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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 1142/93**of 11 May 1993****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 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 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy⁽³⁾, and in particular Article 5 thereof,

Whereas the import levies on cereals, wheat and rye flour, and wheat groats and meal were fixed by Commission Regulation (EEC) No 762/93⁽⁴⁾ and subsequent amending Regulations;

Whereas, in order to make it possible for the levy arrangements to function normally, the representative market rate established during the reference period from 10 May

1993, as regards floating currencies, should be used to calculate the levies;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 762/93 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 12 May 1993.

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

Done at Brussels, 11 May 1993.

For the Commission

René STEICHEN

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 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 79, 1. 4. 1993, p. 11.

ANNEX

to the Commission Regulation of 11 May 1993 fixing the import levies on cereals and on wheat or rye flour, groats and meal

CN code	Third countries ^(*)
0709 90 60	139,56 ⁽²⁾ ⁽³⁾
0712 90 19	139,56 ⁽²⁾ ⁽³⁾
1001 10 00	181,64 ⁽¹⁾ ⁽²⁾
1001 90 91	144,46
1001 90 99	144,46 ⁽²⁾
1002 00 00	156,10 ⁽²⁾
1003 00 10	142,23
1003 00 20	142,23
1003 00 80	142,23 ⁽²⁾
1004 00 00	115,48
1005 10 90	139,56 ⁽²⁾ ⁽³⁾
1005 90 00	139,56 ⁽²⁾ ⁽³⁾
1007 00 90	145,64 ⁽⁴⁾
1008 10 00	56,61 ⁽²⁾
1008 20 00	101,58 ⁽⁴⁾
1008 30 00	61,07 ⁽²⁾
1008 90 10	⁽⁷⁾
1008 90 90	61,07
1101 00 00	214,07 ⁽²⁾
1102 10 00	231,14
1103 11 30	293,58
1103 11 50	293,58
1103 11 90	229,55

⁽¹⁾ Where durum wheat originating in Morocco is transported directly from that country to the Community, the levy is reduced by ECU 0,60/tonne.

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

⁽³⁾ Where maize originating in the ACP is imported into the Community the levy is reduced by ECU 1,81/tonne.

⁽⁴⁾ 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.

⁽⁵⁾ Where durum wheat and canary seed produced in Turkey are transported directly from that country to the Community, the levy is reduced by ECU 0,60/tonne.

⁽⁶⁾ The import levy charged on rye produced in Turkey and transported directly from that country to the Community is laid down in Council Regulation (EEC) No 1180/77 (OJ No L 142, 9. 6. 1977, p. 10), as last amended by Regulation (EEC) No 1902/92 (OJ No L 192, 11. 7. 1992, p. 3), and Commission Regulation (EEC) No 2622/71 (OJ No L 271, 10. 12. 1971, p. 22), as amended by Regulation (EEC) No 560/91 (OJ No L 62, 8. 3. 1991, p. 26).

⁽⁷⁾ The levy applicable to rye shall be charged on imports of the product falling within CN code 1008 90 10 (triticale).

⁽⁸⁾ No levy applies to OCT originating products according to Article 101 (1) of Decision 91/482/EEC.

⁽⁹⁾ 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 1143/93**of 11 May 1993****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 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy ⁽³⁾, and in particular Article 5 thereof,

Whereas the premiums to be added to the levies on cereals and malt were fixed by Commission Regulation (EEC) No 3874/92 ⁽⁴⁾ and subsequent amending Regulations;

Whereas, in order to make it possible for the levy arrangements to function normally, the representative market rate established during the reference period from 10 May

1993, as regards floating currencies, should be used to calculate the levies;

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 12 May 1993.

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

Done at Brussels, 11 May 1993.

For the Commission

René STEICHEN

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 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 390, 31. 12. 1992, p. 121.

ANNEX

to the Commission Regulation of 11 May 1993 fixing the premiums to be added to the import levies on cereals, flour and malt

A. Cereals and flour

(ECU/tonne)

CN code	Current 5	1st period 6	2nd period 7	3rd period 8
0709 90 60	0	0,18	0,18	0
0712 90 19	0	0,18	0,18	0
1001 10 00	0	0	0	0
1001 90 91	0	6,64	6,64	10,32
1001 90 99	0	6,64	6,64	10,32
1002 00 00	0	0	0	0
1003 00 10	0	0	0	0
1003 00 20	0	0	0	0
1003 00 80	0	0	0	0
1004 00 00	0	0	0	0
1005 10 90	0	0,18	0,18	0
1005 90 00	0	0,18	0,18	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	9,45	9,45	14,66

B. Malt

(ECU/tonne)

CN code	Current 5	1st period 6	2nd period 7	3rd period 8	4th period 9
1107 10 11	0	11,82	11,82	18,37	18,37
1107 10 19	0	8,83	8,83	13,73	13,73
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 1144/93

of 10 May 1993

on a standing invitation to tender to determine levies and/or refunds on exports
of white sugar

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector⁽¹⁾, as last amended by Regulation (EEC) No 3814/92⁽²⁾, and in particular Articles 13 (2), 18 (5), 19 (4) and (7) and the second subparagraph of Article 39 thereof,

Having regard to Council Regulation (EEC) No 608/72 of 23 March 1972 laying down rules to be applied in the case of considerable price rises on the world sugar market⁽³⁾, and in particular Article 1 (1) thereof,

Whereas, in conformity with Article 14 of Commission Regulation (EEC) No 3819/92⁽⁴⁾ the amounts of tenders submitted within the framework of an invitation to tender organized by virtue of a measure relating to the common agricultural policy will be expressed in ecus; whereas Article 2 (3) of Commission Regulation (EEC) No 2630/81⁽⁵⁾, as last amended by Regulation (EEC) No 1170/92⁽⁶⁾, provides that the amounts of the successful tenders shall be expressed in ecus on the licences and other documents certifying those amounts; whereas the value of the ecu shall be determined in accordance with Article 2 and 3 to Council Regulation (EEC) No 3813/92⁽⁷⁾;

Whereas, in view of the situation on the Community and world sugar markets, a standing invitation to tender should be issued as soon as possible for the export of white sugar in respect of the 1993/94 marketing year which, having regard to possible fluctuations in world prices for sugar, must provide for the determination of export levies and/or export refunds;

Whereas the general rules governing invitations to tender for the purpose of determining export refunds for sugar were laid down in Council Regulation (EEC) No 766/68 of 18 June 1968 laying down general rules for granting

export refunds on sugar⁽⁸⁾, as last amended by Regulation (EEC) No 1489/76⁽⁹⁾;

Whereas, in view of the specific nature of the transactions involved, special detailed rules should be laid down in this Regulation, and those provided for in Commission Regulation (EEC) No 394/70 of 2 March 1970 on detailed rules for granting export refunds on sugar⁽¹⁰⁾, as last amended by Regulation (EEC) No 1684/92⁽¹¹⁾, should not apply; whereas, for the same reasons, appropriate provisions should be laid down with regard to export licences issued in connection with the standing invitation to tender and there should be a derogation from Commission Regulation (EEC) No 2630/81; whereas, however, the provisions of Commission Regulation (EEC) No 3719/88 of 16 November 1988 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products⁽¹²⁾, as last amended Regulation (EEC) No 2101/92⁽¹³⁾, and those of Commission Regulation (EEC) No 120/89 of 19 January 1989 laying down common detailed rules for the application of the export levies and charges on agricultural products⁽¹⁴⁾, should remain applicable;

Whereas Article 8 (1) of Regulation (EEC) No 3819/92 provides that where agricultural conversion rates are fixed in advance, on application by the party concerned, on the terms referred to in the second subparagraph of Article 6 (1) of Regulation (EEC) No 3813/92, such application must be lodged at the same time as the submission of the tender as part of a tendering procedure; whereas, for reasons specific to the sugar market, when an operator intends to take up the option of an advance fixing of an agricultural conversion rate, his decision shall be made only when the application for the export certificate in question is lodged; whereas in practice he may only apply for advance fixing of the agricultural conversion rate in question after having been declared successful tenderer in respect of the levy or refund for the quantity of sugar indicated in his tender; whereas in the case of the present tendering procedure, a derogation must be made from the said provisions, leaving the tenderer the option of applying for advance fixing of the agricultural conversion rate at the time when the application for the export certificate in question is lodged;

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

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 387, 31. 12. 1992, p. 7.

⁽³⁾ OJ No L 75, 28. 3. 1972, p. 5.

⁽⁴⁾ OJ No L 387, 31. 12. 1992, p. 17.

⁽⁵⁾ OJ No L 258, 11. 9. 1981, p. 16.

⁽⁶⁾ OJ No L 122, 7. 5. 1992, p. 27.

⁽⁷⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁸⁾ OJ No L 143, 25. 6. 1968, p. 6.

⁽⁹⁾ OJ No L 167, 26. 6. 1976, p. 13.

⁽¹⁰⁾ OJ No L 50, 4. 3. 1970, p. 1.

⁽¹¹⁾ OJ No L 176, 30. 6. 1992, p. 31.

⁽¹²⁾ OJ No L 331, 2. 12. 1988, p. 1.

⁽¹³⁾ OJ No L 210, 25. 7. 1992, p. 18.

⁽¹⁴⁾ OJ No L 16, 20. 1. 1989, p. 19.

HAS ADOPTED THIS REGULATION :

Article 1

1. A standing invitation to tender shall be issued in order to determine export levies and/or export refunds on white sugar. During the period of validity of this standing invitation, partial invitations to tender shall be issued.

2. The standing invitation to tender shall remain open until 25 May 1994.

Article 2

The standing invitation to tender and the partial invitations shall be conducted in accordance with Regulation (EEC) No 766/68 and with the following provisions. Regulation (EEC) No 394/70 shall not apply.

Article 3

1. The Member States shall establish a notice of the invitation to tender. The notice of the invitation to tender shall be published in the *Official Journal of the European Communities*. Member States may also publish the notice, or have it published elsewhere.

2. The notice shall indicate in particular the terms of the invitation to tender.

3. The notice may be amended during the period of validity of the standing invitation to tender. It shall be so amended if the terms of the invitation to tender are modified during that period.

Article 4

1. The period during which tenders may be submitted in response to the first partial invitation to tender :

(a) shall begin on 21 May 1993 ;

(b) shall end on 2 June 1993 at 10.30 a.m.

2. The periods during which tenders may be submitted in response to the second and subsequent partial invitations :

(a) shall begin on the first working day following the end of the preceding period ;

(b) shall end at 10.30 a.m. on the Wednesday of the following week.

3. Notwithstanding paragraph 2 (b), the period for the submission of tenders which was to end on :

— Wednesday 14 July 1993 shall end on Tuesday 13 July 1993 at 10.30 a.m.,

— Wednesday 21 July 1993 shall end on Tuesday 20 July 1993 at 10.30 a.m.,

— Wednesday 17 November 1993 shall end on Tuesday 16 November 1993 at 10.30 a.m.,

— Wednesday 8 December 1993 shall end on Thursday 9 December 1993 at 10.30 a.m.

4. Notwithstanding paragraph 2, no partial invitations to tender will be issued on Wednesday 29 December 1993 and Wednesday 30 March 1994.

5. The time limits laid down in this Regulation are expressed in Belgian time.

Article 5

1. Offers in connection with this tender must be in writing, and must be either delivered by hand, against a receipt, to the competent authority in a Member State, or addressed to that authority by registered letter, telex, telegram or fax message.

2. An offer must indicate :

(a) the reference number of the invitation to tender to which the offer relates ;

(b) the name and address of the tenderer ;

(c) the quantity of white sugar to be exported ;

(d) the amount of the export levy or, where applicable, of the export refund, per 100 kilograms of white sugar, expressed in ecus with three decimal places ;

(e) the minimum amount of the security to be lodged covering the quantity of sugar indicated in (c), expressed in the currency of the Member State in which the tender is submitted.

3. An offer shall be valid only if :

(a) the quantity to be exported is not less than 250 tonnes of white sugar ;

(b) proof is furnished before expiry of the time limit for the submission of tenders that the tenderer has lodged the security indicated in the tender ;

(c) it includes a declaration by the tenderer that if his tender is successful he will, within the period laid down in Article 12 (b), apply for an export licence or licences in respect of the quantities of white sugar to be exported ;

(d) it includes a declaration by the tenderer that if his tender is successful he will :

— where the obligation to export resulting from the export licence referred to in Article 12 (b) is not fulfilled, supplement the security by payment of the amount referred to in Article 13 (14), and

— within 30 days following the expiry of the export licence in question, notify the agency which issued the licence of the quantity or quantities in respect of which the licence was not used ;

(e) it contains all the information required under paragraph 2.

4. A tender may stipulate that it is to be regarded as having been submitted only if:

- (a) the minimum export levy or, where applicable, the maximum export refund is fixed on the day of the expiry of the period for the submission of the tenders in question;
- (b) the tender, if successful, relates to all or a specified part of the tendered quantity.

5. A tender which is not submitted in accordance with the provisions of this Regulation, or which contains terms other than those indicated in the present invitation to tender, shall not be considered.

6. Once submitted, a tender may not be withdrawn.

Article 6

1. A security of ECU 9 per 100 kilograms of white sugar to be exported under this invitation to tender must be lodged by each tenderer. Without prejudice to Article 13 (4), this security shall in the case of successful tenderers and at the time of the application referred to in Article 12 (b) become the security for the export licence.

2. The security may be lodged at the tenderer's choice, either in cash or in the form of a guarantee given by an establishment complying with criteria laid down by the Member State in which the tender is submitted.

3. Except in cases of *force majeure* the security referred to in paragraph 1 will be released:

- (a) to unsuccessful tenderers in respect of the quantity for which no award has been made;
- (b) to successful tenderers who have not applied for the relevant export licence within the period referred to in Article 12 (b), to the extent of ECU 8 per 100 kilograms of white sugar.

However, this part of the releasable security shall be reduced by the amount representing the difference existing, as applicable:

— between the maximum amount of the export refund fixed for the partial invitation concerned and the maximum amount of the export refund fixed for the following partial invitation when the latter amount is higher than the former,

or

— between the minimum amount of the export levy fixed for the partial invitation concerned and the minimum amount of the export levy fixed for the following partial invitation when the latter amount is lower than the former;

- (c) to successful tenderers for the quantity for which they have fulfilled, within the meaning of Article 29 (b) and Article 30 (1) (b) (i) of Regulation (EEC) No 3719/88, the export obligation resulting from the licence referred to pursuant to Article 12 (b) in accordance with the terms of Article 33 of that Regulation.

The part of the security or the security which is not released shall be forfeit in respect of the quantity of sugar for which the corresponding obligations have not been fulfilled.

4. In case of *force majeure*, the competent authority of the Member State concerned shall take such action as it considers necessary having regard to the circumstances invoked by the party concerned.

Article 7

1. Tenders shall be examined in private by the competent authority concerned. The persons present at the examination shall be under an obligation not to disclose any particulars relating thereto.

2. Tenders shall be communicated to the Commission forthwith and in such a manner that the tenderers remain anonymous.

Article 8

1. After the tenders received have been examined, a maximum quantity may be fixed for the partial invitation concerned.

2. A decision may be taken to make no award under a specific partial invitation to tender.

Article 9

1. In the light of the current state and foreseeable development of the Community and world sugar markets, there shall be fixed either:

— a minimum export levy,

or

— a maximum export refund.

2. Subject to Article 10, where a minimum export levy is fixed, a contract shall be awarded to every tenderer whose tender quotes a rate of levy equal to or greater than such minimum levy.

3. Subject to Article 10, where a maximum export refund is fixed, a contract shall be awarded to every tenderer whose tender quotes a rate of refund equal to or less than such maximum refund and to every tenderer who has tendered for an export levy.

Article 10

1. Where a maximum quantity has been fixed for a partial invitation to tender

- if a minimum levy is fixed, a contract shall be awarded to the tenderer whose tender quotes the highest levy; if the maximum quantity is not fully covered by that award, awards shall be made to other tenderers in descending order of levies quoted until the entire maximum quantity has been accounted for,
- if a maximum refund is fixed, contracts shall be awarded in accordance with the first indent; if after such awards a quantity is still outstanding, or if there are no tenders quoting an export levy, contracts shall be awarded in ascending order of refunds quoted until the entire maximum quantity has been accounted for, to tenderers quoting a refund.

2. However, where an award to a particular tenderer in accordance with the provisions of paragraph 1 would result in the maximum quantity being exceeded, that award shall be limited to such quantity as is still available. Where two or more tenderers quote the same levy or the same refund and awards to all of them would result in the maximum quantity being exceeded, then the quantity available shall be awarded as follows:

- by being divided among the tenderers concerned in proportion to the total quantities in each of their tenders, or
- by being apportioned among the tenderers concerned by reference to a maximum tonnage to be fixed for each of them, or
- by the drawing of lots.

Article 11

1. The competent authority of the Member State concerned shall immediately notify applicants of the result of their participation in the invitation to tender. In addition, that authority shall send successful tenderers a statement of award.

2. The statement of award shall indicate at least:

- (a) the reference number of the invitation to which the tender relates;
- (b) the quantity of white sugar to be exported;
- (c) the amount expressed in ecus of the export levy to be charged, or where applicable of the export refund to be granted per 100 kilograms of white sugar of the quantity referred to in (b).

Article 12

Every successful tenderer shall have

- (a) the right to receive in the circumstances referred to under (b), in respect of the quantity awarded, an export licence indicating, as appropriate, the export levy or the export refund quoted in his tender;
- (b) the obligation to lodge, in accordance with the relevant provisions of Regulation (EEC) No 3719/88, an application for an export licence in respect of that quantity, the application not being revocable and Article 12 of Regulation (EEC) No 120/89 not applying in such a case. The application shall be lodged in accordance with the relevant provisions of Regulation (EEC) No 3719/88, not later than:
 - the last working day preceding the date of the partial invitation to tender to be held the following week,
 - or
 - if no partial invitation to tender is due to be held that week, the last working day of the following week;
- (c) the obligation to export the tendered quantity and, if this obligation is not fulfilled, to pay, where necessary, the amount referred to in Article 13 (4).

This right and these obligations are not transferable.

Article 13

1. The first paragraph of Article 9 of Regulation (EEC) No 2630/91 shall not apply to the white sugar to be exported in accordance with this Regulation.

2. Export licences issued in connection with a partial invitation to tender shall be valid from the day of issue until the end of the fifth calendar month following that in which the partial invitation was issued.

However, export licences issued in respect of the partial invitations held from 1 May 1994 will be valid only until 30 September 1994.

3. The export licences issued in respect of the partial invitations held between 2 June and 15 September 1993 will be usable only from 16 September 1993.

4. Except in cases of *force majeure*, if the obligation to export resulting from the export licence referred to pursuant to Article 12 (b) has not been fulfilled and if the security referred to in Article 6 is less than:

- (a) the export levy indicated on the licence reduced by the levy referred to in the second subparagraph of Article 18 (1) of Regulation (EEC) No 1785/81 in force on the last day of validity of the said licence;

or

- (b) the sum of the export levy indicated on the licence and the refund referred to in Article 2 of Regulation (EEC) No 766/68 in force on the last day of validity of the said licence ;

or

- (c) the export refund referred to in Article 2 of Regulation (EEC) No 766/68 in force on the last day of validity of the licence reduced by the refund indicated on the said licence,

then, for the quantity in respect of which the said obligation was not fulfilled, the licence holder shall be charged an amount equal to the difference between the result of the valuation made under (a), (b) or (c), as the case may be, and the security referred to in Article 6 (1).

Article 14

If the tenderer intends to apply for advance fixing of agricultural conversion rate under this standing invitation to tender, the provisions of the second indent of Article 8 (1) of Regulation (EEC) No 3819/92 shall not apply.

Article 15

1. If the terms of Article 12 of Regulation (EEC) No 766/68 apply, the export refunds and export levies fixed in advance under the terms of the present invitation to tender :

- (a) before 1 July 1993 for the sugar exported as from that date ;
- (b) before 1 July 1994 for the sugar exported as from that date,

shall be adjusted.

2. For the adjustment referred to in paragraph 1 (a) :

- (a) in the event of the fixing of an intervention price for white sugar applicable with effect from 1 July 1993, which is greater than that in force on 30 June 1993, the export refund and the export levy shall be adjusted by an amount equal to the difference expressed in ecus per 100 kilograms existing between the intervention price for white sugar applicable with effect from 1 July 1993 and the intervention price for that sugar in force on 30 June 1993 ;
- (b) in the event of the fixing of an intervention price for white sugar applicable with effect from 1 July 1993, which is lower than that in force on 30 June 1993, the export refund and the export levy shall be adjusted by an amount equal to the difference expressed in ecus

per 100 kilograms existing between the intervention price for white sugar in force on 30 June 1993 and the intervention price for that sugar applicable with effect from 1 July 1993.

3. For the calculation of the differences referred to in paragraph 2, the intervention prices in question shall be increased by the corresponding storage levy referred to in the second subparagraph of Article 8 (2) of Regulation (EEC) No 1785/81.

4. For the purpose of applying this Article, the Member State issuing the relevant export licence shall at the time of issue complete the section 'special particulars' by adding the following :

'to be adjusted in accordance with adjudication Regulation (EEC) No 1144/93 for exports which take place after 30 June ...' (1993 or 1994 as applicable).

5. Upon presentation by the holder of the export licence concerned, or by the assignee when the licence has been transferred, to the Member State that issued it and before the customs formalities for the quantities concerned have been carried out, that Member State shall enter the refund rate after adjustment in the section 'special particulars' and shall duly certify and stamp that section.

6. For the adjustment referred to in paragraph 1 (b) the provisions of paragraphs 2 to 5 shall be applicable *mutatis mutandis*.

7. The Member States shall inform the Commission as quickly as possible of the quantities of sugar for which an adjustment pursuant to this Article has been made.

Article 16

When white sugar falling within CN code 1701 99 10 is stocked in bulk under a customs warehousing or free zone procedure for advance payment of the refund as defined by Council Regulation (EEC) No 565/80⁽¹⁾, that sugar may, in addition to the operation referred to in Article 28 (4) of Commission Regulation (EEC) No 3665/87⁽²⁾, be mixed in the same place of storage with other white sugar falling within the same CN code 1701 99 10 that is of the same commercial quality and possesses equivalent technical characteristics.

Article 17

This Regulation shall enter into force on 21 May 1993.

⁽¹⁾ OJ No L 62, 7. 3. 1980, p. 5.

⁽²⁾ OJ No L 351, 14. 12. 1987, p. 1.

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

Done at Brussels, 10 May 1993.

For the Commission

René STEICHEN

Member of the Commission

COMMISSION REGULATION (EEC) No 1145/93

of 10 May 1993

re-establishing the levying of customs duties on products falling within CN code 8712 00, originating in China, to which the preferential tariff arrangements set out in Council Regulation (EEC) No 3831/90 apply

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3831/90 of 20 December 1990 applying generalized tariff preferences for 1991 in respect of certain industrial products originating in developing countries⁽¹⁾, extended for 1993 by Regulation (EEC) No 3917/92⁽²⁾, and in particular Article 9 thereof,

Whereas, pursuant to Article 1 of Regulation (EEC) No 3831/90, duties on certain products originating in each of the countries or territories listed in Annex III shall be totally suspended for 1993, and the products as such shall, as a general rule, be subject to statistical surveillance every three months on the reference base referred to in Article 8;

Whereas, as provided for in Article 8, where the increase of preferential imports of these products, originating in one or more beneficiary countries, threatens to cause economic difficulties in a region of the Community, the levying of customs duties may be re-established once the Commission has had an appropriate exchange of information with the Member States; whereas for this purpose the reference base to be considered shall be, as a general rule, equal to 6,615 % of the total importations into the Community, originating from third countries in 1988;

Whereas, in the case of products falling within CN code 8712 00, originating in China, the reference base is fixed at ECU 9 454 000; whereas, on 3 February 1993, imports

of these products into the Community originating in China, reached the reference base in question after being charged thereagainst; whereas the exchange of information organized by the Commission has demonstrated that continuance of the reference threatens to cause economic difficulties in a region of the Community; whereas, therefore, customs duties in respect of the products in question must be re-established against China,

HAS ADOPTED THIS REGULATION:

Article 1

As from 15 May 1993, the levying of customs duties, suspended pursuant to Council Regulation (EEC) No 3831/90, shall be re-established on imports into the Community of the following products originating in China:

CN code	Description
8712 00	Bicycles and other cycles (including delivery tricycles), not motorized:
8712 00 10	— Without ball bearings
8712 00 90	— Other

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, 10 May 1993.

For the Commission

Christiane SCRIVENER

Member of the Commission

⁽¹⁾ OJ No L 370, 31. 12. 1990, p. 1.

⁽²⁾ OJ No L 396, 31. 12. 1992, p. 1.

COMMISSION REGULATION (EEC) No 1146/93

of 11 May 1993

re-establishing the levying of customs duties on products falling within CN code 3102 40, originating in Poland, to which the tariff ceilings set out in Council Regulation (EEC) No 3918/92 apply

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

Having regard to Council Regulation (EEC) No 3918/92 of 28 December 1992 opening and providing for the administration of Community tariff quotas and ceilings for certain agricultural and industrial products and establishing a reduced variable component for certain processed agricultural products originating in Hungary, Poland and the territory of the former Czech and Slovak Federal Republic (CSFR) (1993)(¹), and in particular Article 6 thereof,

Whereas, pursuant to Article 1 of Regulation (EEC) No 3918/92, Hungary, Poland and the territory of the former Czech and Slovak Federal Republic (CSFR) shall benefit from preferential tariff arrangements, in particular the preferential tariff ceilings laid down in column 5 of Annex I to that Regulation; whereas, pursuant to Article 6, as soon as the ceilings have been reached, the Commission may adopt a regulation re-establishing the customs duties applicable to the third countries in question until the end of the calendar year;

Whereas that ceiling was reached by charges of imports of the products listed in the Annex, originating in Poland, to which the tariff preferences apply;

Whereas, it is appropriate to re-establish the levying of customs duties for the products in question with regard to Poland,

HAS ADOPTED THIS REGULATION:

Article 1

As from 15 May 1993 the levying of customs duties, suspended for 1993 pursuant to Regulation (EEC) No 3918/92, shall be re-established on imports into the Community of the products listed in the Annex, originating in Poland.

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, 11 May 1993.

For the Commission

Christiane SCRIVENER

Member of the Commission

(¹) OJ No L 396, 31. 12. 1992, p. 12.

ANNEX

Order No	CN code	Description
21.0101	3102 40	— Mixtures of ammonium nitrate with calcium carbonate or other inorganic non-fertilizing substances :
	3102 40 10	— — With a nitrogen content not exceeding 28 % by weight
	3102 40 90	— — With a nitrogen content exceeding 28 % by weight

COMMISSION REGULATION (EEC) No 1147/93

of 11 May 1993

extending the term of validity of the import licences in the pigmeat sector
provided for in Regulation (EEC) No 564/92

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 518/92 of 27 February 1992 on certain procedures for applying the Interim Agreement on trade and trade-related matters between the European Economic Community and the European Coal and Steel Community, of the one part, and the Republic of Poland, of the other part⁽¹⁾, and in particular Article 1 thereof,Having regard to Council Regulation (EEC) No 519/92 of 27 February 1992 on certain procedures for applying the Interim Agreement on trade and trade-related matters between the European Economic Community and the European Coal and Steel Community, of the one part, and the Republic of Hungary, of the other part⁽²⁾, and in particular Article 1 thereof,Having regard to Council Regulation (EEC) No 520/92 of 27 February 1992 on certain procedures for applying the Interim Agreement on trade and trade-related matters between the European Economic Community and the Coal and Steel Community, of the one part, and the Czech and Slovak Federal Republic, of the other part⁽³⁾, and in particular Article 1 thereof,Whereas Commission Regulation (EEC) No 564/92⁽⁴⁾, amended by Regulation (EEC) No 3371/92⁽⁵⁾, lays down the detailed rules for applying in the pigmeat sector the system provided for by the Interim Agreements concluded by the Community with the aforementioned third countries;

Whereas Community operators submitted their applications for import licences for the period 1 January to

31 March 1993 during the first ten days of January 1993; whereas the operators were convinced at that time that they would be able to meet their obligations under the import licences issued on 23 January 1993;

Whereas, as a result of the outbreak of foot-and-mouth disease, imports of live pigs, pigmeat and certain processed products from the these three countries in question into the Community are banned since 8 April 1993 by Commission Decision 93/210/EEC⁽⁶⁾; whereas, as a result of these unforeseeable events, Community operators cannot fulfil their obligations to import before the expiry of the import licences; whereas the term of validity of the said licences should therefore be sufficiently extended;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. At the request of the operator in question, the term of validity of the import licences referred to in Article 1 of Regulation (EEC) No 564/92 and issued on 23 January 1993 shall be extended by 60 days.

2. The application referred to in paragraph 1 above must be accompanied by the original of the import licence concerned.

Article 2

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

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

Done at Brussels, 11 May 1993.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 56, 29. 2. 1992, p. 3.

⁽²⁾ OJ No L 56, 29. 2. 1992, p. 6.

⁽³⁾ OJ No L 56, 29. 2. 1992, p. 9.

⁽⁴⁾ OJ No L 61, 6. 3. 1992, p. 9.

⁽⁵⁾ OJ No L 342, 25. 11. 1992, p. 22.

⁽⁶⁾ OJ No L 90, 14. 4. 1993, p. 33.

COMMISSION REGULATION (EEC) No 1148/93

of 11 May 1993

laying down detailed rules to implement the specific measures for supplying the French overseas departments with breeding horses

THE COMMISSION OF THE EUROPEAN COMMUNITIES;

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3763/91 of 16 December 1991 introducing specific measures in respect of certain agricultural products for the benefit of the French overseas departments⁽¹⁾, amended by Commission Regulation (EEC) No 3714/92⁽²⁾, and in particular Article 4 (5) thereof,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the value of the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy⁽³⁾, and in particular Article 12 thereof,

Whereas, in application of Article 4 of Regulation (EEC) No 3763/91, it is necessary to determine the number of pure-bred breeding horses originating in the Community which benefit from an aid with a view to developing the potential for production in the French overseas departments;

Whereas it is appropriate to fix the amount of aid referred to above for the supply to the French overseas departments of pure-bred breeding horses originating in the rest of the Community; whereas such aid must be fixed taking into account the criteria laid down in Article 4 (3) of Regulation (EEC) No 3763/91;

Whereas the common detailed rules for implementing the scheme to supply the French overseas departments with certain agricultural products are laid down by Commission Regulation (EEC) No 131/92⁽⁴⁾, as amended by Regulation (EEC) No 2132/92⁽⁵⁾; whereas it is appropriate to lay down additional detailed rules in line with current commercial practice in the equidae sector, in particular regarding the duration of the validity of aid certificates and the amount of securities ensuring operators' compliance with their obligations;

Whereas with a view to sound management of the supply scheme, provision should be made for a timetable for lodging certificate applications and for a scrutiny period prior to the issue of such certificates;

Whereas, for converting the amount of aid into national currency, the operative event should be the day the 'aid

certificate' is lodged with the competent authorities at the place of destination pursuant to Article 3 (6) of Regulation (EEC) No 131/92, without prejudice to the possibility of the advance fixing provided for in Articles 8 to 12 of Commission Regulation (EEC) No 3819/92 of 28 December 1992 on detailed rules for determining and applying agricultural conversion rates⁽⁶⁾;

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

HAS ADOPTED THIS REGULATION:

Article 1

The aid provided for in Article 4 (1) of Regulation (EEC) No 3763/91 for the supply to the French overseas departments of pure-bred breeding horses originating in the Community as well as the number of animals which benefit from it shall be fixed in the Annex to this Regulation.

Article 2

France shall designate the competent authority for:

- (a) the issue of the 'aid certificate' provided for in Article 3 (1) of Regulation (EEC) No 131/92; and
- (b) the payment of the aid to the operators concerned.

Article 3

The provisions of Regulation (EEC) No 131/92 shall apply, with the exception of Article 3 (4).

Article 4

1. Applications for certificates shall be submitted to the competent authority during the first five working days of each month. An application for a certificate shall be admissible only if:

- (a) it relates to no more than the maximum quantity of animals available published by France;
- (b) before expiry of the period provided for the submission of applications for certificates, proof has been provided that the party concerned has lodged a security of ECU 30 per animal.

⁽¹⁾ OJ No L 356, 24. 12. 1991, p. 1.

⁽²⁾ OJ No L 378, 23. 12. 1992, p. 23.

⁽³⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 15, 22. 1. 1992, p. 13.

⁽⁵⁾ OJ No L 213, 29. 7. 1992, p. 25.

⁽⁶⁾ OJ No L 387, 31. 12. 1992, p. 17.

2. The aid certificates shall be issued by the 10th working day of each month at the latest.

3. However, for the first application of this Article, applications for certificates shall be submitted up to 18 May 1993 and the certificates shall be issued by 28 May 1992 at the latest.

Article 5

The duration of validity of the aid certificates shall expire on the last day of the second month following that in which they were issued.

Article 6

The aid provided for in Article 1 shall be paid in respect of the quantities actually supplied.

Article 3 (4) of Regulation (EEC) No 131/92 notwithstanding, the rate to be applied for converting the amount of aid into national currency shall be the agricultural conversion rate in force on the day the 'aid certificate' is lodged with the competent authorities at the place of destination.

Article 7

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

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

Done at Brussels, 11 May 1993.

For the Commission

René STEICHEN

Member of the Commission

ANNEX**Part 1**

Supply to French Guiana of pure-bred breeding horses originating in the Community for the period 1 May to 30 June 1993

<i>(ECU/head)</i>			
CN code	Description of the goods	Number of animals to be supplied	Aid
0101 11 00	Pure-bred breeding horses ⁽¹⁾	16	1 000

Part 2

Supply to Martinique of pure-bred breeding horses originating in the Community for the period 1 May to 30 June 1993

<i>(ECU/head)</i>			
CN code	Description of the goods	Number of animals to be supplied	Aid
0101 11 00	Pure-bred breeding horses ⁽¹⁾	10	1 000

⁽¹⁾ Inclusion in this sub-position is subject to the conditions provided for by Council Directive 90/427/EEC of 26 June 1990 on the zootechnical and genealogical conditions governing intra-Community trade in equidae (OJ No L 224, 20. 8. 1990, p. 55).

COMMISSION REGULATION (EEC) No 1149/93

of 11 May 1993

introducing a countervailing charge on cucumbers originating in Romania

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables⁽¹⁾, as last amended by Regulation (EEC) No 638/93⁽²⁾, and in particular the second subparagraph of Article 27 (2) thereof,

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

Whereas Commission Regulation (EEC) No 290/93 of 9 February 1993 fixing for the 1993 marketing year the reference prices for cucumbers⁽³⁾ fixed the reference price for products of class I at ECU 76,12 per 100 kilograms net for May 1993;

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

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

Regulation (EEC) No 249/93⁽⁵⁾, the prices to be taken into consideration must be recorded on the representative markets or, in certain circumstances, on other markets; whereas it is necessary to multiply the prices with the coefficient fixed in the first indent of Article 1 (2) of Regulation (EEC) No 290/93;

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

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92⁽⁶⁾ are used to convert amounts expressed in third country currencies and are used as the basis for determining the agricultural conversion rates of the Member States' currencies; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93⁽⁷⁾,

HAS ADOPTED THIS REGULATION:

Article 1

A countervailing charge of ECU 5,33 per 100 kilograms net is applied to cucumbers (CN codes 0707 00 11 and 0707 00 19) originating in Romania.

Article 2

This Regulation shall enter into force on 13 May 1993.

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

Done at Brussels, 11 May 1993.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 118, 20. 5. 1972, p. 1.

⁽²⁾ OJ No L 69, 20. 3. 1993, p. 7.

⁽³⁾ OJ No L 34, 10. 2. 1993, p. 13.

⁽⁴⁾ OJ No L 220, 10. 8. 1974, p. 20.

⁽⁵⁾ OJ No L 28, 5. 2. 1993, p. 45.

⁽⁶⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁷⁾ OJ No L 108, 1. 5. 1993, p. 106.

COMMISSION REGULATION (EEC) No 1150/93
of 11 May 1993
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 Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector ⁽¹⁾, as last amended by Regulation (EEC) No 3814/92 ⁽²⁾, and in particular Article 16 (8) thereof,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy ⁽³⁾, and in particular Article 5 thereof,

Whereas the import levies on white sugar and raw sugar were fixed by Commission Regulation (EEC) No 789/93 ⁽⁴⁾, as last amended by Regulation (EEC) No 1107/93 ⁽⁵⁾;

Whereas it follows from applying the detailed rules contained in Commission Regulation (EEC) No 789/93 to the information known to the Commission that the levies

at present in force should be altered to the amounts set out in the Annex hereto;

Whereas, in order to make it possible for the levy arrangements to function normally, the representative market rate established during the reference period from 10 May 1993, as regards floating currencies, should be used to calculate the levies,

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 12 May 1993.

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

Done at Brussels, 11 May 1993.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 387, 31. 12. 1992, p. 7.

⁽³⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 79, 1. 4. 1993, p. 66.

⁽⁵⁾ OJ No L 112, 6. 5. 1993, p. 32.

ANNEX

to the Commission Regulation of 11 May 1993 fixing the import levies on white sugar and raw sugar

(ECU/100 kg)

CN code	Levy ⁽¹⁾
1701 11 10	34,52 ⁽¹⁾
1701 11 90	34,52 ⁽¹⁾
1701 12 10	34,52 ⁽¹⁾
1701 12 90	34,52 ⁽¹⁾
1701 91 00	43,90
1701 99 10	43,90
1701 99 90	43,90 ⁽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.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 10 November 1992

relating to a proceeding pursuant to Articles 85 and 86 of the EEC Treaty
(Cases No IV/33.440 Warner-Lambert/Gillette and Others and No IV/33.486
BIC/Gillette and Others)

(Only the English and Dutch texts are authentic)

(93/252/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

Having regard to the applications for a finding of an infringement submitted on 12 February and 14 March 1990, pursuant to Article 3 of Regulation No 17, by Warner-Lambert Company and BIC SA respectively,

Having regard to the notification on 23 February 1990, pursuant to Article 4 of Regulation 17, of agreements between The Gillette Company and Eemland Holdings NV,

Having given the undertakings concerned, The Gillette Company and Eemland Holdings NV, the opportunity to make known their views on the objections raised by the Commission, pursuant to Article 19 (1) and (2) of Regulation No 17 and Commission Regulation No 99/63/EEC of 25 July 1963 on the hearings provided for in Article 19 (1) and (2) of Council Regulation No 17 ⁽²⁾,

Having heard Warner-Lambert Company and BIC SA pursuant to Article 19 (2) of Regulation No 17,

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

Whereas :

I. FACTS

- (1) This Decision concerns the infringement of Articles 85 and 86 of the EEC Treaty arising from the sale by Stora Kopparbergs Bergslags AB of the Wilkinson Sword wet-shaving business in the Community and the United States of America to Eemland Holdings NV and in the rest of the world to the Gillette Group (hereinafter called 'Gillette'), which involved agreements between Gillette and Eemland and a substantial investment by Gillette in Eemland.

A. Complaints

- (2) On 12 February 1990 the Commission received a complaint from Warner-Lambert Company concerning the sale of the Wilkinson Sword wet-shaving business. Warner-Lambert alleges that the transaction and related agreements involving Gillette constitute an infringement of Article 85 (1) of the EEC Treaty on the part of Gillette and Eemland and an infringement of Article 86 on the part of Gillette. A second complaint relating to the same matter was filed on behalf of BIC SA on 14 March 1990.

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

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

B. Notification

- (3) The Gillette Company notified certain agreements concerning Gillette's investment in and relationship with Eemland, requesting negative clearance or an exemption. The notification was received on 23 February 1990.

C. The parties

- (4) (i) *Stora Kopparbergs Bergslags AB* (Stora) is a Swedish company, it is the largest forest-products company in Europe and diversified into non-forest product areas through the acquisition of Swedish Match AB in May 1988. The consumer products group of Swedish Match AB consisted of shaving products and toiletries (essentially shaving products manufactured and sold under the Wilkinson Sword trade mark), matches (including the brand names Swedish Match and Bryant and May) and disposable lighters (including the Cricket and Feudor brands).
- (ii) *Eemland Holdings NV* (Eemland) is a Netherlands company (formed in February 1988) which has been utilized for this transaction and had not previously traded. The company changed its name from Eemland Management Services BV to Swedish Match AB before adopting its present name.
- (iii) *The Gillette Company*, which is based in the United States of America, is the parent company of Gillette which has business interests worldwide in the development, manufacture and sale of a wide range of personal care products. These include in particular the manufacture and sale of shaving products which contribute over half of the group's worldwide profits.
- (iv) The following parties are equity investors in Eemland:
- (a) Messrs Rossi, Gabrielsson, Stenström and Gruber (managers of the Wilkinson Sword business);
 - (b) Morgan Capital Corporation (a member of the J. P. Morgan banking group);
 - (c) Procuritas MBO Invest AB;
 - (d) Forsäkringsbolaget SPP ömsesidigt (SPP insurance);
 - (e) Aktieselskabet Kjøbenhavns Handelsbank (Copenhagen Bank);

(f) Livsforsäkringsaktiebolaget Skandia (Scandia Insurance);

(g) Spira Invest AB.

(v) *Warner-Lambert Company* (Warner-Lambert) is based in the United States of America and is a diversified researcher, manufacturer and marketer of prescription pharmaceutical, over-the-counter health-care products, confectionary products and other products. It is active on the wet-shave market through its Schick brand of razors and blades.

(vi) *La Société Bic SA* (BIC) is based in France and is active on the wet-shave market through its own brand of razors and blades.

D. The products

- (5) The products to which this Decision refers are wet-shaving products. The core products are razor blades, of which there are essentially three types — traditional double-edged blades (sold for insertion into fixed razor heads), system blades (contained in plastic cartridges for insertion into a separate razor handle) and disposable razors. Also included are razors for use with double-edged and system blades.

E. The market

- (6) The market concerned is the wet-shaving market consisting of razors and razor blades. Dry-shaving are not considered by most wet shavers to be sufficiently close substitutes for wet-shaving products to form part of the same market. Also excluded from this market are other hair removal products such as hair-removing creams and lotions, and wax and electric depilators, which are not close substitutes for wet or dry shaving products and therefore form a separate market. The share of total sales of wet-shaving products accounted for by each of the three product types referred to in recital 5 varies between Member States. Sales of traditional double-edged blades have been declining in the Community as consumers have switched to system blades or disposable razors. Because of price differences between the types of blades the division of the market between the three types of blades is different when considered by value and by volume. In the Community as a whole the segmentation by value shows that double-edged blades accounted for 12 % of the market in 1989, system blades or cartridges accounted for 52 % and disposable razors for the remaining 36 %. By volume the corresponding figures are 16 % for double-edged blades, 36 % for system blades and 49 % for disposable razors. The profit margin achievable on

shaving products also varies between the three product types. Disposable razors achieve the lowest margin; double-edged blades are a high-margin product but system blades achieve the highest margin. There is little continued real growth in blade usage in the Community and market value growth has generally come from manufacturers' investment in the innovative and higher-margin systems segment. There are four major producers of shaving products in the Community (which are also the four largest producers in the world): Gillette, Wilkinson Sword (now the trade mark of Eemland), Schick (the trade mark of Warner-Lambert) and BIC. It has been acknowledged by Eemland that Gillette is the price leader in the Community as a result of its strong market position. This lessens the extent of price competition in this market.

- (7) In considering the relevant geographic market it is not necessary for the purposes of this Decision to decide whether there are national markets in each Member State or whether the Community forms one market.

- (8) The market share data (for 1989) in the table on the following page show that Gillette has a strong position within the Community, with a market share of 59 % (by volume) and 70 % (by value) for the Community as a whole. Wilkinson Sword has a much smaller market share, supplying 14 % (by volume) and 13 % (by value). BIC has a similar market share in volume terms (17 %) but a much lower share by value (8 %) because it concentrates on low-margin disposable razors. The fourth brand, Schick, supplies less than half of the Wilkinson Sword share of the market. Gillette is the market leader in every Member State (although in Greece BIC has a higher market share when measured by volume rather than by value). Gillette's lowest market shares are in the United Kingdom, Greece and Portugal. Its highest market shares are in Denmark (81 % by volume and 89 % by value) and in Spain (71 % by volume and 8 % by value). Wilkinson Sword is strongest on the British, German and French markets. In 1989 sales in the Community and the United States of America accounted for about 79 % (by value) of Wilkinson Sword production (and about 72 % by volume). Sales in other countries were mainly of the cheaper, lower-margin products.

- (9) Apart from being highly concentrated, the market also exhibits considerable barriers to entry. These barriers consist of significant economies of scale on the production level, the importance of advertising and the considerable resources and expertise of the established manufacturers. Eemland has expressed

the view that 'realistically and in the foreseeable future, only on existing manufacturer of wet-shave products could be expected to establish new production facilities for the Community market'. This would appear to be the case in view of the considerable investment required to set up viable production facilities, the cost of advertising and research development and the need to establish a distribution network. A new razor-blade factory needs to produce approximately 600 million blades per year if it is to be economically viable according to Warner-Lambert, which estimates that this would require an investment of at least US\$ 150 million. Eemland is of the opinion that a minimum competitive volume would be about 500 million blades — if products in all three segments were produced — and this would cost about US\$ 75 million to 80 million to set up. Furthermore, the research and development costs for a new razor require large-scale investment. Gillette is reported to have spent an estimated US\$ 200 million in developing its latest product, the 'Gillette Sensor' and to have spent a further US\$ 175 million on an advertising campaign in North America and Europe alone to bring the new system onto the market. This high level of investment suggests that the barriers to entering the wet-shaving market are considerable. There is only very limited scope for making *de novo* entry into the market by purchasing off-the-shelf product designs and equipment for manufacturing, assembling and packaging blades, moulds and cartridges. Any such production would be aimed at sales under 'private labels' (own labels) to avoid the need for heavy advertising expenditure. There has been some modest growth in own-label sales but they still account for only 5 to 7 % of blades sold in the Community (Eemland's estimate). It may not be surprising therefore that no new competitor has entered the market in western Europe for some 15 years. In a market with these characteristics, it follows that the principal means of increasing market share are advertising, the acquisition of a competitor or substantial research and development leading to a new or improved type of product.

F. The Agreements

- (10) By a series of agreements, most of which were signed on 20 December 1989, Stora sold its consumer products division to Eemland which in turn sold the Wilkinson Sword shaving products business outside the European Community and the United States of America to Gillette. Eemland subsequently sold the matches and lighters businesses which were part of the Stora consumer products division to third parties for a total consideration of approximately US\$ 340 million.

Market shares : wet-shaving products by brand (1989)

(%)					
	Volume	Value		Volume	Value
<i>Total EEC</i>			<i>Great Britain</i>		
Gillette	58,6	70,1	Gillette	44,5	62,4
Bic	16,5	8,0	Bic	27,2	12,9
Wilkinson Sword	14,0	12,6	Wilkinson Sword	17,6	16,4
Schick	5,5	5,9	Schick	0,6	0,6
Others	5,4	3,4	Others	10,2	7,7
<i>Federal Republic of Germany</i>			<i>Italy</i>		
Gillette	57,2	62,2	Gillette	65,5	77,7
Bic	2,5	0,8	Bic	19,5	10,5
Wilkinson Sword	38,2	35,1	Wilkinson Sword	13,5	10,3
Schick	1,1	1,3	Schick	—	—
Others	1,0	0,7	Others	1,5	1,4
<i>France</i>			<i>Portugal</i>		
Gillette	62,1	69,7	Gillette	44,4	52,9
Bic	13,4	7,1	Bic	20,5	12,1
Wilkinson Sword	7,6	5,8	Wilkinson Sword	7,2	6,1
Schick	11,7	14,2	Schick	27,8	28,9
Others	5,2	3,3	Others	0,1	0,0
<i>Spain</i>			<i>Greece</i>		
Gillette	71,4	81,4	Gillette	33,0	49,7
Bic	10,7	4,7	Bic	49,6	39,4
Wilkinson Sword	8,9	6,7	Wilkinson Sword	1,8	1,9
Schick	2,2	2,6	Schick	1,2	1,3
Others	6,8	4,6	Others	14,4	7,7
<i>Belgium and Luxembourg</i>			<i>Denmark</i>		
Gillette	58,2	67,0	Gillette	80,8	89,2
Bic	16,0	8,8	Bic	10,6	5,0
Wilkinson Sword	0,8	0,7	Wilkinson Sword	4,5	2,0
Schick	13,4	15,6	Schick	2,2	1,6
Others	11,7	8,0	Others	1,9	2,2
<i>Netherlands</i>			<i>Ireland</i>		
Gillette	70,4	77,3	Gillette	49,0	60,1
Bic	2,8	1,1	Bic	15,9	9,1
Wilkinson Sword	—	—	Wilkinson Sword	33,9	29,8
Schick	18,9	16,4	Schick	0,5	0,4
Others	7,9	5,2	Others	0,6	0,6

Note :

'others' includes own-label sales. Eemland supplies own-label products but the other three suppliers do not.

(Source : Gillette/A.C. Nielsen)

- (11) It was originally intended that Gillette would acquire all the Wilkinson Sword businesses outside the Community but after the execution of the agreements the American anti-trust authorities raised objections. The parties therefore agreed to exclude the American business from the arrangement. Consequently Eemland has retained the wet-shaving products business, principally under the Wilkinson Sword brand name, in the Community and the United States of America.
- (12) Gillette played a leading role in arranging the purchase from Stora of its consumer products division which was achieved by means of a highly leveraged buy-out. Eemland, which was the shell company used for the buy-out, was financed by a number of investors including Gillette through its subsidiary Gillette UK Limited. Gillette says that its reason for participating in the financing of Eemland was its wish to acquire various Wilkinson Sword trade marks and wet-shaving activities in certain countries outside the Community.
- (13) Eemland is funded by a mixture of equity and loan capital. The equity consists of ordinary shares (which carry voting rights) and convertible loan stock. Gillette holds loan stock (for which it paid US\$ 13,7 million) representing 22 % of the issued equity and quasi-equity capital, but has no voting rights. The other equity holders are Morgan (which has 24 % of the total equity and 0,4 % of the voting rights), a group of Scandinavian investors who hold almost all the voting rights and the management who have 0,74 % of the equity and 3,3 % of the voting rights.
- (14) Gillette's loan stock is entitled to interest at levels corresponding to the dividend which would have been receivable had the loan stock been converted into share capital immediately prior to any dividend payment date. Gillette's equity interest confers no voting rights, no representation on the Board, no representation at shareholders' meetings and no access to internal information. Gillette will never be entitled to nominate any director of the Board of Eemland, and undertakes that it will not exert or attempt to exert any influence over the Board or any member of the Board. There are certain circumstances in which Gillette may acquire voting rights in Eemland (on a conversion of its loan stock into ordinary shares) namely on a winding up of Eemland or a listing of the ordinary shares of the company or the sale of the company's equity to a third party.
- (15) The debt structure of Eemland consists of two forms of debt, namely subordinated debt and senior debt, together with a loan note from Stora. The subordinated debt is in the form of a loan made by various institutions to the value of approximately US\$ 68,9 million and a loan made by Gillette also to the value of approximately US\$ 68,9 million, the interest on which (6 % over Libor) is capitalized and not paid until the debt is repaid. The senior debt consists of loans provided by a syndicate of banks to the value of approximately US\$ 409 million which are repayable over a period of up to five years. The senior debt is expected to be repaid in part out of the proceeds of sale of the matches and lighters business. In order to overcome last-minute difficulties in arranging the sale, Stora agreed to accept part of its consideration in the form of a junior subordinated interest-free loan note from Eemland for some US\$ 48 million, and Gillette agreed to pay Stora up to US\$ 11 million to reflect the fact that the loan note carries no right to interest. Following the reassignment to Eemland of the American business, Gillette made a further loan to Eemland to the value of US\$ 6,4 million, carrying interest at the rate of 8 % per annum. This sum is the aggregate of the consideration which was paid by Gillette to Eemland under the intellectual property, manufacturing and distribution agreement (hereinafter called the intellectual property agreement) and the non-Community sale agreement, attributable to the American business. Gillette's loans, which represent 13,6 % of the total financing of Eemland, will be repaid after the senior debt and the loans from the institutions referred to above.
- (16) Under the Equity Holders Agreement (as amended) there are restrictions on the disposal of shares and Gillette acquires certain pre-emption rights. With certain exceptions, no equity holder is entitled to dispose of its holding prior to 1 January 1993.
- The disposal of equity after that date is subject to the following pre-emption rights :
- (a) the Scandinavian investors must give a right of first refusal to other members of that group ;
 - (b) notwithstanding the rights of the Scandinavian investors *inter se*, any disposal of equity is subject to pro rata pre-emption by the other equity holders, Gillette being allowed to seek a non-associated third party purchaser for its entitlement, approved by 75 % of the ordinary shareholders (except Morgan Capital corporation, for reasons of American banking regulations) ;

(c) any equity holder wishing to dispose of 10 % or more of the total equity of Eemland has to procure for other equity holders the opportunity to dispose of a pro rata proportion of their holdings in excess of 10 % on the same terms ;

(d) a 26 % investors' group (i.e. the holders of 26 % or more of the equity, excluding for this purpose Gillette) may indicate that they wish to obtain a stock exchange listing for all the ordinary shares, in which event Gillette has the option to buy, or find a purchaser for, the equity of the 26 % investors' group at the price at which it is proposed to obtain a listing. If Gillette exercises the option, it must ensure that an identical offer is made to all the other equity holders ;

(e) a 65 % (with the support of the management) or 75 % investors' group (excluding for these purposes equity held by Gillette) may indicate that they wish to sell all their equity, in which event Gillette has the option to buy, or find a purchaser for, that equity at the third-party sale price. If Gillette exercises the option, it would have to ensure that an identical offer is made to all the other equity holders. Similarly, if it were to decline the option, the selling group would have to ensure that an identical offer is made to allow the other equity holders (including Gillette) to sell their equity.

The rights described in subparagraphs (d) and (e) above have been waived in side letters by the equity holders concerned, with the exception of Gillette. The Agreement also provides that Eemland may not sell to a third party any business or assets which amount to 'the whole or any substantial part' of its wet-shaving business or assets unless it first offers the business or assets to Gillette, at the same price and on the same terms. Gillette would have 30 days in which to accept such an offer or to find an alternative non-associated third-party purchaser. In the event that Eemland increased its capital and issued new shares, all of the equity holders (including Gillette) would have first call over those new shares.

- (17) There are supply arrangements between Gillette and Eemland in the intellectual property agreement of 2 January 1990 and a temporary supply agreement signed on 20 July 1990 whereby Eemland agrees to supply Wilkinson Sword branded products to Gillette for markets outside the Community and the United States of America. The agreement, on arms-length terms, ran for a

period of two years which expired on 1 January 1992. Gillette has continued to purchase from Eemland, on an *ad hoc* basis, a smaller volume of Wilkinson Sword products. Eemland has assigned its overseas production sites in Brazil (Manaus, annual production approximately 213 million blades) and Zimbabwe (annual production approximately 25 million blades) to Gillette.

- (18) Under the terms of the non-Community sale agreement and the intellectual property agreement, Eemland agrees to sell the Wilkinson Sword wet-shaving activities and intellectual property subsisting outside the Community to Gillette. The subsequent American agreement provides for Eemland to retain the American business. Following the division of the Wilkinson Sword trade marks, Eemland agrees not to supply products under the Wilkinson Sword trade mark outside the Community and the United States of America, and Gillette similarly agrees not to supply such products in the Community or the United States of America, including an obligation not knowingly to sell any product bearing such a mark for supply or delivery inside the Community. Eemland remains free to supply wet-shaving products outside the Community and the United States of America as own-label products or under new brands, subject to certain restrictions.

- (19) The intellectual property acquired from Stora which relates exclusively to the existing business carried on outside the Community and the United States of America is assigned to Gillette subject to an irrevocable non-exclusive licence-back to Eemland of the registered patent and design rights, but not the trademarks. Where the intellectual property relates in part to the business in the Community or the United States of America and in part to countries outside those areas, Eemland will give Gillette the exclusive right to benefit from such intellectual property outside the Community and the United States of America. The parties 'acknowledge that Wilkinson Sword is a valuable international trade mark and that it is in their respective interests to maintain its worth'. Gillette also acquires a first option to purchase any moulds, dies or tools used to supply Gillette under the arrangements described above, should Eemland cease to supply or arrange for third parties to supply Gillette with wet-shaving products under the Wilkinson Sword brand name. The parties also recognize that they may have a customer for one or more products which resells for retail not only in the Community and/or the United States of

America but also in an adjacent country, and they declare their intention to resolve such problems 'in good faith and in a manner that preserves the value' of their respective businesses.

- (20) Under the terms of the agreements Gillette has agreed to indemnify Eemland, Stora and the investors against losses arising from anti-trust proceedings relating to 'the European Wilkinson Sword business'.
- (21) Following the intervention of the American anti-trust authorities mentioned above, an agreement was concluded between the Department of Justice, Gillette and Eemland which led to a consent order being entered by the US Court. Under the terms of this order, Gillette is prevented from acquiring any additional interest in any securities of Eemland other than as interest on existing debt or as conversions of existing shares to voting shares, or from acquiring any assets from Eemland except in limited circumstances. However, Gillette remains free to nominate an alternative purchaser where it is entitled to do so. In the event that Gillette acquires voting rights by conversion of its existing loan stock, it would have to give a proxy to Eemland to cast its votes in the same proportion as the votes cast by the other equity holders. Gillette also undertakes not to exert any influence over Eemland or to do anything to cause Eemland to become insolvent or, if it was insolvent or at risk of becoming insolvent, not to vote against any reorganization plan proposed or supported by Eemland. These restrictions may be waived with the agreement of the Department of Justice or the US courts.

II. LEGAL ASSESSMENT

A. Article 86

- (22) The market concerned is the market for wet-shaving products, namely razor blades and razors, including disposable razors. Gillette occupies a dominant position on this market in the Community as a whole and in each Member State. This is clear from the market share figures given in the table in recital 8. In 1989 in the Community as a whole Gillette achieved a market share of 70 % by value and 59 % by volume. Furthermore Gillette had 50 % or more of the market (by value) in every Member State, which establishes its dominant position in the wet-shaving market in the Community⁽¹⁾. The market shares based on value are a

more reliable indicator of the strength of the various suppliers on this market in view of the heterogeneous nature of the product and the range of product prices. A comparison of Gillette's market shares with the figures for the other competitors on the market also highlights Gillette's dominance. There are only four significant competitors on the market and there is a considerable gap between Gillette and its nearest rival. This dominance is reinforced by the high entry barriers to the wetshaving market, which were examined in the preceding section.

- (23) An undertaking in a dominant position has a special responsibility not to allow its conduct to impair genuine undistorted competition on the common market⁽²⁾. By participating in the buy-out of the Wilkinson Sword business, Gillette has failed to discharge that special responsibility and has abused its dominant position. Gillette was instrumental in arranging the buy-out and notwithstanding the care with which the agreements were drafted, the structure of the wet-shaving market in the Community has been changed by the creation of a link between Gillette and its leading competitor. The Court of Justice has referred to an abuse of a dominant position 'relating to the behaviour of an undertaking in a dominant position which is such as to influence the structure of a market where, as a result of the very presence of the undertaking in question, the degree of competition is weakened and ... has the affect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition'⁽³⁾. The change in the structure of the wet-shaving market brought about by Gillette's participation in the overall arrangement will have an adverse effect on competition in that market in the Community and therefore Gillette's involvement constitutes an abuse of its dominant position.

- (24) In the Joined Cases BAT and Reynolds (hereinafter called the Philip Morris Case)⁽⁴⁾, the Court of Justice considered the situation in which a company acquires a minority shareholding in a competitor. The Court indicated that an abuse of a dominant position can arise only where a shareholding in another company results in at least some

⁽¹⁾ Case C-62/86, Akzo Chemie BV v. Commission [1991] ECR, I to 3359 (paragraph 60).

⁽²⁾ Case 322/81, Michelin v. Commission [1983] ECR 3461 and 3511 (paragraph 57).

⁽³⁾ Case 85/76, Hofmann-La Roche v. Commission [1979] ECR 461 and 541 (paragraph 91).

⁽⁴⁾ Joined Cases 142 and 156/84, BAT and Reynolds [1987] ECR p. 4487.

influence on that company's commercial policy. Gillette has not only become a major shareholder in Eemland but has also become its largest creditor and has acquired important pre-emption and conversion rights and options in Eemland. The position of Gillette is a matter which the management of Eemland will be obliged to take into account and consequently it is a factor which will influence the commercial conduct of Eemland. It follows that Gillette will have at least some influence on Eemland's commercial policy. Although the Court did not strike down the agreements in the Philip Morris Case it is important to note that in that case the Court was considering a situation in which the shareholding was acquired in and not by the undertaking which was said to occupy a dominant position. In the present Case it is a dominant undertaking, Gillette, which has acquired a substantial shareholding in its principal competitor. Despite the similarities between the form of the agreements in the present Case and the form of the agreements in the Philip Morris Case, Gillette is taking a minority interest in a competitor in circumstances which are fundamentally different from those underlying the Philip Morris Case, and in particular the market is dominated by Gillette which makes the existing competition more vulnerable to structural changes.

These rights ensure that no other competitor on the market such as Warner-Lambert or BIC can improve its competitive position through the acquisition of Eemland. It also ensures that no other company hostile to Gillette can take over Wilkinson and effectively prevents the management of Eemland from entering into a merger or joint venture with someone of whom Gillette does not approve. Consequently the medium and long-term commercial fate of Eemland is to some extent in the hands of Gillette. This is emphasized by the fact that Eemland, having sold the matches and lighters division as originally planned, will be entirely dependent upon its shaving products business, thereby making it more vulnerable to Gillette. The pre-emption rights can be considered as a new barrier to entry in this market, given that they are held by a dominant undertaking (unlike in the Philip Morris Case). Other competitors on the market are adversely affected because they are deprived of one of the most obvious ways of challenging Gillette's market dominance, namely by taking over Eemland. Gillette, which is by far the strongest operator on this market, has entered into a relationship with its strongest competitor and although it has not acquired any direct control over Eemland, this relationship enables Gillette to exercise some influence over Eemland's commercial conduct.

(25) Gillette has acquired 22 % of the equity of Eemland, which cannot be disregarded simply because of the absence of voting rights and other usual shareholders' rights or because of Gillette's covenant not to exert or attempt to exert any influence over the Board or any member of the Board of Eemland. Gillette is also a major creditor of Eemland, having contributed US\$ 69 million of mezzanine debt (representing 11,6 % of the debt of Eemland) and almost US\$ 14 million in equity loan stock, has agreed to make payments to Stora of up to US\$ 11 million and has accepted a loan note from Eemland for the sum of US\$ 6,4 million in respect of the American business. The level of Gillette's investment in Eemland compares with Eemland's estimated worldwide turnover in 1989 of US\$ 123 million. Eemland cannot reasonably be expected to ignore this financial dependence on Gillette. For example, the continuing availability of the interest-free loan from Stora, which Eemland currently enjoys, is dependent upon Gillette's willingness to make the payments of up to US\$ 11 million to Stora.

(26) In addition, Gillette has important pre-emption and conversion rights and options in Eemland.

(27) It is also necessary to consider the potential effects of the arrangements. Gillette will acquire certain contingent rights and in particular will be able to acquire voting rights in Eemland under certain circumstances, as described in recital 14 above. This possibility is likely to influence Eemland's commercial policy. At the very least Gillette's conversion rights will influence Eemland's decision-making in respect of those events which may trigger the conversion. This could seriously hamper Eemland's business strategy.

(28) The arrangements as a whole can be viewed as a strategy by Gillette to weaken the competitive position of Eemland and correspondingly to strengthen Gillette's own position. It is significant that Gillette took a leading role in arranging this transaction and in shaping the arrangements. One of the major consequences of this transaction is that Eemland's scope of action on the Community wet-shaving market has been considerably circumscribed. The options which are open to the company are severely limited by the burden of debt which it carries, by the limited geographical scope of its markets and by the influence which Gillette will be able to exercise through its interests in Eemland.

(29) The highly leveraged nature of the buy-out means that Eemland is in a weak position because of the burden of debt which that company is carrying. Eemland's ability to engage in an expensive advertising campaign, for example, is severely limited. Yet advertising is an important part of the manufacturer's competitive strategy on this market, as was noted earlier. Furthermore, because of the geographic separation of the Wilkinson Sword trade mark Eemland will not be able to sell outside the Community and the United States of America under the Wilkinson Sword brand name. Consequently, the company's scope for expansion is limited. Indeed Eemland has lost those markets in which there is the greatest potential for growth.

(30) By weakening the competitive position of Eemland, Gillette as the dominant player on this market will benefit from this lessening of competition. Indeed, Gillette can reasonably be expected to take account of its significant equity holding and creditor relationship with Wilkinson in setting its Community strategy. Outside the Community it is likely that Wilkinson Sword will be used not as a competing brand but as a strategic one. This will very probably have an effect on competition within the Community. One possibility would be concentration on different market segments, with Gillette targeting the top end of the market (particularly the systems segment) and obliging Wilkinson to concentrate on the lower-price part of the market. It is noteworthy that Gillette intends to increase its sales of Sensor razors from [...] in the year of launch (1989) to [...] in 1992⁽¹⁾ while its sales of Contour razors is estimated to drop from [...] units to an estimated [...] units in 1992⁽²⁾. This would indicate that Gillette hopes to concentrate on the market segment where it is technologically superior to its rivals, leaving the lower end of the market to Wilkinson Sword products.

(31) Furthermore, there are several other aspects of the arrangements which will further weaken competition on this market. Firstly, Gillette's access to the existing Wilkinson Sword technology which relates to the business taken over by Gillette will strengthen Gillette's competitive position. This occurs because Eemland will have no initial competitive

advantage over Gillette in that respect: both parties start from the same position. Secondly, Gillette's access when arranging this transaction to detailed financial projections for Wilkinson Sword wet-shaving products, including margin and sales estimates, will also have given Gillette a competitive advantage.

(32) There is a considerable amount of trade in wet-shaving products between Member States. As indicated earlier, Eemland has factories in Germany and in the United Kingdom, for example, but supplies wet-shaving products throughout the Community. Consequently, the matters referred to above will affect trade between Member States. It follows that Gillette's participation in this operation involving one of its principal competitors on the wet-shaving market in the Community constitutes an infringement of Article 86.

B. Article 85 (1)

(33) Gillette and Wilkinson are undertakings within the meaning of Article 85 and the series of agreements to which they are both parties are agreements within the meaning of that provision.

(34) The agreements relating to this operation have the object or effect of influencing the commercial behaviour of Eemland on the wet-shaving market in the Community. In the Philip Morris judgment the Court of Justice acknowledged that the acquisition by one company of an equity interest in a competitor may serve as an instrument for influencing the commercial conduct of the companies in question so as to restrict or distort competition on the market on which they carry on business⁽³⁾. Even though in the circumstances of this case Gillette's acquisition of an equity interest in Eemland as such may not suffice for the finding of an infringement of Article 85 (1) it has to be noted that it was accompanied by a number of agreements which have as their object or effect a restriction of competition between Gillette and Eemland. The relevant agreements in this context are the non-Community sale agreement, the intellectual property agreement and the supply agreement. These agreements must be assessed together and in the context of the operation as a whole.

(35) The geographical separation of the Wilkinson Sword trade mark between the Community and neighbouring markets resulting from the first two of the above agreements will lead to commercial

⁽¹⁾ In the published version of the Decision, some information has been omitted, pursuant to the provision of Article 17 (2) of Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets. However, for a better understanding of the text, some general information has been given in a footnote in those cases where it was possible to do so without violating the non-disclosure requirement for business secrets.

In this case, sales are intended to increase almost fourfold.
⁽²⁾ Sales are estimated to fall by almost one third.

⁽³⁾ BAT and Reynolds v. Commission [1987] ECR 4487 and 4577 (paragraph 37).

cooperation between the respective owners of the trade mark, namely Gillette and Eemland. Both Gillette and Eemland will at least initially be manufacturing and retailing identical products under the same trade marks (albeit in separate geographic areas) and will therefore have a common interest in promoting those products and the value of the trade marks. Indeed, the parties themselves recognize this, as can be seen from the clause in the intellectual property agreement quoted in recital 19 above referring to worldwide goodwill. It follows that there is a strong incentive for the two companies to cooperate and this is particularly obvious in the case of neighbouring markets. There are similar conditions of competition in the European Free Trade Association (EFTA) countries, for example, and the Community. The agreements create an artificial separation of markets. There is no natural border between the Community and non-Community countries for the purposes of trade in shaving products. Advertising and packaging are common to both sides of the border. There is an increased tendency for key accounts in the razor business to become part of large buying groups which regard Europe as one market and do not distinguish between a Community and a non-Community market. Consequently, the trade mark-sharing arrangements do not reflect commercial reality and the parties will be obliged to cooperate at least in relation to these neighbouring markets. This again is recognized in the agreements which state that the parties will cooperate when problems arise in relation to common customers.

- (36) Eemland, in its reply to the Commission's statement of objections, acknowledged that it could face difficulties in dealing with customers in Germany who also want to purchase products from Eemland for associated companies in Austria, and in dealing with retail buying groups which may seek to conclude arrangements on a Europe-wide basis.

- (37) A further matter which Eemland has brought to the attention of the Commission, in its reply to the statement of objections, is that Gillette's participation in the company has had a negative impact on the perception of Wilkinson Sword products in the Community. This has occurred, according to Eemland, because Eemland's competitors have been able to say to trade customers (albeit wrongly) that there is no difference between Gillette and Wilkinson Sword and that they should therefore purchase an alternative second brand to Gillette, other than Wilkinson Sword. This will obviously have an effect on competition in the wet-shaving market within the Community.

- (38) The supply arrangements between Gillette and Eemland provide another element of cooperation between the parties. Gillette has been a substantial customer of Eemland and continues to purchase Wilkinson Sword products for sale outside the Community. These factors lead to a restriction of competition on the wet-shaving market in the Community since, in a market which is characterized by a small number of competitors and high barriers to entry, a newly created relationship between competitors which results in commercial coordination, especially a relationship between the market leader and a leading competitor, will lead to an appreciable restriction of competition. Even though the supply agreement expired on 1 January 1992, Gillette has continued to purchase Wilkinson Sword products from Eemland on an *ad hoc* basis (see recital 17 above).

- (39) For the above reasons, it is considered that the non-Community sale and the intellectual property agreements between Gillette and Eemland restrict competition on the wet-shaving market in the Community in so far as they relate to neighbouring markets in Europe. For the reasons set out in recital 32 above and in view of the marketing policies of large buyers of wet-shaving products who buy on a Europe-wide basis, these agreements will affect trade between Member States. Consequently, these agreements contravene Article 85 (1).

C. Article 85 (3)

- (40) The agreements in question cannot be exempted from the application of Article 85 (1) since they do not contribute to improving the production or distribution of wet-shaving products or to promoting technical or economic progress while allowing consumers a fair share of the resulting benefit. The restrictions imposed on the undertakings concerned are not indispensable to the attainment of these objectives. Gillette claims in its notification that the agreements will enable Eemland to be better placed to produce and distribute its products within the Community but produces no evidence to support this assertion, which the Commission does not accept. Furthermore, the agreements in question afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of wet-shaving products. Consequently, the Commission rejects the application for exemption pursuant to Article 85 (3).

D. Other anti-trust proceedings

- (41) The Commission has taken into account the final judgment entered in the US courts with the consent of Gillette and Eemland, but notes that the restrictions imposed on the parties may be waived with the agreement of the Department of Justice or the US courts. Furthermore, at least some of the restrictions will automatically expire after 10 years. The restrictions accepted by the parties do not, in any event, remedy the adverse effects of the arrangements within the Community.

E. Article 3 of Council Regulation No 17

- (42) Where the Commission finds that there is an infringement of Article 86 of the EEC Treaty, it may require the undertakings concerned to bring such infringement to an end. In the present case, Gillette has abused its dominant position by participating in the buy-out of the Wilkinson Sword business in the Community, thereby creating links between a dominant undertaking and its most important competitor, resulting in some influence over the commercial behaviour of the latter. In order to terminate the infringement of Article 86, it is therefore necessary for Gillette to withdraw from Eemland, disposing of both its equity interest and its interest as a creditor of Eemland. The Commission considers that a period of [...] would be reasonable in the circumstances of this case, to allow Gillette to make appropriate arrangements for these disposals. If the matter is not resolved within that period, an independent third party is to be appointed to ensure that the disposals are effected as soon as possible thereafter.

- (43) Both Gillette and Eemland have contravened Article 85 (1) by entering into the non-Community sale and the intellectual property agreements with regard to neighbouring markets in Europe, thereby influencing their commercial conduct and leading to a restriction of competition in the Community wet-shaving market. The commercial cooperation between Gillette and Eemland which is necessitated by the division of the Wilkinson Sword trade mark between the Community (and the United States of America) and the rest of the world must be terminated in order to prevent coordination of commercial conduct in neighbouring geographic markets. At the same time, this will provide Eemland with a viable geographic base for its current and future operations. To this end, Gillette will be required to re-assign to Eemland the Wilkinson Sword businesses in Czechoslovakia, Hungary, Poland, Turkey,

the former Yugoslavia and all the EFTA countries as well as the former German Democratic Republic. The Commission understands that Eemland has retained *de facto* control of the businesses in the former German Democratic Republic and the EFTA countries pending the outcome of anti-trust proceedings,

HAS ADOPTED THIS DECISION:

Article 1

Gillette's participation in the purchase of the Wilkinson Sword business from Stora as described in this Decision constitutes an abuse of a dominant position within the meaning of Article 86 of the EEC Treaty.

Article 2

Gillette and Eemland have infringed Article 85 (1) of the EEC Treaty by entering into the non-Community sale agreement and the intellectual property manufacturing and distribution agreement in so far as these agreements relate to the former German Democratic Republic and to neighbouring markets in Europe and thereby result in commercial cooperation between Gillette and Eemland within the Community.

Article 3

An exemption pursuant to Article 85 (3) of the EEC Treaty for the agreements as mentioned in Article 2 is hereby refused.

Article 4

Gillette shall bring the infringement mentioned in Article 1 to an end within a period of [...] by disposing of its equity interest in Eemland and its interest as a creditor of Eemland, failing which Gillette shall irrevocably appoint an independent third party, on terms to be approved by the Commission, to act on Gillette's behalf in making the disposals required by this Decision.

Article 5

Gillette and Eemland shall bring the infringements mentioned in Article 2 to an end within a period of [...] by re-assigning to Eemland the Wilkinson Sword businesses including trade marks in the former German Democratic Republic, Czechoslovakia, Hungary, Poland, Turkey, the former Yugoslavia and the EFTA countries.

Article 6

This Decision is addressed to :

- The Gillette Company,
Prudential Tower Building,
Boston, Massachusetts,
United States of America ;
- Eemland Holdings NV,
Egelenburg 152,
1081 GK Amsterdam,
The Netherlands.

Done at Brussels, 10 November 1992.

For the Commission

Leon BRITTAN

Vice-President
