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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 1805/92

of 2 July 1992

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 1738/92⁽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,

Whereas the import levies on cereals, wheat and rye flour, and wheat groats and meal were fixed by Commission Regulation (EEC) No 1772/92⁽⁵⁾;

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 1 July 1992;

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 1772/92 to today's offer prices and quotations known to the Commission that the levies at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies to be charged on products listed in Article 1 (a), (b) and (c) of Regulation (EEC) No 2727/75 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 3 July 1992.

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

Done at Brussels, 2 July 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 180, 1. 7. 1992, 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 182, 2. 7. 1992, p. 15.

ANNEX

to the Commission Regulation of 2 July 1992 fixing the import levies on cereals and on wheat or rye flour, groats and meal

(ECU/tonne)	
CN code	Levy (*)
0709 90 60	139,72 (*) (*)
0712 90 19	139,72 (*) (*)
1001 10 10	155,97 (*) (*) ⁽¹⁰⁾
1001 10 90	155,97 (*) (*) ⁽¹⁰⁾
1001 90 91	132,79
1001 90 99	132,79 ⁽¹¹⁾
1002 00 00	151,27 (*)
1003 00 10	123,30
1003 00 90	123,30 ⁽¹¹⁾
1004 00 10	106,79
1004 00 90	106,79
1005 10 90	139,72 (*) (*)
1005 90 00	139,72 (*) (*)
1007 00 90	145,21 (*)
1008 10 00	48,32 ⁽¹¹⁾
1008 20 00	98,90 (*)
1008 30 00	46,28 (*)
1008 90 10	(*)
1008 90 90	46,28
1101 00 00	198,90 (*) ⁽¹¹⁾
1102 10 00	224,78 (*)
1103 11 10	255,78 (*) ⁽¹⁰⁾
1103 11 90	214,81 (*)

(*) Where durum wheat originating in Morocco is transported directly from that country to the Community, the levy is reduced by ECU 0,60/tonne.

(*) 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.

(*) Where maize originating in the ACP is imported into the Community the levy is reduced by ECU 1,81/tonne.

(*) Where millet and sorghum originating in the ACP is imported into the Community the levy is applied in accordance with Regulation (EEC) No 715/90.

(*) 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.

(*) 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 and Commission Regulation (EEC) No 2622/71.

(*) The levy applicable to rye shall be charged on imports of the product falling within CN code 1008 90 10 (triticale).

(*) On importation into Portugal the levy is increased by the amount specified in Article 2 (2) of Regulation (EEC) No 3808/90.

(*) No levy applies to OCT originating products according to Article 101 (1) of Decision 91/482/EEC, except if paragraph 4 of the same Article applies.

⁽¹⁰⁾ An amount equal to the amount fixed by Regulation (EEC) No 1825/91 is to be levied in accordance with Article 101 (4) of Decision 91/482/EEC.

⁽¹¹⁾ Products falling within this code, imported from Poland, Czechoslovakia or Hungary under the Interim Agreements concluded between those countries and the Community, and in respect of which EUR.1 certificates issued in accordance with Regulation (EEC) No 585/92 have been presented, are subject to the levies set out in the Annex to that Regulation.

COMMISSION REGULATION (EEC) No 1806/92

of 2 July 1992

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 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 1738/92 ⁽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,Whereas the premiums to be added to the levies on cereals and malt were fixed by Commission Regulation (EEC) No 1773/92 ⁽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 1 July 1992;

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

The premiums referred to in Article 15 of Regulation (EEC) No 2727/75 to be added to the import levies fixed in advance in respect of cereals and malt coming from third countries shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 3 July 1992.

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

Done at Brussels, 2 July 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 180, 1. 7. 1992, 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 182, 2. 7. 1992, p. 18.

ANNEX

to the Commission Regulation of 2 July 1992 fixing the premiums to be added to the import levies on cereals, flour and malt

A. Cereals and flour

(ECU/tonne)

CN code	Current 7	1st period 8	2nd period 9	3rd period 10
0709 90 60	0	0	0	0
0712 90 19	0	0	0	0
1001 10 10	0	0	0	0
1001 10 90	0	0	0	0
1001 90 91	0	0	0	0
1001 90 99	0	0	0	0
1002 00 00	0	0	0	0
1003 00 10	0	0	0	0
1003 00 90	0	0	0	0
1004 00 10	0	0	0	0
1004 00 90	0	0	0	0
1005 10 90	0	0	0	0
1005 90 00	0	0	0	0
1007 00 90	0	0	0	0
1008 10 00	0	0	0	0
1008 20 00	0	0	0	0
1008 30 00	0	0	0	0
1008 90 90	0	0	0	0
1101 00 00	0	0	0	0

B. Malt

(ECU/tonne)

CN code	Current 7	1st period 8	2nd period 9	3rd period 10	4th period 11
1107 10 11	0	0	0	0	0
1107 10 19	0	0	0	0	0
1107 10 91	0	0	0	0	0
1107 10 99	0	0	0	0	0
1107 20 00	0	0	0	0	0

COMMISSION REGULATION (EEC) No 1807/92

of 2 July 1992

fixing the minimum levies on the importation of olive oil and levies on the importation of other olive oil sector products

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 No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by Regulation (EEC) No 1720/91⁽²⁾, and in particular Article 16 (2) thereof,

Having regard to Council Regulation (EEC) No 1514/76 of 24 June 1976 on imports of olive oil originating in Algeria⁽³⁾, as last amended by Regulation (EEC) No 728/91⁽⁴⁾, and in particular Article 5 thereof,

Having regard to Council Regulation (EEC) No 1521/76 of 24 June 1976 on imports of olive oil originating in Morocco⁽⁵⁾, as last amended by Regulation (EEC) No 729/91⁽⁶⁾, and in particular Article 5 thereof,

Having regard to Council Regulation (EEC) No 1508/76 of 24 June 1976 on imports of olive oil originating in Tunisia⁽⁷⁾, as last amended by Regulation (EEC) No 413/86⁽⁸⁾, and in particular Article 5 thereof,

Having regard to Council Regulation (EEC) No 1180/77 of 17 May 1977 on imports into the Community of certain agricultural products originating in Turkey⁽⁹⁾, as last amended by Regulation (EEC) No 730/91⁽¹⁰⁾, and in particular Article 10 (2) thereof,

Having regard to Council Regulation (EEC) No 1620/77 of 18 July 1977 laying down detailed rules for the importation of olive oil from Lebanon⁽¹¹⁾,

Whereas by Regulation (EEC) No 3131/78⁽¹²⁾, as amended by the Act of Accession of Greece, the Commis-

sion decided to use the tendering procedure to fix levies on olive oil;

Whereas Article 3 of Council Regulation (EEC) No 2751/78 of 23 November 1978 laying down general rules for fixing the import levy on olive oil by tender⁽¹³⁾ specifies that the minimum levy rate shall be fixed for each of the products concerned on the basis of the situation on the world market and the Community market and of the levy rates indicated by tenderers;

Whereas, in the collection of the levy, account should be taken of the provisions in the Agreements between the Community and certain third countries; whereas in particular the levy applicable for those countries must be fixed, taking as a basis for calculation the levy to be collected on imports from the other third countries;

Whereas, with regard to Turkey and the Maghreb countries, the provisions of this Regulation should be without prejudice to the additional amount to be determined in accordance with the agreements between the Community and these third countries;

Whereas, pursuant to Article 101 (1) of Council Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community⁽¹⁴⁾, no levies shall apply on imports of products originating in the overseas countries and territories; whereas, however, pursuant to Article 101 (4) of the abovementioned Decision, a special amount shall be charged on imports of certain products originating in the overseas countries and territories in order to prevent products originating from these countries and territories from receiving more favourable treatment than similar products imported from Spain or Portugal into the Community as constituted on 31 December 1985;

Whereas application of the rules recalled above to the levy rates indicated by tenderers on 29 and 30 June 1992 leads to the minimum levies being fixed as indicated in Annex I to this Regulation;

Whereas the import levy on olives falling within 29 codes 0709 90 39 and 0711 20 90 and on products falling within CN codes 1522 00 31, 1522 00 39 and 2306 90 19 must be calculated from the minimum levy applicable on the olive oil contained in these products; whereas, however, the levy charged for olive oil may not be less than an amount equal to 8 % of the value of the imported product, such amount to be fixed at a standard rate; whereas application of these provisions leads to the levies being fixed as indicated in Annex II to this Regulation,

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

⁽²⁾ OJ No L 162, 26. 6. 1991, p. 27.

⁽³⁾ OJ No L 169, 28. 6. 1976, p. 24.

⁽⁴⁾ OJ No L 80, 27. 3. 1991, p. 1.

⁽⁵⁾ OJ No L 169, 28. 6. 1976, p. 43.

⁽⁶⁾ OJ No L 80, 27. 3. 1991, p. 2.

⁽⁷⁾ OJ No L 169, 28. 6. 1976, p. 9.

⁽⁸⁾ OJ No L 48, 26. 2. 1986, p. 1.

⁽⁹⁾ OJ No L 142, 9. 6. 1977, p. 10.

⁽¹⁰⁾ OJ No L 80, 27. 3. 1991, p. 3.

⁽¹¹⁾ OJ No L 181, 21. 7. 1977, p. 4.

⁽¹²⁾ OJ No L 370, 30. 12. 1978, p. 60.

⁽¹³⁾ OJ No L 331, 28. 11. 1978, p. 6.

⁽¹⁴⁾ OJ No L 263, 19. 9. 1991, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

The minimum levies on olive oil imports are fixed in Annex I.

Article 2

The levies applicable on imports of other olive oil sector products are fixed in Annex II.

Article 3

This Regulation shall enter into force on 3 July 1992.

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

Done at Brussels, 2 July 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX I

Minimum import levies on olive oil ⁽¹⁾

(ECU/100 kg)

CN code	Non-member countries
1509 10 10	76,00 ⁽²⁾
1509 10 90	76,00 ⁽²⁾
1509 90 00	88,00 ⁽²⁾
1510 00 10	77,00 ⁽²⁾
1510 00 90	122,00 ⁽⁴⁾

⁽¹⁾ No levy applies to OCT originating products according to Article 101 (1) of Decision 91/482/EEC. However, an amount equal to the amount fixed by Regulation (EEC) No 3148/91 is to be levied in accordance with Article 101 (4) of the abovementioned Decision.

⁽²⁾ For imports of oil falling within this CN code and produced entirely in one of the countries listed below and transported directly from any of those countries to the Community, the levy to be collected is reduced by :

(a) Lebanon : ECU 0,60 per 100 kg ;

(b) Turkey : ECU 11,48 per 100 kg ^(*) provided that the operator furnishes proof of having paid the export tax applied by that country ; however, the repayment may not exceed the amount of the tax in force ;

(c) Algeria, Tunisia and Morocco : ECU 12,69 per 100 kg ^(*) provided that the operator furnishes proof of having paid the export tax applied by that country ; however, the repayment may not exceed the amount of the tax in force.

^(*) These amounts may be increased by an additional amount to be determined by the Community and the third countries in question.

⁽³⁾ For imports of oil falling within this CN code :

(a) produced entirely in Algeria, Morocco or Tunisia and transported directly from any of those countries to the Community, the levy to be collected is reduced by ECU 3,86 per 100 kg ;

(b) produced entirely in Turkey and transported directly from that country to the Community, the levy to be collected is reduced by ECU 3,09 per 100 kg.

⁽⁴⁾ For imports of oil falling within this CN code :

(a) produced entirely in Algeria, Morocco or Tunisia and transported directly from any of those countries to the Community, the levy to be collected is reduced by ECU 7,25 per 100 kg ;

(b) produced entirely in Turkey and transported directly from that country to the Community, the levy to be collected is reduced by ECU 5,80 per 100 kg.

ANNEX II

Import levies on other olive oil sector products ⁽¹⁾

(ECU/100 kg)

CN code	Non-member countries
0709 90 39	16,72
0711 20 90	16,72
1522 00 31	38,00
1522 00 39	60,80
2306 90 19	6,16

⁽¹⁾ No levy applies to OCT originating products according to Article 101 (1) of Decision 91/482/EEC. However, an amount equal to the amount fixed by Regulation (EEC) No 3148/91 is to be levied in accordance with Article 101 (4) of the abovementioned Decision.

COMMISSION REGULATION (EEC) No 1808/92

of 30 June 1992

imposing a provisional anti-dumping duty on imports of ferro-silicon
originating in Poland and Egypt

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 in the above Regulation,

Whereas :

A. PROCEDURE

- (1) In December 1990 the Commission received a complaint lodged by the Liaison Committee of Ferro-alloy Industries in the European Economic Community on behalf of almost all the Community producers of ferro-silicon.

The complaint contained evidence that imports of the product concerned from Poland and Egypt were being dumped and were causing injury, and this evidence was considered sufficient to justify initiation of a proceeding. Consequently, in a notice published in the *Official Journal of the European Communities*⁽²⁾ the Commission announced the initiation of an anti-dumping proceeding concerning imports of ferro-silicon originating in Poland and Egypt and opened an investigation.

- (2) Commission Regulation (EEC) No 2409/87⁽³⁾, Commission Decision No 91/240/EEC⁽⁴⁾ and Council Regulation (EEC) No 341/90⁽⁵⁾ and (EEC) No 1115/91⁽⁶⁾ imposed measures on imports of ferro-silicon originating in the Soviet Union, Brazil, Norway, Sweden, Iceland, Venezuela and Yugoslavia.
- (3) The Commission officially notified producers/exporters, importers and Community producers known to be concerned of the initiation of the

proceeding and gave the parties concerned the opportunity to make known their views in writing.

- (4) The producers/exporters and certain importers requested the opportunity to express their views orally and their request was granted.

- (5) The Commission obtained and checked all the information it considered necessary for determining whether dumping had taken place and resulted in injury and it carried out inspections at the premises of:

— Community producers :

- Pechiney Électrometallurgie, France,
- SKW Trostberg AG, Germany,
- Ferrolegerungswerk Lippendorf GmbH, Germany,
- Carbueros Metalicos, Spain,
- Industria Elettrica Indel Spa, Italy,
- Utilizzazioni Elettro Industrial UEI, Italy;

— Community importers :

- Frank und Schulte GmbH, Germany,
- Lemetco GmbH, Germany,
- Deutsche Erz- und Metallgesellschaft mbH, Germany;

— Egyptian producer :

- EFACO, The Egyptian Ferro Alloys Co., Egypt.

- (6) The Commission conducted an investigation at the premises of Elkem in Norway, since Norway had been selected as a like country for the purposes of calculating Poland's normal value (see recital 14).
- (7) The Commission received and used information from importers, producers in the exporting countries and the complainants.
- (8) The investigation into dumping practices covered the period 1 January 1990 to 31 March 1991.

B. PRODUCT

1. Description of the product

- (9) The product concerned is ferro-silicon containing between 10 and 96 % of silicon by weight and falling within CN codes 7202 21 10, 7202 21 90 and 7202 29 00.

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No C 122, 8. 5. 1991, p. 4.

⁽³⁾ OJ No L 219, 8. 8. 1987, p. 24.

⁽⁴⁾ OJ No L 111, 3. 5. 1991, p. 47.

⁽⁵⁾ OJ No L 38, 10. 2. 1990, p. 1.

⁽⁶⁾ OJ No L 111, 3. 5. 1991, p. 1.

2. Like product

- (10) The Commission established that the ferro-silicon produced in the Community and that sold on the domestic markets of Egypt and Norway and the products exported by Egypt and Poland were like products in all essential physical and technical properties.

C. DUMPING

1. Normal value

(a) *Egypt*

- (11) The Commission ascertained that, during the reference period, as part of normal commercial transactions, sales on Egypt's domestic market of the like products produced by the Egyptian firm which cooperated in the investigation were negligible.

This value was therefore based on a constructed value established by adding the production costs and a reasonable profit margin. The production cost was calculated on the basis of all the fixed and variable materials and manufacture costs plus a reasonable amount for selling costs, administrative expenditure and other overheads.

In calculating the overheads, administrative expenditure and selling costs, the Commission took as a basis all the present costs of the sector concerned.

As the entire sector sold at a loss during the reference period, the Commission took a profit margin of 6 %, which was considered reasonable in the light of the productive investment requirements of an industry of this kind in Egypt.

(b) *Poland*

- (12) Account being taken of the fact that during the reference period Poland could not be considered as a market-economy country, the Commission had to base its calculations on the normal values of the products concerned in a market-economy country.

The Polish producer who cooperated in the investigation agreed that Norway be taken into account as a like country. The Commission ascertained that the products of the two countries were largely similar, and that there were no significant disparities

in the manufacturing process or scale, or in access to the main components of the production cost. Consequently, the Commission concluded that the choice of Norway was appropriate and not unreasonable for determining Poland's normal value.

As the Norwegian producer who cooperated in the investigation did not sell sufficient quantities of the like product on his domestic market, the Commission had to determine the normal value on the basis of a constructed value established by adding production costs and a reasonable profit margin.

The production cost was calculated on the basis of all the fixed and variable materials and manufacture costs, plus a reasonable amount for selling costs, administrative expenditure and other overheads.

In calculating the overheads, administrative expenditure and selling costs, the Commission took as a basis all the present costs of the sector concerned.

The Commission took a 6 % profit margin, which was considered reasonable for guaranteeing the industry productive investment on a long-term basis. This margin was in line with the profit margin of 6 % as a weighted average obtained by the sector over the last three available tax years preceding the reference period in Norway.

- (13) The Polish producer accepted the decision to take Norway as a like country, but queried the use of a constructed value, arguing that the Polish company had advantages as regards certain components of the production cost. The Polish producer was, however, unable to quantify or give details of the alleged advantages.

In this context, by using the Norwegian firm, which was recognized as one of the most efficient in the world, the Commission considered that it had taken full account of any comparative advantage which might exist in the supply and cost of some of the Polish producer's raw materials. During the reference period, the Norwegian unit operated at almost its maximum production capacity, and this reduced the fixed costs accordingly; these were in any event low in relation to the total cost per tonne produced. This firm's production costs illustrate its very high level of productivity; it also produces its own energy, an essential component of the production cost, and has facilities for handling other raw materials, such as quartz.

2. Export prices

- (14) Export prices were established on the basis of the prices actually paid or payable for products sold for export to the Community.

— for Egypt from 5 000 tonnes in 1989 to 12 000 tonnes in 1990 and 6 000 tonnes in the first quarter of 1991.

3. Comparison

- (15) In comparing normal value with the export prices on a transaction-by-transaction basis, the Commission took account of differences affecting the comparability of prices, when appropriate and where sufficient evidence was provided to illustrate the direct link with the sales concerned; such adjustments were concerned mainly with payment and delivery terms, transport and insurance costs and different forms of presentation and packaging.

- (20) These two countries' market shares, measured in terms of Community consumption, have increased considerably:

— for Poland: 0,3 % in 1989, 3,1 % in 1990 and 5,1 % in 1991,

— for Egypt: 0,9 % in 1989, 2,1 % in 1990 and 4,1 % in 1991.

- (21) The resale prices in the Community for the product imported from Poland and Egypt were lower than Community producers' average prices, which had already depreciated, and the undercutting involved varied on average from 5 % for Poland to 12 % for Egypt.

4. Dumping margins

- (16) Comparison of the above facts reveals that dumping did take place. The dumping margin calculated for each exporter is equal to the difference between the normal value and the price of exports to the Community, duly adjusted.

- (17) On the basis of the free-at-Community-frontier price, the average weighted margin for the exporters concerned is as follows:

— Poland's producers/exporters	43,9 %
— the Egyptian producer/exporter Efac, Egyptian Ferro-Alloys Co.	61,5 %

3. The Community industry's situation**(a) Community capacity and production**

- (22) From the 1989 to 1990, the Community's production capacity, including that of the former German Democratic Republic, remained at around 360 000 tonnes. Community production has declined constantly, and the total, including the former German Democratic Republic, fell from 250 000 tonnes in 1989 to 150 000 tonnes in 1991, and some of this output was exported or held in stock; this corresponds to a utilization rate of roughly 42 % for 1991.

(b) Market share and consumption

- (23) Between 1989 and 1991, the Community producers' market share declined from 36 to 26 % (the percentage includes the former German Democratic Republic), while the Community's annual consumption stabilized at around 600 000 tonnes over the same: it was obvious that consumption favoured imports from outside the Community, including imports from Poland and Egypt.

(c) Prices

- (24) The low level of import prices over the investigation period meant that Community producers had to sell the product in the Community at prices which in most cases did not cover their production costs. The low level of prices not only prevented Community producers from raising their prices in order to reflect the rise in production costs, but even forced them to lower their prices, although this did not stop them from losing market shares.

D. INJURY**1. Cumulative effect of the imports**

- (18) The imports originating in Poland and Egypt have had a cumulative effect, given the similarity of the products exported to the Community, the competition with like products manufactured by the Community industry and the significant volume of the exports.

2. Volume, market share and import prices

- (19) There has been a considerable increase in Poland's and Egypt's exports to the Community; they have risen:

— for Poland from 1 600 tonnes in 1989 to 18 000 tonnes in 1990 and 7 000 tonnes in the first quarter of 1991,

(d) Results

- (25) In 1988 a number of Community firms made small profits, and the situation improved briefly in the first half of 1989 as a result of the sharp rise in selling prices linked with the upturn in the steel industry and the impact of restructuring measures.

The Community industry nevertheless again recorded appreciable losses bordering on 26 %.

(e) Conclusion

- (26) Despite the restructuring effort made by Community producers, the industry's position has declined considerably, as reflected in the financial losses and the reduction in its market share. The Commission concludes accordingly that the industry has suffered material injury.

4. Cause and effect and other factors

- (27) It was ascertained in the course of the investigation that the trend in imports originating in Poland and Egypt, the relative increase in their combined market shares from 1,2 % in 1989 to 9,2 % in 1991, and the downward pressure on prices exerted by these imports, coincided with the deterioration in the Community industry's competitive and financial situation.
- (28) The Community examined whether other factors, such as imports of products from other non-Community countries, could have caused the injury to the Community industry.
- (29) While the Community industry is affected by imports from other non-Community countries, namely Norway, Sweden, Iceland, Venezuela, Yugoslavia, the former Soviet Union and Brazil, the increasing volume of sales of the Polish and Egyptian products and the undercutting of the prices charged by Community producers alone constitute a contributory factor to the deterioration in the Community industry's situation. In this context, it should be pointed out that imports from the countries listed above are subject to anti-dumping measures, and these countries would be the object of discrimination and the effectiveness of these measures would be undermined if no measures were taken against Poland and Egypt.
- (30) The Commission accordingly concluded, on the basis of the above, that imports of products originating in Poland and Egypt and covered by this

proceeding were a source of material injury to the Community ferro-silicon industry.

E. COMMUNITY INTEREST

- (31) It is in the Community's interest to restore fair competition, without the disturbance of unfair practices. Continued dumping giving rise to material injury would threaten the survival of the Community industry.

In view of ferro-silicon's importance in steel-making, it could not be in the Community's interest to depend wholly on non-Community suppliers, particularly since some are located at a great distance from the Community.

- (32) The representatives of the Community's processing industry and of individual firms have argued that it would be against the Community's interest to keep protective measures in force since they would weaken competitiveness with regard to imports of finished products originating in non-Community countries.
- (33) As is the case of any raw material, it is probable that price rises influence the costs of the manufacturing industries. However, no firm provided clear evidence of a specific effect of ferro-silicon price increases on its production costs; nor was evidence supplied of the possible impact of an increase in manufacturers' prices on their total sales. The Commission considers that the impact would be slight, particularly in view of the low percentage of ferro-silicon used in the production of a tonne of steel and the relatively small proportion of the overall cost of a tonne of steel represented by this product.

- (34) Having carefully compared the above arguments and the problems faced by the Community ferro-silicon industry, which can be attributed to a significant extent to the imports in question, the Commission has concluded that it is in the Community's interest to take action to prevent injury from occurring during the proceeding.

F. DETAILS OF THE MEASURES

- (35) Since for each of the two countries the dumping margin, expressed as a percentage of the net free-at-Community-frontier price of the product before customs duty, exceeds the injury threshold, the Commission considers that measures should be introduced in proportion to the injury thresholds.

- (36) As regards the injury threshold, in order to determine the margin by which the prices for exports to the Community must be increased in order to enable the Community industry to raise its prices too and so become profitable again, the Commission considers that Poland's and Egypt's imports should be effected at prices which would enable the Community industry to make a reasonable profit.

The Commission has taken as a reasonable profit margin an average of 6 %, which should guarantee the industry the investment it needs in order to survive. In the light of the most representative Community producers' production cost, prices need to be raised by 32 % in order to make a profit of this order.

This margin also represents the amount by which the prices for exports of ferro-silicon originating in Egypt and Poland should be increased in order for the injury caused by dumping to be removed.

G. FORM TO BE TAKEN BY THE MEASURES

1. Undertakings

- (37) The following Egyptian firm, which produced and exported to the Community during the reference period, namely:

— Efaco, The Egyptian Ferro-Alloys Co., Egypt

has proposed a price undertaking. The Commission, following consultations, has found this undertaking acceptable. There is therefore no need for the provisions of this Regulation to affect imports of ferro-silicon produced by this company.

2. Provisional duties

- (38) In the light of recital 36, the rate of the provisional duty should be 32 % for imports into the Community of ferro-silicon from Poland and Egypt.
- (39) A time limit should be laid down by which the parties concerned can make known their views in writing and request a hearing. All the statements made for the purpose of this Regulation are provi-

onal and may be reviewed if a definitive duty proposed by the Commission has to be calculated,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of ferro-silicon originating in Poland and Egypt, containing by weight 10 % to 96 % of silicon and falling within CN codes 7202 21 10, 7202 21 90 and 7202 29 00.

2. The duty, expressed as a percentage of the net free-at-Community-frontier price of the product before customs duty, shall be 32 % for Poland and Egypt.

3. The provisional anti-dumping duty shall not apply to products manufactured by the Egyptian company:

— Efaco, The Egyptian Ferro-Alloys Co., Egypt,

whose undertaking given in the context of this anti-dumping proceeding has been accepted.

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

5. Security equal to the amount of the provisional duty must be lodged in order for the products referred to in paragraph 1 to be released for free circulation.

Article 2

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

Article 3

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

Subject to the provisions of Articles 11, 12 and 13 of Regulation (EEC) No 2423/88, Article 1 of this Regulation shall be applied for a four month-period, unless the Council adopts definitive measures before the end of this period.

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

Done at Brussels, 30 June 1992.

For the Commission

Frans ANDRIESEN

Vice-President

COMMISSION REGULATION (EEC) No 1809/92**of 2 July 1992****adopting interim protective measures on applications for STM licences in the beef and veal sector submitted during the period 22 to 25 June 1992 for trade with Spain and Portugal**

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

Having regard to the Act of Accession of Spain and Portugal, and in particular Article 85 (1) and Article 252 (1) thereof,

Whereas Commission Regulation (EEC) No 3810/91 of 18 December 1991 laying down detailed rules for the application of the supplementary trade mechanism in the beef and veal sector between the Community as constituted on 31 December 1985 and Spain and Portugal and repealing Regulations (EEC) No 4026/89 and (EEC) No 3815/90⁽¹⁾, as amended by Regulation (EEC) No 716/92⁽²⁾, set the indicative ceilings applicable in the beef and veal sector and the maximum quantities for which STM licences may be issued in July and August 1992;

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

Whereas the licence applications lodged between 22 and 25 June 1992 are for a quantity in excess of that set for

the months of July and August 1992 for live animals; whereas as an interim protective measure only a percentage of the amounts applied for in that period should be granted and no further certificates issued for the time being,

HAS ADOPTED THIS REGULATION:

Article 1

For live animals of the bovine species, other than purebred breeding animals and animals for bullfights:

1. applications for STM licences for the following products submitted between 22 and 25 June 1992 and notified to the Commission shall be accepted for 96,898 % for Spain and 2,904 % for Portugal;
2. the issuing of STM licences in response to applications submitted from 29 June 1992 onwards is suspended for the time being.

Article 2

This Regulation shall enter into force on 3 July 1992.

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

Done at Brussels, 2 July 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 357, 28. 12. 1991, p. 53.

⁽²⁾ OJ No L 78, 24. 3. 1992, p. 5.

COMMISSION REGULATION (EEC) No 1810/92
of 2 July 1992
amending Regulation (EEC) No 3378/91 laying down detailed rules for the sale of
butter from intervention stocks for export

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

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EEC) No 816/92 ⁽²⁾, and in particular Articles 6 (7) and 28 thereof,

Whereas Commission Regulation (EEC) No 3378/91 ⁽³⁾, as last amended by Regulation (EEC) No 1321/92 ⁽⁴⁾, provides for quantities of butter in public storage to be made available to operators and invitations to tender to be organized in order, *inter alia*, to determine the minimum selling prices for butter intended for export either in the unaltered state or after processing; whereas Article 1 of the said Regulation stipulates that butter placed on sale must have entered into storage before 1 October 1990;

Whereas, in view of the development of butter stocks and of the quantities available, sales should be extended to butter entering into storage before 1 November 1990;

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

HAS ADOPTED THIS REGULATION:

Article 1

In Article 1 (1) of Regulation (EEC) No 3378/91, the date '1 October 1990' is hereby replaced by '1 November 1990'.

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, 2 July 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 86, 1. 4. 1992, p. 83.

⁽³⁾ OJ No L 319, 21. 11. 1991, p. 40.

⁽⁴⁾ OJ No L 140, 23. 5. 1992, p. 16.

COMMISSION REGULATION (EEC) No 1811/92

of 2 July 1992

adopting interim protective measures in so far as concerns Spain in regard to applications for STM licences coming from the Community of Ten for milk and milk products lodged between 22 and 26 June 1992

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal, and in particular Article 85 (1) thereof,

Whereas Commission Regulation (EEC) No 608/86⁽¹⁾ laying down detailed rules for applying the supplementary trade mechanism to milk products imported into Spain from the Community of Ten, as last amended by Regulation (EEC) No 705/92⁽²⁾, fixes the indicative ceilings for milk sector products for 1992 and splits these up into monthly ceilings;

Whereas applications for STM licences in the Community of Ten for cheese of categories 5 and 6 lodged between 22 and 26 June 1992 relate to quantities higher than the ceiling set for the month of July 1992;

Whereas Article 85 (1) of the Act of Accession states that the Commission may take interim protective measures necessary by an emergency procedure where the situation indicates that the initiative ceiling will be attained or exceeded; whereas to this it is necessary, as an interim protective measure, in view of the number of requests, for the products concerned and only for the Community of Ten, to issue licences up to a percentage of the quantities applied for categories 5 and 6 and to suspend all further issuing of licences for the products in question,

HAS ADOPTED THIS REGULATION:

Article 1

1. Applications for STM licences as referred to in Regulation (EEC) No 606/86, lodged between 22 and 26 June 1992 for the Community of Ten and lodged with the Commission, for milk products falling within:

— category 5 of CN code ex 0406 are hereby accepted up to 10,57 %;

— category 6 of CN code ex 0406 are hereby accepted up to 7,34 %.

2. The issuing of STM licences in the Community of Ten is hereby provisionally suspended for products falling within categories 5 and 6.

3. Without prejudice to any definitive measures the Commission may take, further applications for STM licences may be lodged from 20 July 1992 for all products in respect of that fraction of the indicative ceiling applicable from 1 August 1992.

Article 2

This Regulation shall enter into force on 6 July 1992.

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

Done at Brussels, 2 July 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 58, 1. 3. 1986, p. 28.

⁽²⁾ OJ No L 75, 21. 3. 1992, p. 29.

COMMISSION REGULATION (EEC) No 1812/92

of 2 July 1992

abolishing the corrective amount on the import of aubergines into the
Community of Ten from Spain

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 3709/89
of 4 December 1989 laying down general rules for imple-
menting the Act of Accession of Spain and Portugal as
regards the compensatory mechanism for imports of fruit
and vegetables from Spain ⁽¹⁾, and in particular Article 4
(2) thereof,Whereas Article 152 of the Act of Accession introduces
from 1 January 1990 a compensatory mechanism for
imports into the Community as constituted on 31
December 1985, hereinafter called 'the Community of
Ten', of fruit and vegetables from Spain for which a
reference price is fixed with regard to third countries;Whereas Regulation (EEC) No 3709/89 lays down general
rules for applying the said compensatory mechanism and
Commission Regulation (EEC) No 3815/89 ⁽²⁾ lays down
detailed rules for applying the said compensatory
mechanism;Whereas Commission Regulation (EEC) No 1598/92 ⁽³⁾
introduces a corrective amount on imports of aubergines
into the Community of Ten from Spain;Whereas Article 3 (4) of Regulation (EEC) No 3709/89
lays down the conditions under which a corrective
amount introduced pursuant to Article 3 (1) of the said
Regulation is to be abolished; adjusted; whereas the said
conditions require abolition of the corrective amount on
imports of aubergines into the Community of Ten from
Spain,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1598/92 is hereby repealed.

Article 2

This Regulation shall enter into force on 3 July 1992.

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

Done at Brussels, 2 July 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission⁽¹⁾ OJ No L 363, 13. 12. 1989, p. 3.⁽²⁾ OJ No L 371, 20. 12. 1989, p. 28.⁽³⁾ OJ No L 169, 24. 6. 1992, p. 11.

COMMISSION REGULATION (EEC) No 1813/92
of 2 July 1992
fixing the import levies on white sugar and raw sugar

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the market in sugar⁽¹⁾, as last amended by Regulation (EEC) No 61/92⁽²⁾, and in particular Article 16 (8) thereof,

Whereas Article 16 (1) of Regulation (EEC) No 1785/81 provides for charging a levy on imports of the products listed in Article 1 (1) of that Regulation ;

Whereas the import levy on white sugar and raw sugar must be equal to the threshold price less the cif price ; whereas the threshold price for each of these products was fixed by Council Regulation (EEC) No 1748/92⁽³⁾ fixing, for the 1992/93 marketing year, the derived intervention prices for white sugar, the intervention price for raw sugar, the minimum prices for A and B beet, the threshold prices, the amount of compensation for storage costs and the prices to be applied in Spain and Portugal ;

Whereas, pursuant to Article 101 (1) of Council Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community⁽⁴⁾, no levies shall apply on imports of products originating in the overseas countries and territories ; whereas, however, pursuant to Article 101 (4) of the abovementioned Decision, a special amount shall be charged on imports of certain products originating in the overseas countries and territories in order to prevent products originating from these countries and territories from receiving more favourable treatment than similar products imported from Spain or Portugal into the Community as constituted on 31 December 1985 ;

Whereas the cif price for raw sugar and white sugar is calculated by the Commission for a Community frontier crossing point which was fixed at Rotterdam by Regulation (EEC) No 431/68 of the Council of 9 April 1968

determining the standard quality for raw sugar and fixing the Community frontier crossing point for calculating cif prices for sugar⁽⁵⁾ ;

Whereas this price must be based on the most favourable purchasing opportunities on the world market established for each product on the basis of quotations or prices on that market adjusted for any deviation from the standard quality for which the threshold price is fixed ; whereas the standard quality for raw sugar was defined by Regulation (EEC) No 431/68 and that for white sugar by Regulation (EEC) No 793/72⁽⁶⁾ ;

Whereas, when the most favourable purchasing opportunities on the world market are being established, the Commission must take account of all available information on offers on the world market, on quotations on the exchanges which are important for world trade, on prices recorded on important third-country markets, and on sales concluded in international trade of which it has knowledge either directly or through the agency of the Member States ;

Whereas, however, pursuant to Regulation (EEC) No 784/68 of the Commission of 26 June 1968 laying down detailed rules for calculating cif prices for white sugar and raw sugar⁽⁷⁾, the Commission must disregard information if the goods concerned are not of sound and fair marketable quality or if the price quoted in an offer relates to small quantities and is not representative of the market ; whereas offer prices which can be assumed not to be representative of the actual market trends must also be disregarded ;

Whereas any offer or prices taken into consideration which are not for goods delivered in bulk cif Rotterdam must be adjusted ; whereas when this adjustment is being made account must be taken of the difference in the cost of transporting the goods between the port of loading and the port of destination and between the port of loading and Rotterdam ; whereas, if the price or the offer relates to goods in bags, it must be reduced by ECU 0,73 per 100 kilograms under the terms of Article 4 of Regulation (EEC) No 784/68 ;

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 6, 11. 1. 1992, p. 19.

⁽³⁾ OJ No L 181, 1. 7. 1992, p. 13.

⁽⁴⁾ OJ No L 263, 19. 9. 1991, p. 1.

⁽⁵⁾ OJ No L 89, 10. 4. 1968, p. 3.

⁽⁶⁾ OJ No L 94, 21. 4. 1972, p. 1.

⁽⁷⁾ OJ No L 145, 27. 6. 1968, p. 10.

Whereas, if information on sugar of the standard quality is to be comparable, the price increases or reductions fixed pursuant to Article 15 of Regulation (EEC) No 1785/81 must be added to or deducted from the offers taken into consideration in the case of white sugar; whereas, in the case of raw sugar, the corrective factors provided for in Article 5 of Regulation (EEC) No 784/68 must be applied;

Whereas, pursuant to Article 7 of Regulation (EEC) No 784/68, a special cif price may be established for sugar which has been specially treated or specially packed if the offer price for such sugar is lower than the cif price established pursuant to the provisions referred to above;

Whereas a cif price may, by way of exception, be left unchanged for a limited period if the offer price which served as a basis for the previous calculation of the cif price is not available to the Commission and if the offer prices which are available and which appear not to be sufficiently representative of actual market trends would entail sudden and considerable changes in the cif price;

Whereas the levy is altered only if the variation in the elements used to calculate it would entail an increase or a reduction of not less than ECU 0,24 per 100 kilograms in relation to the levy previously fixed;

Whereas, in accordance with Article 21 (1) of Regulation (EEC) No 1785/81, the nomenclature provided for in this Regulation is incorporated in the Common Customs Tariff;

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 subparagraph of Article 3 (1) of Council Regulation (EEC) No 1676/85 ⁽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 these exchange rates being those recorded on 1 July 1992;

Whereas it follows from applying these provisions that the levies for white sugar and raw sugar should be as set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1.

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

Article 2

This Regulation shall enter into force on 3 July 1992.

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

Done at Brussels, 2 July 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽²⁾ OJ No L 201, 31. 7. 1990, p. 9.

ANNEX

to the Commission Regulation of 2 July 1992 fixing the import levies on white sugar and raw sugar

(ECU/100 kg)

CN code	Levy ⁽¹⁾
1701 11 10	38,44 ⁽¹⁾
1701 11 90	38,44 ⁽¹⁾
1701 12 10	38,44 ⁽¹⁾
1701 12 90	38,44 ⁽¹⁾
1701 91 00	45,11
1701 99 10	45,11
1701 99 90	45,11 ⁽²⁾

⁽¹⁾ The levy applicable is calculated in accordance with the provisions of Article 2 or 3 of Commission Regulation (EEC) No 837/68.

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

⁽³⁾ No import levy applies to OCT originating products according to Article 101 (1) of Decision 91/482/EEC. However, an amount equal to the amount fixed by Regulation (EEC) No 1870/91 B to be levied in accordance with Article 101 (4) of the abovementioned Decision.

COMMISSION REGULATION (EEC) No 1814/92

of 2 July 1992

fixing the export refunds on rice and broken rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice ⁽¹⁾, as last amended by Regulation (EEC) No 674/92 ⁽²⁾, and in particular the first sentence of the fourth subparagraph of Article 17 (2) thereof,

Whereas Article 17 of Regulation (EEC) No 1418/76 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund;

Whereas Article 2 of Council Regulation (EEC) No 1431/76 of 21 June 1976 laying down general rules for granting export refunds on rice and criteria for fixing the amount of such refunds ⁽³⁾, provides that when refunds are being fixed account must be taken of the existing situation and the future trend with regard to prices and availabilities of rice and broken rice on the Community market on the one hand and prices for rice and broken rice on the world market on the other; whereas the same Article provides that it is also important to ensure equilibrium and the natural development of prices and trade on the rice market and, furthermore, to take into account the economic aspect of the proposed exports and the need to avoid disturbances of the Community market;

Whereas export possibilities exist for a quantity of 15 000 tonnes of wholly milled rice, falling within CN codes 1006 30 92 900, 1006 30 94 900 and 1006 30 96 900 to certain destinations; whereas the procedure laid down in Article 9 (4) of Commission Regulation (EEC) No 891/89 ⁽⁴⁾, as last amended by Regulation (EEC) No 337/92 ⁽⁵⁾, should be used; whereas account should be taken of this when the refunds are fixed;

Whereas Commission Regulation (EEC) No 1361/76 ⁽⁶⁾ lays down the maximum percentage of broken rice allowed in rice for which an export refund is fixed and specifies the percentage by which that refund is to be

reduced where the proportion of broken rice in the rice exported exceeds that maximum;

Whereas Article 3 of Regulation (EEC) No 1431/76 defines the specific criteria to be taken into account when the export refund on rice and broken rice is being calculated;

Whereas the world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination;

Whereas a separate refund should be fixed for packaged long grain rice to accommodate current demand for the product on certain markets;

Whereas the refund must be fixed at least once a month; whereas it may be altered in the intervening period;

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

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Council Regulation (EEC) No 1676/85 ⁽⁷⁾, as last amended by Regulation (EEC) No 2205/90 ⁽⁸⁾;
- 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 it follows from applying these rules and criteria to the present situation on the market in rice and in particular to quotations or prices for rice and broken rice within the Community and on the world market, that the refund should be fixed as set out in the Annex hereto;

Whereas by its Regulation (EEC) No 1432/92 ⁽⁹⁾ the Council prohibited trade between the Community and the Republics of Serbia and of Montenegro; that it is important to take account of it at the time of the fixing of the refunds;

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

⁽¹⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽²⁾ OJ No L 73, 19. 3. 1992, p. 7.

⁽³⁾ OJ No L 166, 25. 6. 1976, p. 36.

⁽⁴⁾ OJ No L 94, 7. 4. 1989, p. 13.

⁽⁵⁾ OJ No L 36, 13. 2. 1992, p. 15.

⁽⁶⁾ OJ No L 154, 15. 6. 1976, p. 11.

⁽⁷⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁸⁾ OJ No L 201, 31. 7. 1990, p. 9.

⁽⁹⁾ OJ No L 151, 3. 6. 1992, p. 4.

HAS ADOPTED THIS REGULATION :

2. Export refunds towards the Republics of Montenegro and Serbia are not fixed.

Article 1

1. The export refunds on the products listed in Article 1 of Regulation (EEC) No 1418/76 with the exception of those listed in paragraph 1 (c) of that Article, exported in the natural state, shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 3 July 1992.

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

Done at Brussels, 2 July 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX

to the Commission Regulation of 2 July 1992 fixing the export refunds on rice and broken rice

Product code	Destination (1)	Amount of refunds (ECU/tonne)
1006 20 11 000	—	—
1006 20 13 000	01	208,00
1006 20 15 000	01	208,00
1006 20 17 000	—	—
1006 20 92 000	—	—
1006 20 94 000	01	208,00
1006 20 96 000	01	208,00
1006 20 98 000	—	—
1006 30 21 000	—	—
1006 30 23 000	01	208,00
1006 30 25 000	01	208,00
1006 30 27 000	—	—
1006 30 42 000	—	—
1006 30 44 000	01	208,00
1006 30 46 000	01	208,00
1006 30 48 000	—	—
1006 30 61 100	01	260,00
	02	266,00
	03	271,00
	04	260,00
1006 30 61 900	01	260,00
	04	260,00
1006 30 63 100	01	260,00
	02	266,00
	03	271,00
	04	260,00
1006 30 63 900	01	260,00
	04	260,00
1006 30 65 100	01	260,00
	02	266,00
	03	271,00
	04	260,00
1006 30 65 900	01	260,00
	04	260,00
1006 30 67 100	—	—
1006 30 67 900	—	—

(ECU/tonne)		
Product code	Destination (¹)	Amount of refunds
1006 30 92 100	01	260,00
	02	266,00
	03	271,00
	04	260,00
1006 30 92 900	01	260,00
	04	260,00
	05	226,00
	06	282,00
1006 30 94 100	01	260,00
	02	266,00
	03	271,00
	04	260,00
1006 30 94 900	01	260,00
	04	260,00
	05	226,00
	06	282,00
1006 30 96 100	01	260,00
	02	266,00
	03	271,00
	04	260,00
1006 30 96 900	01	260,00
	04	260,00
	05	226,00
	06	282,00
1006 30 98 100	—	—
1006 30 98 900	—	—
1006 40 00 000	—	—

(¹) The destinations are identified as follows :

- 01 Austria, Liechtenstein, Switzerland, the communes of Livigno and Campione d'Italia,
- 02 Zones I, II, III, VI, Ceuta and Melilla,
- 03 Zones zones IV, V a), VII c), Canada and Zone VIII excluding Surinam, Guyana and Madagascar,
- 04 Destinations mentioned in Article 34 of Commission Regulation (EEC) No 3665/87,
- 05 Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan,
- 06 Refund fixed under the procedure laid down in Article 9 (4) of amended Regulation (EEC) No 891/89 in respect of a quantity of 15 000 tonnes of wholly milled rice for destination Zones I to VI and Zone VIII, excluding Guyana, Surinam and Madagascar.

NB : The zones are those defined in the Annex to Commission Regulation (EEC) No 1124/77, as last amended by Regulation (EEC) No 3049/89.

COMMISSION REGULATION (EEC) No 1815/92
of 2 July 1992
fixing the aid for cotton

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

Having regard to the Act of Accession of Greece, and in particular paragraphs 3 and 10 of Protocol 4 thereto, as amended by the Act of Accession of Spain and Portugal, and in particular Protocol 14 annexed thereto, and Commission Regulation (EEC) No 4006/87 ⁽¹⁾,

Having regard to Council Regulation (EEC) No 2169/81 of 27 July 1981 laying down the general rules for the system of aid for cotton ⁽²⁾, as last amended by Regulation (EEC) No 791/89 ⁽³⁾, and in particular Article 5 (1) thereof,

Whereas the amount of the additional aid referred to in Article 5 (1) of Regulation (EEC) No 2169/81 was fixed by Commission Regulation (EEC) No 1171/92 ⁽⁴⁾, as last amended by Regulation (EEC) No 1710/92 ⁽⁵⁾;

Whereas it follows from applying the rules and other provisions contained in Regulation (EEC) No 1171/92 to

the information at present available to the Commission that the amount of the aid at present in force should be altered as shown in Article 1 to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. The aid for unginned cotton referred to in Article 5 of Regulation (EEC) No 2169/81 shall be ECU 64,930 per 100 kilograms.
2. However, the amount of the aid will be confirmed or replaced with effect from 3 July 1992 to take account of the guide price of cotton adopted in respect of the 1992/1993 marketing year and which appear to have been offered in the largest quantities.

Article 2

This Regulation shall enter into force on 3 July 1992.

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

Done at Brussels, 2 July 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 377, 31. 12. 1987, p. 49.

⁽²⁾ OJ No L 211, 31. 7. 1981, p. 2.

⁽³⁾ OJ No L 85, 30. 3. 1989, p. 7.

⁽⁴⁾ OJ No L 122, 7. 5. 1992, p. 29.

⁽⁵⁾ OJ No L 179, 1. 7. 1992, p. 49.

COMMISSION REGULATION (EEC) No 1816/92

of 2 July 1992

fixing the export refunds 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 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 1738/92⁽²⁾, and in particular the fourth subparagraph of Article 16 (2) thereof,

Whereas Article 16 of Regulation (EEC) No 2727/75 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products in the Community may be covered by an export refund;

Whereas Article 2 of Council Regulation (EEC) No 2746/75 of 29 October 1975 laying down general rules for granting export refunds on cereals and criteria for fixing the amount of such refunds⁽³⁾ provides that when refunds are being fixed, account must be taken of the existing situation and the future trend with regard to prices and availabilities of cereals on the Community market on the one hand, and prices for cereals and cereal products on the world market on the other; whereas the same Article provides that it is also important to ensure equilibrium and the natural development of prices and trade on cereal markets and, furthermore, to take into account the economic aspect of the proposed exports and the need to avoid disturbances on the Community market;

Whereas Article 3 of Regulation (EEC) No 2746/75 defines the specific criteria to be taken into account when the refund on cereals is being calculated;

Whereas these specific criteria are defined, as far as wheat and rye flour, groats and meal are concerned, in Article 4 of Regulation (EEC) No 2746/75; whereas furthermore, when the refund on these products is being calculated, account must be taken of the quantities of cereals required for their manufacture; whereas these quantities were fixed in Commission Regulation No 162/67/EEC⁽⁴⁾, as last amended by Regulation (EEC) No 468/92⁽⁵⁾;

Whereas the world market situation or the specific requirements of certain markets may make it necessary to

vary the refund for certain products according to destination;

Whereas the refund must be fixed once a month; whereas it may be altered in the intervening period;

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

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 % a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Council Regulation (EEC) No 1676/85⁽⁶⁾, as last amended by Regulation (EEC) No 2205/90⁽⁷⁾,
- 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 it follows from applying the detailed rules set out above to the present situation on the market in cereals, and in particular to quotations or prices for these products within the Community and on the world market, that the refunds should be as set out in the Annex hereto;

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

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 (a), (b) and (c) of Regulation (EEC) No 2727/75, exported in the natural state, shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 3 July 1992.

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 171, 26. 6. 1992, p. 47.

⁽³⁾ OJ No L 281, 1. 11. 1975, p. 78.

⁽⁴⁾ OJ No 128, 27. 6. 1967, p. 2574/67.

⁽⁵⁾ OJ No L 53, 28. 2. 1992, p. 15.

⁽⁶⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁷⁾ OJ No L 201, 31. 7. 1990, p. 9.

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

Done at Brussels, 2 July 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX

to the Commission Regulation of 2 July 1992 fixing the export refunds on cereals and on wheat or rye flour, groats and meal

(ECU/tonne)		
Product code	Destination (1)	Amount of refund
0709 90 60 000	—	—
0712 90 19 000	—	—
1001 10 10 000	—	—
1001 10 90 000	04	50,00
	02	20,00
1001 90 91 000	—	—
1001 90 99 000	04	40,00
	05	25,00
	02	20,00
1002 00 00 000	03	21,00
	02	20,00
1003 00 10 000	—	—
1003 00 90 000	04	40,00
	02	20,00
1004 00 10 000	—	—
1004 00 90 000	—	—
1005 10 90 000	—	—
1005 90 00 000	04	60,00
	02	0
1007 00 90 000	—	—
1008 20 00 000	—	—
1101 00 00 100	01	87,00
1101 00 00 130	01	82,00
1101 00 00 150	01	75,00
1101 00 00 170	01	70,00
1101 00 00 180	01	65,00
1101 00 00 190	—	—
1101 00 00 900	—	—
1102 10 00 500	01	87,00
1102 10 00 700	—	0
1102 10 00 900	—	—
1103 11 10 200	01	165,00
1103 11 10 400	01	145,00
1103 11 10 900	01	0
1103 11 90 200	01	87,00
1103 11 90 800	—	—

(¹) The destinations are identified as follows :

- 01 All third countries,
- 02 Other third countries,
- 03 Switzerland, Austria and Liechtenstein,
- 04 Switzerland, Austria, Liechtenstein, Ceuta and Melilla,
- 05 Romania.

NB : The zones are those defined in Commission Regulation (EEC) No 1124/77, as last amended by Regulation (EEC) No 3049/89.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 25 July 1990

on aid granted by the Italian Government to a manufacturer of ophthalmic products (Industrie Ottiche Riunite — IOR)

(Only the Italian text is authentic)

(92/329/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having given notice in accordance with the above Article to interested parties to submit their comments, and having regard to those comments,

Whereas :

I

Industrie Ottiche Riunite SpA (IOR) was created in 1969, when Filotecnica Salmoiraghi merged with Officine Galileo di Marghera. From 1975 to 1983 IOR's only shareholder was Finmeccanica, from 1983 to 1986 Sofin, both belonging to the public holding IRI.

In October 1986 IOR was partly privatized. 50 % of its shares were sold to the private group Finalp for their nominal value Lit 2 billion on 15 October 1986 and the assets of its contact lenses division were sold to the Ciba-Geigy group. The privatization was completed in March 1989, when Finalp took over the other 50 % of IOR's shares as well.

Before its partial privatization IOR was never a profitable company. Its losses amounted to Lit 8,2 billion in 1982, 5,6 billion in 1983, 6,5 billion in 1984, 11,5 billion in 1985 and 11,9 billion in 1986, which corresponds to 31,

18, 19, 26 and 24 % respectively of its annual turnover. These losses were made good by its public shareholder. The losses IOR made in 1985 and expected in 1986 up to 15 October were covered by an advance of Lit 17 339,9 million by Sofin; within the framework of the partial privatization of IOR in October 1986, Sofin waived its claim to this sum.

The Commission was not notified of this step under Article 93 (3).

II

The Commission, upon learning that Sofin had provided Lit 17,3 billion to IOR and had subsequently waived its claim to this sum and considering that such action can constitute State aid, invited the Italian Government to provide information by letters dated 30 November 1987, 20 January 1988 and 13 April 1988.

The Italian Government replied by telexes dated 29 February and 13 June 1988, providing incomplete information on the privatization and stating that Sofin's action was a normal shareholder's decision and not a form of State aid.

After an initial investigation of the available information the Commission considered that the Lit 17,3 billion awarded to IOR by its public shareholder did constitute State aid falling under the prohibition laid down in Article 92 (1), to which none of the exemptions set out in the said Article appeared to be applicable.

Neither could the Commission exclude the possibility that the financing of IOR after 15 October 1986 contained additional elements of State aid. On 3 November 1988 the Commission therefore decided to initiate the procedure laid down in Article 93 (2) regarding that aid and invited the Italian Government by letter dated 25 November 1988 to submit its observations.

III

By letter dated 25 January 1989 the Italian Government submitted its observations under the procedure. It stated that Sofin had invested approximately Lit 7 billion in IOR between 1983 and 1986 in order to improve its productivity and efficiency. It stressed that Sofin, by covering IOR's losses, had acted as any investor in a similar position would have done, because Sofin — being the one and only shareholder of IOR until October 1986 — was in any case liable under Italian law for IOR's debts.

The Italian Government also emphasized Finalp's commitment in 1986 to improve IOR's situation, by providing bank guarantees, by investing Lit 14 billion and by means of synergies with other companies it owns.

IOR's financial results in 1987 bore witness to its successful restructuring. Consequently the Italian Government did not subscribe to the Commission's point of view that the payment of Lit 17,3 billion by Sofin constituted State aid. If the Commission should nevertheless interpret this intervention as constituting aid, the Italian Government believed that the exemptions set out in Article 92 (3) should apply to it, given the similarities between this case and three others, which had been cited in the Commission's Seventeenth Report on Competition Policy (points 224, 227 and 229) where the Commission had closed the procedure.

By letter dated 16 February 1989 the Italian Government provided 11 annexes to its letter of 25 January, mainly containing factual information on IOR's accounts and privatization.

In reply to five additional questions put by the Commission by letter dated 11 October 1989, the Italian Government provided information by means of a telex message dated 19 December 1989. These questions concerned a payment of Lit 5 661 million by Sofin to IOR in 1987; the conditions on which Sofin had lent Lit 6 000 million to IOR; the conditions on which Sofin had remained a 50 % shareholder between 15 October 1986 and 15 March 1989; the financial details of the partial privatization in October 1986; other possible candidates for taking over IOR. Notably on the latter subject, additional information was provided by letter received on 12 June 1990 and in a bilateral meeting on 6 July 1990.

In the course of consulting other interested parties, observations were also submitted by Finalp, Sofin and IOR; none of them considered that the Italian Government's actions contained elements of State aid and they agreed with the Italian Government that, even if there were such aid elements, they would surely be compatible with the common market.

The Governments of three other Member States, namely Germany, Denmark and the Netherlands, submitted observations within the framework of the procedure supporting the Commission's decision to initiate the procedure.

All observations made by third parties were submitted to the Italian Government by letter dated 18 September 1989 inviting its comments. These comments were sent to the Commission by telex message dated 17 January 1990.

IV

The provision of funds to public enterprises by their shareholder may involve elements of State aid. In order to verify whether such a provision constitutes aid, it would in the first place be appropriate, ignoring any social elements or regional or sectoral policy, to consider whether under similar circumstances a private shareholder would go ahead with such a step on the basis of the same conditions in the light of expected profitability.

Regarding IOR the Commission notes that this company's accumulated losses amounted to Lit 43 700 million between 1982 and 1986, compared with a share capital of Lit 4 000 million.

It is the Commission's opinion that a private investor would not have paid almost eleven times his original investment in five years, in order to be able to dispose of half of the investment at its nominal price, as Sofin did in 1986. Consequently the provision of Lit 17 339,9 million by Sofin in 1986, first in the form of a credit, later as a grant, constitutes State aid.

Within the framework of the procedure the Italian Government claimed that Sofin had acted as any investor in a similar position would have done by covering IOR's losses, because it was the one and only shareholder of IOR until 15 October 1986 and therefore liable under Italian law for all its debts. The liquidation of IOR would consequently have entailed even higher costs for Sofin.

The Commission cannot subscribe to this point of view. A private investor will normally be reluctant to become the one and only shareholder of a company, if as a consequence he must assume unlimited liability for it; he will make sure that this additional risk is outweighed by additional gains.

In the case of IOR the Commission notes that Finmeccanica (IRI group) became the one and only shareholder of IOR in 1975, when it took over the shares held by Montedison. In 1983 IRI transferred IOR from Finmeccanica to Sofin. According to the information provided by IOR, which was not contradicted by the Italian Government, IOR never had a profitable year between its creation in 1969 and 1988, after its partial privatization. It is the Commission's view that Finmeccanica, Sofin and more generally IRI, by becoming the one and only shareholder of IOR, accepted a risk which a private investor would have refused.

Consequently Sofin's status as unique shareholder of IOR in 1986 in no way alters the qualification made above, that the sum of Lit 17 339,9 million provided by Sofin in 1986, in order to cover part of IOR's losses, constitutes State aid.

Another point made by the Italian Government, by Sofin and by IOR concerned Finalp's financial engagements, which they viewed as a counterpart to the steps taken by Sofin. Finalp would notably finance Lit 14 000 million investments in IOR — in reality it financed Lit 20 000 million — would make IOR profitable again and would release Sofin from its obligations and guarantees as sole shareholder of IOR.

It is the Commission's opinion that Finalp's commitment to restore IOR's profitability was of benefit to itself and to IOR, but much less so to Sofin, which withdrew from IOR completely in March 1989 when it disposed of the remaining 50 % of IOR's shares to Finalp. Finalp's action therefore does not alter the Commission's opinion that the steps taken by Sofin, which related to the period before 15 October 1986, constituted State aid.

The Commission also verified whether additional aid elements were contained in the prices at which the assets of IOR's contact lenses division were sold to Ciba-Geigy and the shares of the remainder of IOR to Finalp in 1986 and 1989.

Ciba-Geigy paid Lit 130 million for the assets of IOR's contact lenses division, which price was well below their book value at the time. Finalp paid the nominal value for the shares of the remainder of IOR — Lit 1 000 per share — in 1986 and 1989.

The Commission notes that in 1986 Sofin invited an accountant other than its regular accountant to establish the current theoretical value of IOR on 31 December

1985. The outcome was a value of minus Lit 32,455 million on that date.

That same year, Sofin invited five possible candidates to take over IOR to submit a bid; when doing so Sofin did not impose any prior conditions which might have influenced the price offered. Of these five candidates, three were interested in buying IOR. Of these three, Finalp's bid was the most attractive, in terms of the price offered as well as the prospects for continuity.

Given that Finalp had no interest in IOR's contact lenses division, Sofin sold the assets of this division — which made monthly losses of Lit 200 million — to Ciba-Geigy, the only candidate it could find, the price being the result of bilateral negotiations.

Having examined the information provided by the Italian Government, Sofin, Finalp and IOR, the Commission accepts that the terms on which IOR was privatized are comparable to those Sofin might have obtained in an open bid and that, consequently, the privatization of IOR did not entail additional elements of State aid.

Finally, the Commission also investigated the transition period between 15 October 1986 and 15 March 1989, in which Sofin still held 50 % of IOR's shares, in order to ensure that, in this period, Sofin had not financed a disproportionately large part of IOR's restructuring programme.

The Italian Government stressed within the framework of the procedure that Sofin had received a fixed dividend on its 50 % stake in IOR, which had been set at Lit 536 million for 1988 and Lit 898 million for 1989. Sofin also received interest — equal to the prime rate awarded by banks — on a loan of Lit 6 billion to IOR.

Even though one may question whether the financial status of IOR justified the use of the prime rate, the Commission is willing to accept that the co-financing of IOR between 15 October 1986 and 15 March 1989 did not entail further elements of State aid.

Consequently, the Commission identifies one aid to IOR, amounting to Lit 17 339,9 million, granted in 1986.

V

By the end of 1985 IOR had a workforce of 494, mainly involved in the production of ophthalmic lenses of glass and of organic matter, traditional as well as contact lenses.

There is trade between Member States in ophthalmic lenses, either unmounted (Nimexe 9001) or mounted (Nimexe 9004) as shown in the following tables:

Exports of lenses (Nimexe 9001 + 9004) from Italy to other Member States

Year	to other Member States (ECU million)	Percentage of total intra-Community exports (in %)
1985	34,1	13
1986	43,7	14
1987	48,7	15
1988	50,1	15

Imports of lenses (Nimexe 9001 + 9004) into Italy from other Member States

Year	from other Member States (ECU million)	Percentage of total intra-Community imports (in %)
1985	29,6	12
1986	32,7	12
1987	34,2	12
1988	41,2	12

There is competition between manufacturers of ophthalmic lenses. According to the date provided within the framework of the procedure, IOR accounted for 27 % of Italian production of lenses in 1985, 27,7 % in 1986 and — further to the split-off of its contact lenses division — 22,2 % in 1987.

No precise data on IOR's market share in the Community are available. An approximation was provided by Sofin, according to which IOR's sales of contact lenses in 1984 amounted to 3,8 % of total consumption in 1983 in Italy, Germany, France and the United Kingdom. By extrapolating these data on the basis of population, IOR's market share for contact lenses in the Community of Ten in 1983/84 was approximately 3,2 %. For traditional ophthalmic lenses made of glass, IOR's sales represented 4,5 % of consumption in the four large Member States, which can be extrapolated to an approximate market share of 3,8 % in the Community of Ten in 1983/84. Similarly, its market share for plastic lenses was 7,7 % in the four large Member States and approximately 6,5 % in the Community.

The traditional position of expensive brand lenses has gradually been eroded by cheaper, less known alternatives, a growing part of which is imported from third countries.

The Community as a whole is a net exporter of ophthalmic lenses, albeit with a decreasing margin, as shown in the following table.

Exports and imports of the Community to/from third countries

(ECU million)

Year	Exports EUR-12	Imports EUR-12
1985	41,2	21,5
1986	38,9	22,1
1987	38,3	25,2
1988	37,8	27,9

Where financial assistance from the State strengthens the position of certain enterprises compared with that of others competing with them in the Community, it must be deemed to affect those other enterprises.

Consequently, the aid which the Italian Government has granted to IOR affects trade between Member States and distorts or threatens to distort competition within the meaning of Article 92 (1).

VI

By not notifying the Commission, at the proposal stage, of its decision to grant aid to IOR, the Italian Government failed to fulfil its obligations pursuant to Article 93 (3).

The Commission — making use of a possibility given to it by Article 93 (2) and by the Court of Justice in its Judgment of 12 July 1973 in Case 70/72 (1), confirmed in its Judgment of 24 February 1987 in Case 310/85 (?) — can require Member States to recover aid granted without prior notification, where such aid is found to be incompatible with the common market, from the recipients thereof.

VII

The exceptions to the general incompatibility of the aid set out in Article 92 (2) are inapplicable in this case in view of the nature of the aid which is not directed towards attainment of that provision.

Article 92 (3) lists the aid whic may be considered compatible with the common market. Compatibility with the Treaty must be viewed in the context of the Community as a whole and not in that of a single Member State. In order to ensure the proper functioning of the common market and to take into account the principles laid down in Article 3 (f) of the Treaty, the exceptions to the principle of Article 92 (1) set out in paragraph 3 of that Article must be interpreted strictly when any aid scheme or any individual aid award is examined.

(1) [1973] ECR 813.
(2) [1987] ECR 901.

In particular, they may be applied only where the Commission establishes that, without the aid, the free play of market forces would not by itself induce potential recipients to act in such a manner as to contribute to the attainment of one of the objectives sought.

To apply the exceptions to cases which do not contribute to the attainment of such an objective, or where the aid is not essential to that end, would be tantamount to granting undue advantages to the industries or firms of certain Member States, the financial position of which would be bolstered, and might affect trade between Member States and distort competition without this being justified in any way within the meaning of Article 92 (3).

The Italian Government has been unable to give, or the Commission to discover, any justification for a finding that the aid in question falls into any of the categories of exception provided for in Article 92 (3).

With regard to the exceptions provided for in Article 92 (3) (a) and (c) for aid that promotes or facilitates the development of certain areas, the Commission notes that IOR is located at Porto Marghera (Venice). The standard of living there is not abnormally low and there is no serious unemployment there within the meaning of the exception provided for in Article 92 (3) (a), nor is the area in which Porto Marghera is located at present included among those receiving special regional assistance within the meaning of the exception provided for in Article 92 (3) (c). Finally, aid granted in order to cover losses is not designed to contribute to the development of certain economic areas, as set out in the Commission's principles of coordination of regional aid systems⁽¹⁾.

As to the exceptions provided for in Article 92 (3) (b), the aid in favour of IOR is intended neither to promote the execution of an important project of common European interest nor to remedy a serious disturbance in the Italian economy; neither has the Italian Government advanced any arguments in favour of a possible application of these exceptions.

As to the exceptions provided for in Article 92 (3) (c) in favour of aid to facilitate the development of certain economic activities, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, the Commission notes that the aid granted to IOR by the Italian Government via Sofin in

1986 was based on losses sustained by IOR before 15 October 1986.

Without the aid in question IOR would have had to shut down, thereby enabling competitors in Italy, in other Member States and in third countries to expand.

It is the Commission's well-established policy not to consider that loss-compensation facilitates the development of a mature economic activity but, on the contrary, to consider that such aid, more than any other, alters trading conditions in the Community to an extent contrary to the common interest. Consequently, the aid granted in order to compensate IOR's losses does not qualify for the exception set out in Article 92 (3) (c).

The fact that IOR was partly privatized in 1986 and subsequently underwent restructuring due to Finalp's efforts in no way alters this conclusion. Neither can the alleged similarities between this aid and other cases mentioned by the Italian Government lead to a different finding. The Commission must verify the compatibility of every aid on its own merits, taking into account all particularities of the sectors and regions, the type of aid, and the conditions of trade and competition, which may change over time.

Consequently, none of the exemptions provided for in Article 92 can apply to the aid in question.

VIII

In conclusion, the aid of Lit 17 339,9 million is unlawful, the Italian Government having failed to fulfil its obligations pursuant to Article 93 (3) of the EEC Treaty. Furthermore, as set out above, the aid is incompatible because it does not meet the conditions which are required in order to benefit from one of the exemptions provided for in Article 92 (3).

The Commission has decided that in this particular case, repayment of the aid should not be demanded. This decision is based on the time which has passed between the date the aid became known to the Commission and the date this Decision was taken. This long interval would be difficult to justify with respect to the case-law of the Court of justice⁽²⁾ concerning procedural time limits,

⁽¹⁾ OJ No C 31, 3. 2. 1979, p. 9.

⁽²⁾ Order of the Court of 11 July 1979 in Case 59/79, *Fédération Nationale des Producteurs de Vins de Table v. Commission*, [1979] ECR p. 2425, and Judgment of 24 November 1987 in Case 223/85, *RSV v. Commission*, [1987] ECR p. 4617.

HAS ADOPTED THIS DECISION :

Article 2

This decision is addressed to the Italian Republic.

Article 1

Done at Brussels, 25 July 1990.

The aid granted by the Italian Government to Industrie Ottiche Riunite in 1986 amounting to Lit 17 339,9 million is declared incompatible with the common market. The aid is furthermore unlawful for breach of procedure.

For the Commission

Leon BRITTAN

Vice-President

COMMISSION DECISION

of 18 December 1991

on aid by Germany to the Deggendorf textile works

(Only the German text is authentic)

(92/330/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having given notice to the parties concerned to submit their comments in accordance with Article 93,

Whereas :

I

On 25 February 1991, pursuant to Article 93 (3) of the EEC Treaty, the German Permanent Representation notified the Commission of a plan to grant aid to the firm Textilwerke Deggendorf GmbH. The firm is mainly active in the production of synthetic fibres, a sector in which the relevant Community rules require the prior notification of all aid proposals.

The aid was to be financed by the 'Bayerisches regionales Förderprogramm', approved by the Commission by letter dated 21 December 1988.

Further information regarding the proposed investment are requested from the German authorities by letter dated 14 March 1991. The reply was received by the Commission on 8 May 1991.

By letter dated 27 June 1991 the Commission informed the German Government that it had decided to initiate Article 93 (2) proceedings in respect of the aid and asked the German Government to submit its comments.

Interested third parties were informed of the Commission's decision through publication of a notice in the *Official Journal of the European Communities*(⁽¹⁾).

The aid relates to investment to be carried out in the firm Pietsch, whose capital was bought by Textilwerke

Deggendorf GmbH for DM 1 when it was threatened with closure in 1989.

Pietsch, which specializes exclusively in the manufacture of textile curtains, has been subjected by its new owner to a take-over and modernization plan to be supported financially by the Land of Bavaria.

The investment to be aided, amounting to DM 11,95 million, will allow the maintenance of the 134 existing jobs and the creation of 15 new jobs in Pietsch.

The take-over and modernization plan, which was initiated in July 1989 when the firm's assets were taken over, is to extend over three years and to involve the carrying-out of DM 11,95 million in investment, including DM 2 million for real estate investment and DM 4 million for the purchase of machinery specifically designed for the manufacture of curtains.

Deggendorf is to receive from the Bavarian Ministry for Economic Affairs two soft loans (4,5 % interest) financed under the regional programme of the Land and with a three-year grace period. The first loan, amounting to DM 2,8 million, is to be for 15 years and the second, amounting to DM 3 million, for eight years.

The net grant equivalent of the interest rate subsidy may be put at 3,46 % in the case of the first loan and 2,77 % in the case of the second. The public loans will finance 48,53 % of the investment, to be completed by July 1992.

On the basis of the information available to it, the Commission examined the competition policy impact of the financial and accounting relationship between Deggendorf and Pietsch.

The Commission was not able to determine whether a perfectly clear distinction could be established between the production of synthetic fibres and the new investment. However, it took the view that the aid was liable indirectly to favour Deggendorf, which manufactures products that may not in principle receive aid under the Community rules applicable to synthetic fibres.

(⁽¹⁾) OJ No C 207, 8. 8. 1991, p. 6.

The Commission also took account of the fact that, on 21 May 1986, it took a negative Decision on aid incompatible with the common market that had been granted to Degendorf between 1981 and 1983. The Decision 86/509/EEC⁽¹⁾ required the repayment of the DM 6,12 million subsidy and the DM 11 million soft loan which had been granted. These have still not been repaid, and Degendorf is therefore still the recipient of illegal aid which artificially enhances its competitiveness.

Lastly, the Commission took the view that, on the Community market for polyamide and polyester yarn, which is at the same time highly competitive, with several producers on each of the national markets, and characterized by stagnant demand, highly capital-intensive investment and reduced profit margins, the aid threatens to distort competition and to affect trade between Member States. Consequently, the aid does not fulfil the conditions that would allow it to qualify for one of the exemptions provided for in Article 92 (1) to (3) and is incompatible with the common market within the meaning of Article 92 (1) of the Treaty.

In reaching this view, the Commission carried out an analysis similar to that which it had carried out several months previously when examining aid granted to the same firm Textilwerke Degendorf GmbH for investment to rationalize the production of stockings and polyamide yarn.

The Commission had concluded that that aid was compatible with the common market, but made its decision subject to the requirement that the German authorities should not actually disburse the aid until the incompatible aid granted illegally from 1981 to 1983 had been repaid.

In its decision to initiate proceedings in respect of the plan to grant restructuring aid to Pietsch⁽²⁾, the Commission referred to this requirement, stating that 'if this procedure should result in a positive decision authorizing grant of the aid, the aid should be actually paid only once the illegal aid covered by the Decision of 21 May 1986 has been reimbursed'.

II

The German Government, in submitting its comments under the Article 93 (2) procedure by letter dated 30 July 1991, confirmed and amplified the position taken in the

notification, thus providing the Commission with additional information enabling it to assess — taking account of its effects on competition — the link between Textilwerke Degendorf GmbH, the undisputed recipient of the aid, and Pietsch, the firm in which the aided investment will be carried out.

The German authorities regarded as negligible the effects of the aid on synthetic fibre production in the context of Textilwerke Degendorf's overall budget.

The Danish and Dutch Governments and the British Textile Confederation sent the Commission brief comments, which were transmitted to the German Government, eliciting no further comments on its part. The German Government presented its reactions to the Commission's decision by letter of 30 July 1991.

III

The subsidized DM 5,8 million loan granted to Textilwerke Degendorf GmbH under the 'Bayerisches regionales Förderprogramm' approved by the Commission by letter dated 27 December 1988 constitutes aid within the meaning of Article 92 (1) of the EEC Treaty in that it enables the firm to carry out investment without bearing the full costs.

The aid was properly notified to the Commission in accordance with Article 93 (3) of the EEC Treaty and with the prior notification requirement provided for in the Community rules applicable to all aid proposals, of whatever form, in favour of companies in the synthetic fibres sector.

The Commission was thus enabled to formulate its views and assess the proposed aid.

The financial and accounting relationship between Textilwerke Degendorf and Pietsch appears to the Commission to have no effect on fibre production in the context of the overall budget of the parent company. However, the link increases Textilwerke Degendorf's market since Pietsch uses synthetic yarn in the manufacture of its curtains.

In its decision of 26 March 1991 the Commission took the view that an additional market for the production of synthetic yarn helped to reduce the general surplus of supply existing in the sector.

⁽¹⁾ OJ No L 300, 24. 10. 1986, p. 34.

⁽²⁾ Letter of 27 June 1991 and OJ No C 207, 8. 8. 1991.

Thus, the link between synthetic yarn and fibre production and the new investment to be financed partly from public funds does not prompt the Commission to assess the planned aid by reference to the unfavourable *a priori* position contained in the rules applicable to the synthetic fibres sector.

With specific regard to the firm Pietsch, which manufactures only textile curtains, the Commission notes that the Land of Bavaria intends to support its take-over and modernization plan. The proposed aid is to be granted under a regional aid scheme approved by the Commission, under the terms provided for by the scheme (aid in the form of an interest rate subsidy on loans, the intensity of the aid being limited to 8 % net grant equivalent). The Commission is in a position to take the view that, by aiming to maintain the 134 existing jobs in Pietsch and to create 15 additional permanent jobs in Deggendorf's area, the proposed aid facilitates the development of the economic area under consideration and may consequently be considered to be compatible with the common market pursuant to Article 92 (3) (c).

IV

However, the Commission notes that, until such time as Textilwerke Deggendorf GmbH has repaid all the aid which it improperly received from 1981 to 1983, its competitiveness will continue to be enhanced by an advantage that is not without impact on trading conditions.

Contrary to the comments made by the German authorities after the Commission decided to initiate proceedings, the Commission does not reproach Textilwerke Deggendorf GmbH for having appealed to a German court to have an administrative decision relating to it annulled.

However, the Commission notes on the one hand that the actual recovery of the illegal and incompatible aid has not yet taken place and on the other that it does not have any means of coercion at its disposal to accelerate or enforce the implementation of its decision of 21 May 1986. In that decision, in which it found that aid granted to the company between 1981 and 1983 was illegal, the Commission requested the repayment of subsidies amounting to DM 6,12 million and soft loans amounting to DM 11 million.

Since that negative Decision was not appealed against before the Court of Justice, it has become final. On the other hand, the German Government appealed to the Court of Justice for annulment of the Commission's decision of 26 March 1991. The Commission has already pointed out to the German Government in its decision of

26 March 1991 concerning Textilwerke Deggendorf that, in its examination of aid cases, it has to take account of all the circumstances that may influence the impact of the aid on trading conditions within the Community.

In a recent judgment, the Court of Justice held that, when the Commission examines the compatibility of aid with the common market, it must take account of all the relevant factors, including where appropriate the context already assessed in a previous decision and the requirements which such previous decision may have imposed on a Member State⁽¹⁾. Accordingly, the Commission may legitimately base a subsequent decision on failure to comply with a condition laid down in a previous decision relating to the same firm, which is the situation applying in this case.

The antecedents of the case reinforce such an analysis and prompt the Commission to reaffirm on this point the argument put forward in its decision of 26 March 1991; the improper advantage which Textilwerke Deggendorf has enjoyed since 1981/83 has conferred on the firm an unjustified financial gain which will continue until such time as the illegal and incompatible aid previously received is actually paid back.

Consequently, the Commission is justified in taking the view that the aid in question, which is incompatible with the common market, may not actually be granted to Textilwerke Deggendorf GmbH until the firm has repaid the incompatible aid referred to in its Decision of 21 May 1986.

The aid illegally granted, which Deggendorf has refused to repay since 1986, and the new aid for the investment currently under consideration would have the combined effect of giving the firm an excessive and improper advantage that would adversely affect trading conditions to an extent contrary to the common interest.

Consequently, even if the aid of DM 744 485 currently planned through the granting of subsidized loans amounting to DM 5,8 million must be considered to be compatible with the common market, the Commission considers that its disbursement should be suspended pending the repayment of the incompatible aid referred to in its 1986 decision.

This situation has arisen as a result of the negligent behaviour of the German Government and of Deggendorf, who have acted in infringement of the mandatory rules laid down in Article 93 (3). Suspension of the disburse-

⁽¹⁾ Judgment of 3 October 1991 in Case 261/89, not yet reported.

ment of the current aid is made all the more necessary by the fact that the Commission does not have any other means of coercion at its disposal to accelerate or enforce implementation of its 1986 decision.

Furthermore, it should be borne in mind that, in its notice pursuant to Article 93(2) of the Treaty, the Commission already drew attention to the double distortion of competition resulting from the non-repayment of the previous incompatible aid by Textilwerke Deggendorf GmbH. Neither the German Government nor the firm have put forward any arguments or remarks that might change the Commission's assessment on this point.

In conclusion, the aid amounting to DM 744 485 which the German Government proposes to grant to Deggendorf is compatible with the common market, but may be granted only when Textilwerke Deggendorf GmbH has repaid the aid illegally received between 1981 and 1983 and referred to in Decision 86/509/EEC.

The Commission is obliged to draw this conclusion because Textilwerke Deggendorf has since 1981/83 been improperly benefiting from aid totalling DM 17,12 million and since it still persists in refusing to comply with the requirements incumbent upon it under Community law by not repaying the relevant aid. It should be stressed that the suspensory condition laid down in this Decision does not conflict with the suspensory clause laid down in the decision of 26 March 1991: firstly, because the desired effect is the same both cases, namely to prevent Textilwerke Deggendorf, through its attitude, from continuing to benefit from advantages deriving from an unjustified financial gain, and secondly because the present suspensory clause will cease to have effect as soon as the firm has complied with its repayment obligations as laid down in the decision of 21 May 1986. (The same applies to the suspensory clause laid down in the decision of 26 March 1991),

HAS ADOPTED THIS DECISION:

Article 1

The aid in the form of two subsidized loans of DM 2,8 million and DM 3 million granted to Textilwerke Deggendorf GmbH for 15 years and eight years respectively at 4,5 % interest with a three-year grace period and notified to the Commission by letter dated 25 February 1991 from the German authorities is compatible with the common market within the meaning of Article 92 of the EEC Treaty.

Article 2

The German authorities shall suspend payment to Deggendorf of the aid referred to in Article 1 of this Decision until such time as they have recovered the incompatible aid referred to in Article 1 of Decision 86/509/EEC.

Article 3

The German Government shall inform the Commission within two months of the date of notification of this Decision of the measures taken to comply therewith.

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 18 December 1991.

For the Commission

Leon BRITTAN

Vice-President

COMMISSION DECISION

of 30 June 1992

accepting the Egyptian producer's undertaking in connection with the anti-dumping proceeding concerning imports of ferro-silicon originating in Poland and Egypt

(92/331/EEC)

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 Article 10 thereof,

After consultation within the Advisory Committee as provided for in the said Regulation,

Whereas :

A. PROVISIONAL MEASURES

- (1) Commission Regulation (EEC) No 1808/12⁽²⁾ imposed a provisional anti-dumping duty on imports into the Community of ferro-silicon originating in Poland and Egypt and falling with CN codes 7202 21 10, 7202 21 90 and 7202 29 000.

B. UNDERTAKINGS

- (2) All the producers concerned had been informed of the outcome of the investigation, but the Egyptian producer EFACO (The Egyptian Ferro-Alloys Co.) gave an undertaking in accordance with Article 10 of Regulation (EEC) No 2423/88.
- (3) On the basis of recitals 35 and 36 of Regulation (EEC) No 1808/92, the effect of this undertaking would be to increase import prices in the Community by an amount considered sufficient, in the present circumstances, to eliminate the injury resulting from dumping.

- (4) The Commission considers this offer to be acceptable, and so the investigation can be terminated in respect of the said Egyptian producer.
- (5) The Commission nevertheless notes the very tense situation on the Community market in ferro-silicon. The Community authorities therefore need to keep a close eye on exporters' competitive behaviour on the Community market and on the Community industry's financial and trade situation.
- (6) The Commission would also point out that where a undertaking has been withdrawn or where the Commission has reason to believe that it has been violated and where Community interests call for such intervention, the Commission may, in accordance with Article 10 (6) of Regulation (EEC) No 2423/88, apply provisional anti-dumping duties forthwith on the basis of the facts established before acceptance of the undertaking.
- (7) When the Anti-Dumping Committee was consulted about acceptance of the undertaking, no objection was raised.

HAS DECIDED AS FOLLOWS :

Sole Article

The undertaking given by the Egyptian producer EFACO in connection with the anti-dumping proceeding concerning imports of ferro-silicon originating in Egypt and Poland is hereby accepted.

This undertaking shall take effect from the day of entry into force of Regulation (EEC) No 1808/12.

Done at Brussels, 30 June 1992.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ See page 8 of this Official Journal.