ; |
| (b) minimum total acidity (expressed as tartaric acid) : | 5 grams per litre and 4 grams per litre
for table wines produced in Spain ⁽¹⁾ ; |
| (c) maximum volatile acidity : | 11 milliequivalents per litre ; |
| (d) maximum sulphur dioxide content : | 115 milligrams per litre. |

Rosé wines must comply with the conditions laid down above for red wines except as regards their content of sulphur dioxide, for which the same time limits as those fixed for white wines shall apply.

Conditions (a) and (d) shall not apply to wines of types R III, A II and A III.

⁽¹⁾ Article 127 of the Act of Accession.

COMMISSION REGULATION (EEC) No 3623/90

of 14 December 1990

amending the monetary compensatory amounts applicable in the cereals sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1677/85 of 11 June 1985 on monetary compensatory amounts in agriculture ⁽¹⁾, as last amended by Regulation (EEC) No 2205/90 ⁽²⁾, and in particular Article 12 thereof,

Having regard to Commission Regulation (EEC) No 3153/85, of 11 November 1985, laying down detailed rules for the calculation of monetary compensatory amounts ⁽³⁾, as last amended by Regulation (EEC) No 3672/89 ⁽⁴⁾, and in particular Article 6, paragraph 3 thereof,

Whereas, Part 1 of Annex I of Commission Regulation (EEC) No 1207/90, fixing the monetary compensatory amounts in the cereals sector ⁽⁵⁾, as last amended by Regulation (EEC) No 3289/90 ⁽⁶⁾, replacing earlier Commission Regulations 1876/89 ⁽⁷⁾, 4103/88 ⁽⁸⁾, 1852/88 ⁽⁹⁾ and 3938/87 ⁽¹⁰⁾, which fixed the monetary compensatory amounts in the cereals sector from 1 January 1988;

Whereas the monetary compensatory amounts applicable to groats and meal of maize destined for the brewing industry laid down in Regulation (EEC) No 1207/90 take account of the production refund paid to starch manufacturers within the Community laid down in Regulation (EEC) No 2742/75 of the Council of 29 October 1975 on production refunds in the cereals and rice sectors ⁽¹¹⁾, as last amended by Regulation (EEC) No 1009/86 ⁽¹²⁾;

Whereas Regulation (EEC) No 2742/75 expired on 1 July 1989; whereas the references to the production refund in the additional tables and codes in the appendix to Annex I of Regulation (EEC) No 1207/90 are no longer required and can be deleted;

Whereas footnote 3 to Part 1 of Annex I to Regulation (EEC) No 1207/90 requires a declaration in respect of all products falling within CN code heading 2309 of the precise composition of the product; whereas the purpose

for the footnote is to establish whether the product contains manioc;

Whereas, in view of the fact that since the introduction of the Combined Nomenclature of goods based on the harmonized system, laid down in Council Regulation (EEC) No 2658/87 ⁽¹³⁾, as last amended by Regulation (EEC) No 3274/90 ⁽¹⁴⁾, it has been possible to establish the composition of the product without the need of a detailed description from the parties concerned, footnote 3 to Part 1 of Annex I to Regulation (EEC) No 1207/90 is not longer necessary and can be deleted;

Whereas, the deletion of the aforementioned footnote 3 can be applied retrospectively from the introduction of the Combined Nomenclature on 1 January 1988, at the request of the interested parties, in cases where those concerned have fulfilled all their obligations in respect of obtaining monetary compensatory amounts on trade in compound feed;

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

Regulations (EEC) Nos 1207/90, 1876/89, 4103/88, 1852/88 and 3938/87 are hereby amended as follows:

Footnote (3) to Part 1 of Annex I is hereby deleted.

Article 2

1. In Chapter II of the appendix to Annex I of Regulation (EEC) No 1207/90 the additional table 11-3 is hereby deleted and the additional tables 11-4 to 11-7 become the additional tables 11-3 to 11-6 respectively.

2. Part 1 of Annex I of Regulation (EEC) No 1207/90 is hereby replaced by the Annex to this Regulation.

Article 3

This Regulation shall enter into force on the first Monday following its publication.

However, Article 1 is applicable from 1 January 1988 at the request of the interested parties.

⁽¹⁾ OJ No L 164, 24. 6. 1985, p. 6.

⁽²⁾ OJ No L 201, 31. 7. 1990, p. 9.

⁽³⁾ OJ No L 310, 21. 11. 1985, p. 4.

⁽⁴⁾ OJ No L 358, 8. 12. 1989, p. 28.

⁽⁵⁾ OJ No L 122, 11. 5. 1990, p. 1.

⁽⁶⁾ OJ No L 319, 19. 11. 1990, p. 1.

⁽⁷⁾ OJ No L 188, 1. 7. 1989, p. 1.

⁽⁸⁾ OJ No L 364, 30. 12. 1988, p. 1.

⁽⁹⁾ OJ No L 167, 1. 7. 1988, p. 1.

⁽¹⁰⁾ OJ No L 372, 31. 12. 1987, p. 1.

⁽¹¹⁾ OJ No L 281, 1. 11. 1975, p. 57.

⁽¹²⁾ OJ No L 94, 9. 4. 1986, p. 6.

⁽¹³⁾ OJ No L 256, 7. 9. 1987, p. 1.

⁽¹⁴⁾ OJ No L 315, 15. 11. 1990, p. 2.

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

Done at Brussels, 14 December 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX

ANNEX I

PART 1

SECTOR CEREALS

Monetary compensatory amounts

CN code	Table	Additional code	Notes	Positive			Negative							
				Germany	Netherlands	Spain	United Kingdom	Belgium/Luxembourg	Denmark	Italy	France	Greece	Ireland	Portugal
				DM	Fl	Pta	£	Bfrs/Lfrs	Dkr	Lit	FF	Dr	£ Irl	Esc
												— 1 000 kg —		
0709 90 60												1 042,1		
0712 90 19												1 042,1		
1001 10 10												1 458,8		
1001 10 90												1 458,8		
1001 90 91												1 042,1		
1001 90 99												1 042,1		
1002 00 00												990,0		
1003 00 10												990,0		
1003 00 90												990,0		
1004 00 10												950,4		
1004 00 90												950,4		
1005 10 90												1 042,1		
1005 90 00												1 042,1		
1007 00 90												990,0		
1008 20 00												990,0		
1101 00 00												1 263,4		
1102 10 00												1 190,5		
1102 20 10												1 458,9		
1102 20 90												468,9		
1102 90 10												1 009,8		
1102 90 30												969,4		
1102 90 90	11-1	7285										1 009,8		
	11-1	7286										1 009,8		
1103 11 10												1 874,8		
1103 11 90												1 364,4		
1103 12 00												1 330,5		
1103 13 11	11-2	7287										1 511,0		
1103 13 19												1 511,0		
1103 13 90												1 062,9		
1103 19 10												1 009,8		
1103 19 30												1 386,0		
1103 19 90	11-1	7285										1 009,8		
	11-1	7286										1 009,8		
1103 21 00												1 062,9		
1103 29 10												1 009,8		
1103 29 20												1 009,8		

CN code	Table	Additional code	Notes	Positive			Negative							
				Germany	Netherlands	Spain	United Kingdom	Belgium/Luxembourg	Denmark	Italy	France	Greece	Ireland	Portugal
				DM	Fl	Pta	£	Bfrs/Lfrs	Dkr	Lit	FF	Dr	£ Irl	Esc
1103 29 30												— 1 000 kg —		
1103 29 40												969,4		
1103 29 90	11-1	7285										1 062,9		
	11-1	7286										1 009,8		
1104 11 10												1 009,8		
1104 11 90												1 386,0		
1104 12 10												969,4		
1104 12 90												1 710,7		
1104 19 10												1 062,9		
1104 19 30												1 009,8		
1104 19 50												1 146,3		
1104 19 99	11-1	7285										1 009,8		
	11-1	7286										1 009,8		
1104 21 10												1 009,8		
1104 21 30												1 386,0		
1104 21 50												1 584,0		
1104 21 90												1 009,8		
1104 22 10	11-6	7158										969,4		
	11-6	7159										1 710,7		
1104 22 30												1 330,5		
1104 22 50												969,4		
1104 22 90												969,4		
1104 23 10												1 062,9		
1104 23 30												1 062,9		
1104 23 90												1 062,9		
1104 29 11												1 062,9		
1104 29 15												1 009,8		
1104 29 19	11-3	7290										1 009,8		
	11-3	7291										1 009,8		
1104 29 31												1 062,9		
1104 29 35												1 009,8		
1104 29 39	11-3	7290										1 009,8		
	11-3	7291										1 009,8		
1104 29 91												1 062,9		
1104 29 95												1 009,8		
1104 29 99	11-1	7285										1 009,8		
	11-1	7286										1 009,8		
1104 30 10												781,5		
1104 30 90												312,6		
1107 10 11												1 854,9		
1107 10 19												1 385,9		
1107 10 91												1 762,2		
1107 10 99												1 316,7		
1107 20 00												1 534,5		

[illegible]

CN code	Table	Additional code	Notes	Positive			Negative							
				Germany	Nether-lands	Spain	United Kingdom	Belgium/Luxem-bourg	Denmark	Italy	France	Greece	Ireland	Portugal
				DM	Fl	Pta	£	Bfrs/Lfrs	Dkr	Lit	FF	Dr	£ Irl	Esc
2309 90 43	23-12	7541	(²)									— 1 000 kg —		
	23-12	7542	(²)									—		
	23-12	7543	(²)									6 183,6		
	23-12	7547	(²)									12 367,3		
	23-12	7548	(²)									—		
	23-12	7549	(²)									10 797,8		
	23-12	7672	(²)									21 595,6		
	23-12	7673	(²)									396,0		
	23-12	7674	(²)									6 579,6		
	23-12	7678	(²)									12 763,3		
	23-12	7679	(²)									396,0		
	23-12	7679	(²)									11 193,8		
	23-12	7680	(²)									21 991,6		
2309 90 51	23-7	7624										—		
	23-7	7695										781,5		
2309 90 53	23-13	7541	(²)									—		
	23-13	7542	(²)									6 183,6		
	23-13	7543	(²)									12 367,3		
	23-13	7547	(²)									—		
	23-13	7548	(²)									10 797,8		
	23-13	7549	(²)									21 595,6		
	23-13	7681	(²)									781,5		
	23-13	7682	(²)									6 965,1		
	23-13	7683	(²)									13 148,8		
	23-13	7687	(²)									781,5		
	23-13	7688	(²)									11 579,3		
	23-13	7689	(²)									22 377,1		

(¹) When completing the customs formalities, the applicant must state in the declaration provided for this purpose the content by weight of starch, expressed as dry matter, per 1 000 kg of the product.

(²) When completing customs formalities, the party concerned shall state in the declaration provided for this purpose, in particular, the actual content by weight per tonne of finished product of:

- milk powder or granules (other than whey),
- whey powder or granules,
- added casein and/or caseinate.

COMMISSION REGULATION (EEC) No 3624/90**of 14 December 1990****amending Regulation (EEC) No 1836/90 adopting measures for the supply of raw sugar from beet harvested in the Community to Portuguese refineries during the 1990/91 marketing year**

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

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 9 (6) thereof,

Whereas the second subparagraph of Article 9 (4) of Regulation (EEC) No 1785/81 stipulates that, to the extent necessary for the supply of refineries, provision may be made for the same measures as those taken in regard to raw sugar produced in the French overseas departments to be applied to raw sugar produced from beet harvested in the Community; whereas the raw sugar forward supply estimate for all refineries indicates an increase in the quantity of the raw sugar from beet harvested in the Community that is available for Portuguese refineries for the 1990/91 marketing year; whereas the quantity of such sugar foreseen for the supply of

Portuguese refineries in respect of the 1990/91 marketing year by Commission Regulation (EEC) No 1836/90 ⁽³⁾ should as a consequence be amended;

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

HAS ADOPTED THIS REGULATION:

Article 1

The quantity of 15 000 tonnes indicated in Article 1 of Regulation (EEC) No 1836/90 is replaced by the quantity of 45 000 tonnes.

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, 14 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 168, 30. 6. 1990, p. 3.

COMMISSION REGULATION (EEC) No 3625/90

of 14 December 1990

amending Regulation (EEC) No 3483/90 on the transitional measures relating to the application of the system of accession compensatory amounts for olive oil

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 473/86 of 25 February 1986 laying down the general rules for the system of accession compensatory amounts for olive oil⁽¹⁾, and in particular Article 7 (1) (a) thereof,Whereas Commission Regulation (EEC) No 3483/90⁽²⁾ laid down transitional measures on application of accession compensatory amounts for olive oil,

Whereas a check has shown the existence of a substantive error that increases the risk of speculative traffic; whereas Article 1 and the Annex to Regulation (EEC) No 3483/90 ought therefore to be amended;

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

HAS ADOPTED THIS REGULATION:

Article 1

Article 1 (1) of Regulation (EEC) No 3483/90 is hereby amended as follows:

'1. The accession compensatory amounts applicable on trade between Spain and Portugal and the Community of Ten, between Spain and Portugal and third countries and between these two Member States on oil packaged in Spain or Portugal during the two months following the date of entry into force of the consumption aid in Spain and Portugal for olive oil of CN codes 1509 10 90, 1509 90 00 and 1510 00 90 the packaging of which meets the requirements for granting of the consumption aid but for which proof is furnished that the aid has not been paid shall be as stated in the Annex hereto.'

Article 2

The Annex to Regulation (EEC) No 3483/90 is hereby replaced by the Annex to this Regulation.

*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 1 December 1990.

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

Done at Brussels, 14 December 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission⁽¹⁾ OJ No L 53, 1. 3. 1986, p. 43.⁽²⁾ OJ No L 336, 1. 12. 1990, p. 77.

ANNEX

Olive oil

(ECU/100 kg)

CN code	Table	Additional code	Notes	Accession compensatory amount to be charged (–) or granted (+) in trade as follows							
				from third countries to Spain	from the Community of Ten to Spain	from Spain to third countries or to EEC of Ten	from third countries to Portugal	from the Community of Ten to Portugal	from Portugal to third countries or to EEC of Ten	from Spain to Portugal	from Portugal to Spain
1509 10 90	1	7713		—	– 17,71	+ 17,71	—	– 50,17	+ 50,17	– 32,46	+ 32,46
	1	7714		– 17,71	—	—	– 50,17	—	—	—	—
1509 90 00	2	7718		—	– 16,08	+ 16,08	—	– 49,84	+ 49,84	– 33,76	+ 33,76
	2	7719		– 16,08	—	—	– 49,84	—	—	—	—
1510 00 90	3	7737		—	– 35,48	+ 35,48	—	– 53,78	+ 53,78	– 18,30	+ 18,30
	3	7738		– 35,48	—	—	– 53,78	—	—	—	—

Appendix to Annex

ADDITIONAL CODES

TABLE 1

CN code	Description	Additional code
1509 10 90	– Olive oil which satisfies the requirements of Article 9 (2) of the Treaty :	
	– – Presented in bulk or in immediate packings of a net capacity of more than 5 litres	7709
	– – Presented in immediate packings of a net capacity not exceeding 5 litres	7713
	– Other	7714

TABLE 2

CN code	Description	Additional code
1509 90 00	– Olive oil which satisfies the requirements of Article 9 (2) of the Treaty :	
	– – Presented in bulk or in immediate packings of a net capacity of more than 5 litres	7717
	– – Presented in immediate packings of a net capacity not exceeding 5 litres	7718
	– Other	7719

TABLE 3

CN code	Description	Additional code
1510 00 90	– Olive oil which satisfies the requirements of Article 9 (2) of the Treaty :	
	– – Presented in bulk or in immediate packings of a net capacity of more than 5 litres	7734
	– – Presented in immediate packings of a net capacity not exceeding 5 litres	7737
	– Other	7738

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 28 November 1990

relating to a proceeding under Article 85 of the EEC Treaty

(IV/32.877 — Bayer Dental)

(Only the German text is authentic)

(90/645/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the EEC Treaty⁽¹⁾, as last amended by the Act of Accession of Spain and Portugal, and in particular Article 3 (1) thereof,

Having regard to the Commission's Decision of 6 March 1989 to initiate proceedings in this case upon its own initiative,

Having given Bayer AG the opportunity of being heard on the matters to which the Commission has taken objection, in accordance with Article 19 (1) of Regulation (EEC) No 17, in conjunction with Commission Regulation (EEC) No 99/63/EEC of 25 July 1963 on the hearings provided for in Article 19 (1) and (2) of Council Regulation No 17⁽²⁾,

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

Whereas :

I. THE FACTS

A. Introduction

- (1) This Decision is based on a proceeding initiated by the Commission upon its own initiative after lear-

ning of Article XIV of Bayer Dental's General Conditions of Sale and Delivery for the Federal Republic of Germany (dated 1 March 1988) because it took the view that this provision amounted to an express prohibition of exports of Bayer Dental preparation.

B. The Undertaking

- (2) Bayer Dental is a legally dependent division of Bayer AG with its head office in Leverkusen, Germany. It distributes the dental products manufactured by Bayer. The products in question are auxiliary substances used in dentistry. The 1987 annual report indicated a total turnover for the Bayer Group of DM 37,1 billion, with Bayer AG accounting for DM 16,7 billion, the group's health branch a total of DM 5,552 billion and the dental branch DM 180 million. Turnover in the dental branch therefore amounts to 3,26 % of turnover in the health branch. Total turnover for dental products in the European Community was some DM [...] ⁽³⁾ in 1987. Half of this amount was realized in Germany.
- (3) A number of suppliers of varying size are active on the overall market in dental products. Bayer is one of the larger ones, but does not have a dominant position.

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

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

⁽³⁾ In the published version of the Decision, some information has hereinafter been omitted, pursuant to the provisions of Article 21 of Regulation (EEC) No 17 concerning non-disclosure of business secrets.

C. The distribution system

- (4) Alongside Bayer Dental, two wholly owned subsidiaries export from Germany. The sale of dental products in the individual Community Member States is carried out by associated companies. Only Denmark is supplied direct by the three German companies.
- (5) Price list No 32 for the wholesale by Bayer Dental of dental/medical products in the Federal Republic of Germany (dated 1 March 1988) contains the following Article XIV:

'XIV. Resale

- 1. Original packages of the seller which carry a registered trade mark may be supplied to a third party only in unopened form.
- 2. The seller's preparations are intended for distribution solely in the Federal Republic of Germany, including West Berlin. Their resale abroad may, in the country concerned, be prohibited because they contravene registration regulations, and may lead to claims for damages because they infringe industrial property rights.'

It is this Article which is the subject of the proceeding.

- (6) On 15 September 1988 the Commission sent a request for information to Bayer AG relating exclusively to the provisions of Article XIV cited above. Questions 1, 2 and 3 of this request were as follows:

- 1. How do you reconcile paragraph 1 of Article XIV (Resale) with the Judgments of the Court of Justice in Cases 102/77 [1978] ECR 1139 and 3/78 [1978] ECR 1832?
- 2. How do you reconcile the first sentence of paragraph 2 of Article XIV with the principle of the free movement of goods, according to which anybody obtaining your products should be free to distribute them throughout the Community?
- 3. What industrial property rights, as referred to in the second sentence of paragraph 2 of Article XIV, provide a legal basis for claims for damages in the case of supplies being made to other Member States of the European Community? Since this question presupposes that these cannot be rights held by Bayer AG or one of its subsidiaries, please indicate all known industrial property rights of your competitors which might give rise to such claims.'

In its reply of 27 October 1988, Bayer AG adopted a position which is described in broad outline at

point D below. In reply to question 3 asking it to indicate the industrial property rights of competitors abroad, Bayer AG made the following statement:

'As pointed out above, we assume no guarantee of immunity from the foreign rights of third parties because we have not examined those rights. We are therefore unable to give any concrete indication of such rights of third parties. They may, in particular, take the form of national rights relating to trade marks, patents of utility models.'

- (7) In price list No 33 for the wholesale of dental/medical products, valid from 1 February 1989, Article XIV was replaced by an amended Article XV. Bayer AG also amended Article XV in its price list valid from 1 July 1990. The amended version does not include a prohibition on repackaging. It makes it clear that exports are permitted. Any liability arising from a defect of title in respect of such exports is unequivocally excluded. The proceeding is not concerned with this new version.

D. The position adopted by Bayer AG

- (8) In its written and oral statements concerning the matters to which objection had been taken, Bayer AG took the view, in general, that the Commission could not take action against the now amended Article under the threat of fines simply because it considered it to be unclearly formulated, without proving that competition had actually been restricted.

The main arguments advanced by Bayer AG against the Commission's position on the individual elements of the former Article XIV are as follows:

It claimed that the Commission had failed to recognize that the prohibition against opening original packages expressed in paragraph 1 related only to 'original packages which carry a registered trade mark' and not to the original box indicated in the price list. The 'original box' did not carry any registered trade mark. The practical application of this prohibition was consistent with the Judgment of the Court of Justice in Case 102/77, *Hoffman-La-Roche v. Centrafarm* ⁽¹⁾. The sole intention of Bayer AG was to prevent the original state of its products from being altered through repackaging. Moreover, the principle of drug safety dictated that the original package should remain intact until it reached the final consumer so that the manufacturer and product could be identified. The

⁽¹⁾ ECR 1139, [1978].

Commission did not indicate either in its objections or in talks on 18 May 1989, so the argument continues, that it had anything against that practice. Bayer AG felt that, for that reason alone, it ought to be given a fresh opportunity to make its views known should the Commission decide to take a more restrictive line.

At the hearing on 19 June 1989, Bayer AG presented a number of sample packages and explained its practice in their respect. This practice was, it claimed, relatively liberal. In no case had Bayer AG as yet taken action against a dealer, e.g. for having removed tubes from an individual package and packing them differently.

According to the submissions made by Bayer AG, the two sentences of paragraph 2 of Article XIV are intended merely to rule out any civil liability under Section 434 of the German Civil Code, which requires the seller to provide the buyer with the purchased item free of any rights of third parties. Bayer AG was unable to verify whether, in the case of export by one of its purchasers, its products would infringe registration regulations or industrial property rights in the country of destination. It showed by reference to specific cases that difficulties over industrial property rights abroad had arisen in the past with its own exports. Bayer AG therefore believed that it was obliged, for contractual reasons, at least to warn potential exporters that they might face similar difficulties when exporting Bayer products.

Furthermore, it could not be argued that Article XIV had been introduced in order to circumvent the Community's competition rules. It had featured in Bayer's General Conditions of Sale and Delivery for many years, perhaps since before the entry into force of the Treaty.

Moreover, prices for dental products were freely determined throughout Europe, and Bayer's prices were almost the same everywhere in Europe. Bayer therefore had not the slightest interest in preventing parallel trade in these products.

Bayer AG also pointed to the fact that the disputed Article XIV formed part of the General Conditions of Sale and Delivery, which covered a wide range of

commercial transactions and products. It therefore had to be kept general to a certain degree.

II. LEGAL ASSESSMENT

A. Article 85 (1)

- (9) Purchase and delivery contracts are concluded by Bayer with dealers, i.e. with undertakings. Article 1 of Bayer Dental's General Conditions of Sale and Delivery makes these conditions part of the purchase contract. Article XIV is part of the General Conditions of Sale and Delivery of 1 March 1988. These conditions govern all matters relating to a contract of sale. They are applied to each contract routinely and in their entirety. The buyer consents tacitly to the individual conditions, including the prohibitions in Article XIV of repackaging (paragraph 1) and export (paragraph 2). Consequently, these provisions do not represent unilateral conduct, but form part of the total contractual relationship between manufacturer and dealer. This constitutes an agreement within the meaning of Article 85 (1) of the EEC Treaty (cf. Judgement of the Court of 11 January 1990 in Case 277/87, Sandoz, paragraphs 10 to 12).
- (10) Article XIV is intended to restrict or distort competition within the common market. This is clear from the combined contractual conditions for resellers of Bayer Dental preparations contained in Article XIV. The purpose of these conditions is to prevent any resale whatsoever following repackaging, and resale outside the Federal Republic of Germany. This conclusion follows not from the subjective statements of the parties concerning the aim they were pursuing, their intentions or their motives, but from the objective circumstances.
- (11) To begin with, the first paragraph of Article XIV prohibits original packages of the seller which carry registered trade marks from being supplied to a third party in opened form. Its wording runs counter to the Judgment of the Court of Justice in Case 102/77, cited above in recital 8, because it leaves out of account forms of repackaging which do not affect the original state of the dental preparations. The provision is apt to awaken in the minds of resellers so much doubt as to their actual

rights that they will refrain from reselling repacked products. In so doing, the prohibition pursues the object of restricting competition.

- (12) Since Bayer is reproached solely for the restrictive object of the prohibition of repackaging and not for its actual conduct, the statements of Bayer AG at the hearing that in practice it tolerates the removal of tubes from their individual packages and that, irrespective of the wording of paragraph 1, it generally tolerates all forms of repackaging which do not alter the original state of its products, are irrelevant. There was therefore no reason for the Commission to give Bayer AG another hearing on this matter before adopting this Decision.

Moreover, the finding set out in recital 11, like the following findings on the two sentences of Article XIV, paragraph 2, does not affect Bayer's right to protect its trade marks within the framework of the applicable legal order, especially the relevant case law of the Court of Justice.

- (13) The first sentence of the second paragraph of Article XIV, cited in recital 5 states, by implication, that the preparations are not intended for sale abroad. Since the schedule numbers of preparations offered for sale abroad, and consequently the packaging, are sometimes the same (compare the price lists of Bayer Dental Norden for Denmark, of 4 January 1988, and the 'Lista de Precios' of Bayer Dental Portugal, 1988), the German dealer must take this sentence to be a prohibition on selling the preparations abroad.
- (14) He will be strengthened in this view by the second sentence of paragraph 2. The reference to contravention of registration regulations, of infringement of industrial property rights, and claims for damages draw attention to the considerable risks and penalties which might arise in the case of export. The wording is so vague that it is not made clear whether the claims connected with infringement of industrial property rights are possible claims of third parties or of Bayer AG itself.
- (15) In view of this wording, the explanation put forward by Bayer AG that the second paragraph of Article XIV is intended merely to rule out any civil liability under Section 434 of the German Civil Code is not convincing because there is not a single word which refers to that aim. It is beyond dispute that liability arising from a defect of title can be ruled out by contract (*MünchKommBZ zum Bürgerlichen Gesetzbuch*, Volume 3, second edition, 1988, note 11 on paragraph 434, p. 65, and Palandt, *Bürgerliches Gesetz-*

buch, 48th edition, 1989, note 1 (B) on paragraph 434, p. 483). A look at Bayer Dentals General Conditions of Sale and Delivery shows that Bayer formulated the rest of its conditions in quite unequivocal fashion.

It is therefore incomprehensible that Bayer AG should not have directly excluded the possibility of liability arising from a defect of title.

Furthermore, Bayer AG was at first unable, when asked by the Commission, to specify any foreign rights of third parties. Of the few specific examples it finally gave in its reply to the statement of objections and at the hearing, only two related to Member States of the European Community. Since Bayer AG sells its dental preparations in all European countries either directly or via associated companies, it is reasonable to assume that it should have a precise knowledge of the industrial property rights of third parties which may be or have been invoked against export sales in the individual countries.

Finally, the Commission doubts whether Bayer AG is under any legal obligation to inform persons reselling its goods of the legal difficulties of carrying out exports. The Commission presumes that the persons concerned are traders from the sector who can be assumed to know about any difficulties which may arise.

- (16) All this goes to show that the purpose of Article XIV is to use prohibitions of resale to restrict the freedom of action of resellers of Bayer Dental products where exporting is concerned, because of the fear of being exposed to claims for damages.

Effect on trade between the Member States

- (17) The provision was also liable to affect trade between the Member States. Bayer Dental products are marketed in the Community and worldwide. According to figures supplied by Bayer AG, some ...% (DM ...) of total turnover of its dental branch in 1987 (DM 180 million) was realized in the European Community, including the Federal Republic of Germany, half (DM ...) in the Federal Republic itself and half in the other Member States. On top of this fairly substantial turnover comes the fact that Bayer AG, with a total turnover of DM 16,7 billion, is not just a major chemicals company but also a significant supplier on the market in dental products. Another point to be borne in mind is that it sells its dental products in the other Member States through local associated companies or, in the case of Denmark, through supply by

German subsidiaries, and that it is therefore able to coordinate its own prices and delivery conditions throughout the Community. In view of that fact parallel imports take on a particular importance. However, as stated above, Article XIV has as its very object to prevent exporters from making parallel exports from Germany. That object alone is enough to make it basically liable to affect trade between the Member States because it cannot be ruled out that parallel exports would occur much more frequently without the said provision than with it.

Bayer's counter-argument that it has no interest in preventing parallel trade in dental products because prices for them are almost the same throughout Europe must also be dismissed. According to the judgments of the Court of Justice in Case 19/77, *Miller International Schallplatten v. Commission* ⁽¹⁾ and in Case 107/82, *AEG/Telefunken v. Commission* ⁽²⁾ arguments of that nature cannot generally suffice to exclude the possibility that restrictions of competition may appreciably affect intra-Community trade, because market and price conditions might change at any time.

B. Article 85 (3)

- (18) Pursuant to Article 4 of Regulation 17, an exemption cannot be granted in this case because Bayer Dental's General Conditions of Sale and Delivery have not been notified to the Commission.

Nor are they exempt from notification pursuant to Article 4 (2) of Regulation No 17 since Article XIV affects imports and exports between the Member States.

Moreover, the Commission could not have granted an exemption for Article XIV even if notification had taken place because, as indicated, its object is to prevent exports.

- (19) As stated above (recital 7), Bayer AG submitted price list No 33 for 1989 with the new Article XV after being informed of the Commission objections and amended that Article after its hearing so that

the Commission no longer sees any reason to intervene.

C. Article 3 of Regulation No 17

- (20) The point at issue in this case is essentially one of law. Whilst the Commission finds against Bayer that Article XIV has the purpose, when objectively considered, of restricting exports of the products concerned, the Commission also takes into account the fact that restriction is not expressed clearly and unequivocally, and that, consequently, Bayer AG continues to hold that Article XIV did not infringe Article 85. A decision is necessary to clarify the position in law and to prevent any future infringement of the same or a similar kind. The Commission has a legitimate interest in finding that Article XIV infringed Article 85 (1) (Judgment of the Court of Justice in Case 7/82, *GVL* ⁽³⁾).

HAS ADOPTED THIS DECISION:

Article 1

Article XIV of the General Conditions of Sale and Delivery of price list No 32 of 1 March 1988 for the wholesale by Bayer Dental of dental/medical products in the Federal Republic of Germany is hereby found to have infringed Article 85 (1) of the EEC Treaty because its object was to prevent resale after repackaging and resale outside the Federal Republic of Germany.

Article 2

This Decision is addressed to

Bayer AG,
Bayerwerk,
D-5090 Leverkusen.

Done at Brussels, 28 November 1990.

For the Commission

Leon BRITTAN

Vice-President

⁽¹⁾ ECR 151, [1978].

⁽²⁾ ECR 3201, [1983].

⁽³⁾ ECR 483 [1983].

COMMISSION DECISION

of 6 December 1990

making an initial allocation to Italy of part of the resources to be charged to the 1991 budget year for the supply of food from intervention stocks to designated organizations for distribution to the most deprived persons in the Community

(90/646/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3730/87 of 10 December 1987 laying down the general rules for the supply of food from intervention stocks to designated organizations for distribution to the most deprived persons in the Community⁽¹⁾,

Having regard to Commission Regulation (EEC) No 3744/87 of 14 December 1987 laying down the detailed rules for the supply of food from intervention stocks to designated organizations for distribution to the most deprived persons in the Community⁽²⁾, as last amended by Regulation (EEC) No 2736/89⁽³⁾, and in particular Article 2 (3) thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy⁽⁴⁾, as last amended by Regulation (EEC) No 2205/90⁽⁵⁾, and in particular Article 2 (4) thereof,

Whereas on 20 November 1990, Italy requested Commission authorization to initiate already in 1990 the action on its territory to be financed by resources chargeable to the 1991 budget and indicated the quantities of produce that it wished to distribute; whereas it is desirable to initiate the scheme now in Italy by making an allocation to that country; whereas this allocation shall not exceed 50 % of the resources allocated by Commission decision to Italy in respect of the plan for 1990;

Whereas in order to facilitate the implementation of this scheme it is necessary to specify the rate of exchange to be employed in converting the ecu into the national

currency and to do so at a rate which reflects economic reality,

HAS ADOPTED THIS DECISION:

Article 1

1. The allocation for Italy of the appropriations referred to in Article 2 (3) of Regulation (EEC) No 3744/87 to be charged to the 1991 budget shall be ECU 8 500 000.

This sum shall be converted into national currency at the rate applicable on 3 January 1990 and published in the C series of the *Official Journal of the European Communities*.

2. Subject to the limit set out in paragraph 1, the following quantities of produce may be withdrawn from intervention for distribution in Italy:

- 3 334 tonnes of durum wheat,
- 2 166 tonnes of beef.

3. The withdrawals referred to in paragraph 2 may be made from 1 December 1990.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 6 December 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 352, 15. 12. 1987, p. 1.

⁽²⁾ OJ No L 352, 15. 12. 1987, p. 33.

⁽³⁾ OJ No L 263, 9. 9. 1989, p. 19.

⁽⁴⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁵⁾ OJ No L 201, 31. 7. 1990, p. 9.