

Official Journal

of the European Communities

ISSN 0378-6978

L 306

Volume 36

11 December 1993

English edition

Legislation

Contents

I Acts whose publication is obligatory

- ★ Council Regulation (EC) No 3382/93 of 6 December 1993 opening and providing for the administration of a Community tariff quota for beer made from malt originating in Malta (1994) 1
- ★ Council Regulation (EC) No 3383/93 of 6 December 1993 establishing ceilings and Community surveillance for imports of certain products originating in Malta (1994) 3
- ★ Council Regulation (EC) No 3384/93 of 6 December 1993 opening and providing for the administration of a Community tariff quota for fresh strawberries originating in the Occupied Territories and laying down the procedure applicable to certain agricultural products subject to reference quantities originating in the said territories (1993/94) 10
- ★ Council Regulation (EC) No 3385/93 of 6 December 1993 opening and providing for the administration of a Community tariff quota for fresh or dried hazelnuts, shelled or not, originating in Turkey (1994) 14
- ★ Council Regulation (EC) No 3386/93 of 6 December 1993 imposing a definitive anti-dumping duty on imports of dead-burned (sintered) magnesia originating in the People's Republic of China 16
- Commission Regulation (EC) No 3387/93 of 10 December 1993 amending Regulation (EC) No 3197/93 on the supply of vegetable oil as food aid 22
- Commission Regulation (EC) No 3388/93 of 10 December 1993 closing an invitation to tender for the supply of cereals as food aid 23
- Commission Regulation (EC) No 3389/93 of 10 December 1993 on the issuing of a standing invitation to tender for the resale on the internal market of 100 000 tonnes of barley held by the Danish intervention agency 24
- ★ Commission Regulation (EC) No 3390/93 of 9 December 1993 concerning the stopping of fishing for herring by vessels flying the flag of the United Kingdom 25

★ Commission Regulation (EC) No 3391/93 of 9 December 1993 concerning the stopping of fishing for common sole by vessels flying the flag of France	26
★ Commission Regulation (EC) No 3392/93 of 10 December 1993 on detailed rules for the application of Council Regulation (EEC) No 1842/83 laying down general rules for the supply of milk and certain milk products at reduced prices to school children	27
★ Commission Regulation (EC) No 3393/93 of 10 December 1993 laying down detailed rules governing the granting of private storage aid for certain cheeses manufactured on the smaller Aegean islands	32
★ Commission Regulation (EC) No 3394/93 of 10 December 1993 amending Regulation (EEC) No 606/86 laying down detailed rules for applying the supplementary trade mechanism to milk products imported into Spain from the Community of Ten and Portugal	35
★ Commission Regulation (EC) No 3395/93 of 10 December 1993 adopting derogatory arrangements in the beef and veal sector as a result of certain animal health measures	37
Commission Regulation (EC) No 3396/93 of 10 December 1993 on the issuing of standing invitations to tender for the sale of common wheat of breadmaking quality held by the French and German intervention agencies for export to certain ACP countries in the 1993/94 marketing year	38
★ Commission Regulation (EC) No 3397/93 of 10 December 1993 amending Regulation (EEC) No 1627/89 on the buying-in of beef by invitation to tender	43
Commission Regulation (EC) No 3398/93 of 10 December 1993 amending Regulation (EC) No 3340/93 introducing a countervailing charge on fresh clementines originating in Morocco	45
Commission Regulation (EC) No 3399/93 of 10 December 1993 fixing the import levies on rice and broken rice	46
Commission Regulation (EC) No 3400/93 of 10 December 1993 fixing the premiums to be added to the import levies on rice and broken rice	48

II Acts whose publication is not obligatory

Commission

93/668/EC :

- | | |
|--|----|
| ★ Commission Decision of 24 November 1993 relating to a proceeding pursuant to Article 85 of the EEC Treaty (IV/32031 — Auditel) | 50 |
|--|----|

93/669/EC :

- | | |
|---|----|
| ★ Commission Decision of 30 November 1993 fixing for the Netherlands the maximum amount of the compensation eligible for Community financing of the programme for restructuring milk production laid down in Article 8 of Council Regulation (EEC) No 3950/92 | 56 |
|---|----|

93/670/EC :

- | | |
|---|----|
| ★ Commission Decision of 1 December 1993 concerning the Community's financial contribution to expenditure by the United Kingdom on the establishment of the Community vineyard register | 57 |
|---|----|

93/671/EC :

- | | |
|---|----|
| ★ Commission Decision of 10 December 1993 amending for the second time Decision 93/566/EC concerning certain protection measures relating to classical swine fever in Germany and replacing Decision 93/539/EEC | 59 |
|---|----|

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 3382/93

of 6 December 1993

opening and providing for the administration of a Community tariff quota for
beer made from malt originating in Malta (1994)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas the Supplementary Protocol to the Agreement establishing an association between the European Economic Community and Malta⁽¹⁾ provides, in an exchange of letters annexed to the said Protocol, that beer made from malt falling within CN code 2203 00, originating in Malta, may be imported into the Community free of duty within the limits of an annual Community tariff quota of 5 000 hectolitres; whereas the tariff quota in question should therefore be opened for the period from 1 January to 31 December 1994;

Whereas equal and continuous access to the quota should be ensured for all Community importers and the rates laid down for the quota should be applied consistently to all imports of the product in question into all the Member States until the quota is exhausted;

Whereas, the decision for the opening of tariff quotas should be taken by the Community in the execution of its international obligations; whereas, to ensure the efficiency of a common administration of these quotas, there

is no reasonable obstacle to authorizing the Member States to draw from the quota-volumes the necessary quantities corresponding to actual imports; whereas, however, this method of administration requires close cooperation between the Member States and the Commission and the latter must in particular be able to monitor the rate at which the quotas are used up and inform the Member States accordingly;

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

HAS ADOPTED THIS REGULATION:

Article 1

From 1 January to 31 December 1994, the customs duty applicable to imports into the Community of beer made from malt originating in Malta shall be suspended at the levels indicated below and within the limits of Community tariff quotas as shown below:

Order No	CN code	Description	Amount of quota (hl)	Quota duty (%)
09.1451	2203 00	Beer made from malt	5 000	Exemption

Article 2

The tariff quota referred to in Article 1 shall be administered by the Commission, which may take any appropriate measure with a view to ensuring the efficient administration thereof.

Article 3

If an importer presents, in a Member State, a declaration of entry into free circulation including a request for prefe-

rential benefit for a product covered by this Regulation, and if this declaration is accepted by the customs authorities, the Member State concerned shall draw, from the tariff quota, by means of notification to the Commission, a quantity corresponding to these needs.

The requests for drawing, with the indication of the date of acceptance of the said declaration, must be communicated to the Commission without delay.

⁽¹⁾ OJ No L 81, 23. 3. 1989, p. 2.

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

If a Member State does not use the quantities drawn, it shall return them as soon as possible to the tariff quota.

If the quantities requested are greater than the available balance of the tariff quota, allocation shall be made on a pro rata basis with respect to the requests. Member States shall be informed by the Commission of the drawings made.

Article 4

Each Member State shall ensure that importers of the product concerned have equal and continuous access to

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

Article 5

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

Article 6

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

It shall apply with effect from 1 January 1994.

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

Done at Brussels, 6 December 1993.

For the Council

The President

W. CLAES

**COUNCIL REGULATION (EC) No 3383/93
of 6 December 1993**

**establishing ceilings and Community surveillance for imports of certain
products originating in Malta (1994)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas the Agreement establishing an Association between the European Economic Community and Malta ⁽¹⁾, as supplemented by the Additional Protocol ⁽²⁾, by the Supplementary Protocol to the Agreement ⁽³⁾ and the Protocol extending the first stage of this Agreement ⁽⁴⁾ provided, in Article 2 of Annex I, for the total abolition of customs duties in respect of the products to which the Agreement applies; whereas, however, exemption from duties in respect of a number of products is subject to ceilings above which the customs duties applicable to third countries may be re-established;

Whereas, therefore, it is necessary to establish ceilings to be applied in 1994; whereas the application of ceilings requires a surveillance system for imports of these products originating in Malta;

Whereas the decision for the establishment of the said ceilings and for the installation of a surveillance system should be taken by the Community, in the execution of its international obligations, in order to enable the departments of the Commission to be kept aware of the level of imports of the said products;

Whereas, to ensure the efficiency of this surveillance system, Member States are required nevertheless to charge imports of the products in question against the ceilings as and when the products are entered with the customs authorities for free circulation; whereas such administration should provide the possibility of re-establishing customs duties once the said ceilings have been reached at Community level;

Whereas this administrative procedure requires close and particularly rapid cooperation between the Member States and the Commission and the latter must in particular be able to follow the progress of quantities charged against the ceilings and keep the Member States informed; whereas this cooperation has to be particularly close since

the Commission must be able to take appropriate measures to re-establish customs tariffs if one of the ceilings is reached,

HAS ADOPTED THIS REGULATION:

Article 1

1. From 1 January to 31 December 1994 imports into the Community of the products listed in the Annex and originating in Malta shall be subject to annual ceilings and Community surveillance.

The description of the products referred to in the first subparagraph, the corresponding CN codes and the ceilings are set out in the Annex.

2. Quantities shall be charged against the ceilings as and when the products are entered with customs authorities for free circulation accompanied by a movement certificate in accordance with the rules contained in the Protocol concerning the definition of the concept of originating products and methods of administrative cooperation annexed to the Protocol laying down certain provisions relating to the Agreement establishing an association between the European Economic Community and Malta ⁽⁵⁾.

Goods may be charged against the ceilings only if the movement certificate is submitted before the date on which customs duties are re-established.

The extent to which a ceiling is used up shall be determined at Community level on the basis of the imports charged against it in the manner defined in the preceding subparagraphs.

Member States shall inform the Commission of imports charged in accordance with the above procedure at the intervals and within the time limits specified in paragraph 4.

3. As soon as the ceilings are reached, the Commission may adopt a Regulation re-establishing, until the end of the calendar year, the customs duties applicable to third countries.

⁽¹⁾ OJ No L 61, 14. 3. 1971, p. 2.

⁽²⁾ OJ No L 304, 29. 11. 1977, p. 2.

⁽³⁾ OJ No L 81, 23. 3. 1989, p. 2.

⁽⁴⁾ OJ No L 116, 9. 5. 1991, p. 67.

⁽⁵⁾ OJ No L 111, 28. 4. 1976, p. 3.

4. Member States shall send the Commission not later than the 15th day of each month statements of the quantities charged during the preceding month.

Article 2

The Commission, in close cooperation with the Member States, shall take all appropriate measures for the purposes of applying this Regulation.

Article 3

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

It shall apply as from 1 January 1994.

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

Done at Brussels, 6 December 1993.

For the Council

The President

W. CLAES

ANNEX

List of products subject to import ceilings in 1994

Order No	CN code (1)	Description	Level of ceiling (tonnes)
11.0010	5204	Cotton sewing thread, whether or not put up for retail sale :	} application of ceiling suspended
		– Not put up for retail sale :	
	5204 11 00	– – Containing 85 % or more by weight of cotton	
	5204 19 00	– – Other	
	5205	Cotton yarn (other than sewing thread), containing 85 % or more by weight of cotton, not put up for retail sale	
	5206	Cotton yarn (other than sewing thread), containing less than 85 % by weight of cotton, not put up for retail sale	
	5604	Rubber thread and cord, textile covered ; textile yarn, and strip and the like falling within code 5404 or 5405, impregnated, coated, covered or sheathed with rubber or plastics :	
	ex 5604 90 00	– Other : – – Of cotton	
11.0020	5208	Woven fabrics of cotton, containing 85 % or more by weight of cotton, weighing not more than 200 g/m ²	} application of ceiling suspended
	5209	Woven fabrics of cotton, containing 85 % or more by weight of cotton, weighing more than 200 g/m ²	
	5210	Woven fabrics of cotton, containing less than 85 % by weight of cotton, mixed mainly or solely with man-made fibres, weighing not more than 200 g/m ²	
	5211	Woven fabrics of cotton, containing less than 85 % by weight of cotton, mixed mainly or solely with man-made fibres, weighing more than 200 g/m ²	
	5212	Other woven fabrics of cotton	
	5801	Woven pile fabrics and chenille fabrics, other than fabrics falling within code 5806 :	
		– of cotton :	
	5801 21 00	– – Uncut weft pile fabrics	
	ex 5811 00 00	Quilted textile products of cotton in the piece, composed of one or more layers of textile materials assembled with padding by stitching or otherwise, other than embroidery falling within code 5810	
	ex 6308 00 00	Sets consisting of woven fabric and yarn, of cotton, whether or not with accessories, for making up into rugs, tapestries, embroidered table cloths or serviettes, or similar textile articles, put up in packings for retail sale	
11.0030	5506	Synthetic staple fibres, carded, combed or otherwise processed for spinning	} application of ceiling suspended
	5507 00 00	Artificial staple fibres, carded, combed or otherwise processed for spinning	

(1) The Taric codes are to be found on the last page of this Annex.

Order No	CN code	Description	Level of ceiling (tonnes)
11.0040	5608	Knotted netting of twine, cordage or rope ; made-up fishing nets and other made-up nets, of textile materials :	application of ceiling suspended
		– Of man-made textile materials :	
	5608 19	– – Other :	
		– – – Made-up nets :	
		– – – – Of nylon or other polyamides :	
	5608 19 19	– – – – – Other	
		– – – – – Other :	
	5608 19 39	– – – – – Other	
	5608 90 00	– Other	
	6101	Men's or boys' overcoats, car-coats, capes, cloaks, anoraks (including ski-jackets), wind-cheaters, wind-jackets and similar articles, knitted or crocheted, other than those falling within code 6103	
	6102	Women's or girls' overcoats, car-coats, capes, cloaks, anoraks (including ski-jackets), wind-cheaters, wind-jackets and similar articles, knitted or crocheted, other than those falling within code 6104	
	6103	Men's or boys' suits, ensembles, jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted	
	6104	Women's or girls' suits, ensembles, jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted	
	6106	Women's or girls' blouses, shirts and shirt-blouses, knitted or crocheted	
	6107	Men's or boys' underpants, briefs, nightshirts, pyjamas, bathrobes, dressing gowns and similar articles, knitted or crocheted :	
		– Other :	
	6107 91	– – Of cotton :	
	6107 91 10	– – – Of terry towelling fabrics	
	6107 91 90	– – – Others	
	6107 92 00	– – Of man-made fibres	
	6107 99 00	– – Of other textile materials	
	6108	Women's or girls' slips, petticoats, briefs, panties, nightdresses, pyjamas, negligés, bathrobes, dressing gowns and similar articles, knitted or crocheted :	
		– Other :	
	6108 91	– – Of cotton :	
	6108 91 10	– – – Of terry towelling fabrics	
	6108 91 90	– – – Others	
	6108 92 00	– – Of man-made fibres	
	6108 99	– – Of other textile materials	
	6108 99 10	– – – Of wool or fine animal hair	
	6108 99 90	– – – Other	
	6110	Jerseys, pullovers, cardigans, waistcoats and similar articles, knitted or crocheted :	
	6110 10	– Of wool or fine animal hair :	
		– – Other :	
		– – – Men's or boys' :	
	6110 10 31	– – – – Of wool	
		– – – – Of fine animal hair :	
	6110 10 35	– – – – – Of Kashmir goats	
	6110 10 38	– – – – – Other	
		– – – Women's or girls' :	
	6110 10 91	– – – – Of wool	
		– – – – Of fine animal hair :	
	6110 10 95	– – – – – Of Kashmir goats	
	6110 10 98	– – – – – Other	

Order No	CN code	Description	Level of ceiling (tonnes)
11.0040 (cont'd)	6110 20	— Of cotton :	application of ceiling suspended (cont'd)
		— — Other :	
	6110 20 91	— — — Men's or boys'	
	6110 20 99	— — — Women's or girls'	
	6110 30	— Of man-made fibres :	
		— — Other :	
	6110 30 91	— — — Men's or boys'	
	6110 30 99	— — — Women's or girls'	
	6110 90	— Of other textile materials :	
	6110 90 10	— — Of flax or ramie	
	6110 90 90	— — Other	
	6111	Babies' garments and clothing accessories, knitted or crocheted :	
	6111 10	— Of wool or fine animal hair :	
	6111 10 90	— — Other	
	6111 20	— Of cotton :	
	6111 20 90	— — Other	
	6111 30	— Of synthetic fibres :	
	6111 30 90	— — Other	
	6111 90 00	— Of other textile materials	
	6112	Track suits, ski suits and swimwear, knitted or crocheted :	
		— Track suits :	
	6112 11 00	— — Of cotton	
	6112 12 00	— — Of synthetic fibres	
	6112 19 00	— — Of other textile materials	
	6112 20 00	— Ski suits	
		— Men's or boy's swimwear :	
	6112 31	— — Of synthetic fibres :	
	6112 31 90	— — — Other	
	6112 39	— — Of other textile materials :	
	6112 39 90	— — — Other	
		— Women's or girls' swimwear :	
	6112 41	— — Of synthetic fibres :	
	6112 41 90	— — — Other	
	6112 49	— — Of other textile materials :	
	6112 49 90	— — — Other	
	6113 00	Garments, made up of knitted or crocheted fabrics falling within code 5903, 5906 or 5907 :	
	6113 00 90	— Other	
	6114	Other garments, knitted or crocheted	
	6117	Other made up clothing accessories, knitted or crocheted ; knitted or crocheted parts of garments or of clothing accessories	
	6301	Blankets and travelling rugs :	
	6301 20	— Blankets (other than electric blankets) and travelling rugs, of wool or of fine animal hair :	
	6301 20 10	— — Knitted or crocheted	
	6301 30	— Blankets (other than electric blankets) and travelling rugs, of cotton :	
	6301 30 10	— — Knitted or crocheted	
	6301 40	— Blankets (other than electric blankets) and travelling rugs, of synthetic fibres :	
	6301 40 10	— — Knitted or crocheted	
	6301 90	— Other blankets and travelling rugs :	
	6301 90 10	— — Knitted or crocheted	

Order No	CN code	Description	Level of ceiling (tonnes)
11.0040 (cont'd)	6302	Bed linen, table linen, toilet linen and kitchen linen :	application of ceiling suspended (cont'd)
	6302 10	– Bed linen, knitted or crocheted :	
	6302 10 10	– – Of cotton	
	6302 10 90	– – Of other textile materials	
	6302 40 00	– Table linen, knitted or crocheted	
	6303	Curtains (including drapes) and interior blinds ; curtain or bed valances :	
		– Knitted or crocheted :	
	6303 11 00	– – Of cotton	
	6303 12 00	– – Of synthetic fibres	
	6303 19 00	– – Of other textile materials	
	6304	Other furnishing articles, excluding those falling within code 9404 :	
		– Bedspreads :	
	6304 11 00	– – Knitted or crocheted	
		– Other :	
	6304 91 00	– – Knitted or crocheted	
	6305	Sacks and bags, of a kind used for the packing of goods :	
	6305 20 00	– Of cotton	
		– Of man-made textile materials :	
	6305 31	– – Of polyethylene or polypropylene strip or the like	
	ex 6305 39 00	– – Other :	
		– – – Knitted or crocheted	
	ex 6305 90 00	– Of other textile materials :	
		– – Knitted or crocheted	
	6307	Other made up articles, including dress patterns :	
	6307 10	– Floom-cloths, dish-cloths, dusters and similar cleaning cloths :	
	6307 10 10	– – Knitted or crocheted	
	6307 90	– Other :	
	6307 90 10	– – Knitted or crocheted	
11.0050	6201	Men's or boys' overcoats, car-coats, capes, cloaks, anoraks (including ski-jackets), wind-cheaters, wind-jackets and similar articles, other than those falling within code 6203	1 864
	6203	Men's or boys' suits, ensembles, jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear)	
	6207	Men's or boys' singlets and other vests, underpants, briefs, nightshirts, pyjamas, bathrobes, dressing gowns and similar articles :	
		– Other :	
	6207 91	– – Of cotton :	
	6207 91 10	– – – Bathrobes, dressing gowns and similar articles in terry towelling style	
	6207 91 90	– – – Others	
	6207 92 00	– – Of man-made fibres	
	6207 99 00	– – Of other textile materials	
	6210	Garments, made up of fabrics falling within code 5602, 5603, 5903, 5906 or 5907 :	
	6210 10	– Of fabrics falling within code 5602 or 5603 :	
		– – Of fabrics falling within code 5603 :	
	6210 10 91	– – – In sterile packs	
	6210 10 99	– – – Other	
	6210 20 00	– Other garments, of the type described in codes 6201 11 to 6201 19	
	6210 40 00	– Other men's or boys' garments	

Order No	CN code	Description	Level of ceiling (tonnes)
11.0050 (cont'd)	6211	Track suits, ski suits and swimwear; other garments:	1 864 (cont'd)
		– Swimwear:	
	6211 11 00	– – Men's or boys'	
	6211 20 00	– Ski suits	
		– Other garments, men's or boys':	
	6211 31 00	– – Of wool or fine animal hair	
	6211 32	– – Of cotton:	
	6211 32 10	– – – Industrial and occupational clothing	
		– – – Tracksuits with lining:	
	6211 32 31	– – – – with an outer shell of a single identical fabric	
		– – – – Other:	
	6211 32 41	– – – – – Upper parts	
	6211 32 42	– – – – – Lower parts	
	6211 32 90	– – – Other	
	6211 33	– – Of man-made fibres:	
	6211 33 10	– – – Industrial and occupational clothing	
		– – – Tracksuits with lining:	
	6211 33 31	– – – – with an outer shell of a single identical fabric	
		– – – – Other:	
	6211 33 41	– – – – – Upper parts	
	6211 33 42	– – – – – Lower parts	
	6211 33 90	– – – Other	
	6211 39 00	– – Of other textile materials:	
		– – – Tracksuits with lining:	
	6211 42 31	– – – – with an outer shell of a single identical fabric	
		– – – – Other:	
	6211 42 41	– – – – – Upper parts	
	6211 42 42	– – – – – Lower parts	
		– – – Tracksuits with lining:	
	6211 43 31	– – – – with an outer shell of a single identical fabric	
		– – – – Other:	
	6211 43 41	– – – – – Upper parts	
	6211 43 42	– – – – – Lower parts	
	6217	Other made up clothing accessories; parts of garments or of clothing accessories, other than those falling within code 6212:	
	6217 90 00	– Parts	

Taric codes

Order No	CN code	Taric code
11.0010	ex 5604 90 00	5604 90 00 * 50
11.0020	ex 5811 00 00	5811 00 00 * 14 5811 00 00 * 91 5811 00 00 * 92
	ex 6308 00 00	6308 00 00 * 11 6308 00 00 * 19
11.0040	ex 6305 39 00	6305 39 00 * 91
	ex 6305 90 00	6305 90 00 * 10 6305 90 00 * 20

COUNCIL REGULATION (EC) No 3384/93

of 6 December 1993

opening and providing for the administration of a Community tariff quota for fresh strawberries originating in the Occupied Territories and laying down the procedure applicable to certain agricultural products subject to reference quantities originating in the said territories (1993/94)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof,

Having regard to Council Regulation (EEC) No 1134/91 of 29 April 1991 on the tariff arrangements applicable to imports into the Community of products originating in the Occupied Territories and repealing Regulation (EEC) No 3363/86⁽¹⁾, and in particular Articles 2 and 3 thereof,

Having regard to the proposal from the Commission,

Whereas Article 2 of Regulation (EEC) No 1134/91 provides for the elimination of customs duties on imports of the agricultural products set out in Annex II thereto and originating in the Occupied Territories on 1 January 1993, and within the periods indicated for each product; whereas, therefore, it is appropriate to open from 1 November 1993 the Community tariff quotas laid down for the said products, the volumes of which are indicated in Article 1 and the Annex to this Regulation;

Whereas duties on the strawberries falling within CN code 0810 10 90 are eliminated within the limits of a Community tariff quota of 1 200 tonnes;

Whereas equal and continuous access to the quota should be ensured for all Community importers and the rate laid down for the quota should be applied consistently to all imports of the products in question into all the Member States until the quota is exhausted;

Whereas the decision for the opening, in the execution of its international obligations, of a tariff quota should be taken by the Community; whereas, to ensure the efficiency of a common administration of this quota, there is, however, no obstacle to authorizing the Member States to draw from the quota-volume the necessary quantities corresponding to actual imports; whereas this method of administration requires close cooperation between the Member States and the Commission and the latter must in particular be able to monitor the rate at which the quota is used up and inform the Member States accordingly;

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

Whereas, in carrying out its international obligations, the Community must open reference quantities and establish a statistical surveillance system regarding the products listed in the Annex;

Whereas, in order to enable the competent authorities within the Commission to establish an annual trade balance sheet for each of the products and if necessary, to put into application the arrangement provided for in Article 3 (2) of Regulation (EEC) No 1134/91, these products are subject to the statistical surveillance in accordance with Regulations (EEC) No 2658/87⁽²⁾ and (EEC) No 1736/75⁽³⁾;

Whereas, to ensure the efficiency of the surveillance system, the Member States must nevertheless charge imports of the products in question against the reference quantities as and when these products are presented to the customs under cover of declarations for release for free circulation; whereas the reference quantities for the products listed in the Annex should be opened for the period 1993/94,

HAS ADOPTED THIS REGULATION:

Article 1

The customs duty applicable to imports into the Community of fresh strawberries originating in the Occupied Territories shall be suspended at the level indicated below and within the limit of the Community tariff quota as shown below:

⁽²⁾ OJ No L 256, 7. 9. 1987, p. 1. Regulation as last amended by Regulation (EEC) No 2976/93 (OJ No L 268, 29. 10. 1993, p. 21).

⁽³⁾ OJ No L 183, 14. 7. 1975, p. 3. Regulation as last amended by Regulation (EEC) No 1629/88 (OJ No L 147, 14. 6. 1988, p. 1).

⁽¹⁾ OJ No L 112, 4. 5. 1991, p. 1.

Order No	CN Code	Taric Code	Description	Amount of quota (in tonnes)	Quota duty (%)
09.1381	0810 10 90	*36 *39 *41 *49	Fresh strawberries from 1 November 1993 to 31 March 1994	1 200	0

Article 2

The tariff quota referred to in Article 1 shall be administered by the Commission, which may take any appropriate measure with a view to ensuring the efficient administration thereof.

Article 3

If an importer presents, in a Member State, a declaration of entry into free circulation including a request for preferential benefit for a product covered by Article 1 of this Regulation, and if this declaration is accepted by the customs authorities, the Member State concerned shall draw, from the tariff quota, by means of notification to the Commission, a quantity corresponding to these needs.

The requests for drawing, with the indication of the date of acceptance of the said declaration, must be communicated to the Commission without delay.

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

If a Member State does not use the quantities drawn, it shall return them as soon as possible to the tariff quota.

If the quantities required are greater than the available balance of the tariff quota, allocation shall be made on a pro rata basis with respect to the requests. Member States shall be informed by the Commission of the drawings made.

Article 4

1. Imports into the Community of certain products originating in the Occupied Territories shall be subject to reference quantities and to a statistical surveillance.

The products referred to in the first subparagraph, their CN codes, the periods of validity and the levels of the reference quantities are set out in the Annex.

2. Quantities shall be charged against the reference quantities as and when products are entered with customs authorities for free circulation and accompanied by a movement certificate. If the movement certificate is submitted *a posteriori*, the goods shall be charged against the corresponding reference quantity at the moment when the goods are entered for free circulation.

The extent to which the reference quantities are used up shall be determined at Community level on the basis of the imports charged against them in the manner defined in the first subparagraph, as communicated to the Statistical Office of the European Communities in application of Regulations (EEC) No 2658/87 and (EEC) No 1736/75.

Article 5

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

Article 6

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

It shall apply with effect from 1 November 1993.

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

Done at Brussels, 6 December 1993.

For the Council

The President

W. CLAES

ANNEX

Order No	CN code	Taric code	Description	Validity	Reference quantity (tonnes)
18.0310	ex 0702 00 10	*51 *59 *61 *69	Tomatoes, fresh or chilled	1. 12. 1993 — 31. 3. 1994	1 000
18.0320	ex 0709 30 00	*20 *30	Aubergines, fresh or chilled	15. 1. 1994 — 30. 4. 1994	3 000
18.0330	ex 0709 60 10		Sweet peppers	1. 1. 1994 — 31. 12. 1994	1 000
18.0340	ex 0709 90 70	*20	Courgettes, fresh or chilled	1. 12. 1993 — 28. 2. 1994	300
18.0350	0805 10 11 0805 10 15 0805 10 19 0805 10 21 0805 10 25 0805 10 29 0805 10 31 0805 10 35 0805 10 39 0805 10 41 0805 10 45 0805 10 49 ex 0805 10 70 ex 0805 10 90	*11 *13 *14 *18 *11 *19	Oranges, fresh	1. 1. 1994 — 31. 12. 1994	25 000
18.0360	ex 0805 20 10 ex 0805 20 30 ex 0805 20 50 ex 0805 20 70 ex 0805 20 90	*31 *33 *35 *38 *39 *31 *33 *35 *38 *39 *31 *33 *35 *38 *39 *31 *33 *35 *38 *39 *11 *15 *16 *17 *18 *51 *53 *55 *58 *59	Mandarins (including tangerines and satsumas); clementines, wilkings and similar citrus hybrids, fresh	1. 1. 1994 — 31. 12. 1994	500

Order No	CN code	Taric code	Description	Validity	Reference quantity (tonnes)
18.0370	ex 0805 30 10	*10	Lemons (<i>Citrus limon</i> , <i>Citrus limonom</i>), fresh	1. 1. 1994 — 31. 12. 1994	800
18.0380	ex 0807 10 90	*13 *14 *23 *33 *34 *43	Melons, fresh	1. 11. 1993 — 31. 5. 1994	10 000

COUNCIL REGULATION (EC) No 3385/93
of 6 December 1993

**opening and providing for the administration of a Community tariff quota for
fresh or dried hazelnuts, shelled or not, originating in Turkey (1994)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas the Annex to Council Regulation (EEC) No 4115/86 of 22 December 1986 on imports into the Community of agricultural products originating in Turkey⁽¹⁾, provides that fresh or dried hazelnuts, shelled or not and originating in Turkey shall be admitted on importation into the Community at zero duty within the limits of a Community tariff quota of 25 000 tonnes; whereas the Community tariff quota concerned should therefore be opened for 1994;

Whereas equal and continuous access to the quota should be ensured for all Community importers and the rate laid down for the quota should be applied consistently to all imports of the products in question into the Member States until the quota is exhausted;

Whereas the decision on the opening, in implementation of its international obligations, of a tariff quota should be taken by the Community; whereas, to ensure the efficiency of a common administration of this quota, there is, however, no obstacle to authorizing the Member States to

draw from the quota-volume the necessary quantities corresponding to actual imports; whereas this method of administration requires close cooperation between the Member States and the Commission and the latter must in particular be able to monitor the rate at which the quota is used up and inform the Member States accordingly;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. From 1 January to 31 December 1994 the customs duty applicable to imports into the Community of the following products originating in Turkey shall be suspended at the level indicated and within the limits of a Community tariff quota as shown below:

Order No	CN code	Description	Amount of quota (in tonnes)	Rate of quota duty (%)
09.0201	0802 21 00 0802 22 00	Fresh or dried hazelnuts, shelled or not	25 000	0

2. Imports of the products in question may not be charged against this tariff quota if they already qualify for the same customs duties under other preferential tariff arrangements.

Article 2

The tariff quota referred to in Article 1 shall be administered by the Commission, which may take any appropriate measure with a view to ensuring the efficient administration thereof.

Article 3

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

tariff quota, by means of notification to the Commission, a quantity corresponding to these needs.

The requests for drawing, with the indication of the date of acceptance of the said declaration, must be communicated to the Commission without delay.

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

⁽¹⁾ OJ No L 380, 31. 12. 1986, p. 16.

If a Member State does not use the quantities drawn, it shall return them as soon as possible to the tariff quota.

If the quantities requested are greater than the available balance of the quota, allocation shall be made on a pro rata basis with respect to the requests. Member States shall be informed by the Commission of the drawings made.

Article 4

Each Member State shall ensure that importers of the product concerned have equal and continuous access to

the quota for such time that the residual balance of the quota volume permits.

Article 5

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

Article 6

This Regulation shall enter into force on 1 January 1994.

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

Done at Brussels, 6 December 1993.

For the Council

The President

W. CLAES

COUNCIL REGULATION (EC) No 3386/93**of 6 December 1993****imposing a definitive anti-dumping duty on imports of dead-burned (sintered) magnesia originating in the People's Republic of China**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Community⁽¹⁾, and in particular Article 12 thereof,

Having regard to the proposal from the Commission, submitted after consultation within the Advisory Committee as provided under the above Regulation,

Whereas :

A. Provisional measures

- (1) The Commission, by Regulation (EEC) No 2799/92⁽²⁾, imposed a provisional anti-dumping duty on imports of dead-burned (sintered) magnesia originating in the People's Republic of China and falling within CN code 2519 90 30, hereafter referred to as 'dead-burned magnesite'.

B. Subsequent procedure

- (2) Following the imposition of the provisional anti-dumping duty, five Chinese exporters and some independent importers requested and were granted an opportunity to be heard by the Commission. They also made written submissions making known their views on the findings as did other independent importers, some end users and the Chinese authorities.
- (3) Parties were also informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive duties. They were also granted a period within which they could make representations subsequent to these disclosures.
- (4) The oral and written comments submitted by the parties were considered and, where appropriate, the Commission's findings were modified to take account of them.

C. Product under consideration — Like product

- (5) Certain Chinese exporters, independent importers and end users have repeated the argument that dead-burned magnesite originating in the Community and elsewhere is not a like product to that originating in the People's Republic of China. In this respect, the Chinese exporters proposed that an independent technical expert be appointed by the Commission to determine the question of whether or not Chinese dead-burned magnesite is a 'like product' to any other dead-burned magnesite, in terms of the quality of its mineral deposits, the extracting and processing methods, its chemical and physical characteristics and the application of the final product.
- (6) The Commission accepts that an independent expert may provide factual information as to any such differences between Chinese dead-burned magnesite and that from other sources. The existence of these differences is, however, accepted by the Community institutions. It is also not contested that these differences do not alter the fact that the basic physical and chemical characteristics of all types of dead-burned magnesite are identical. Only if these basic physical and technical characteristics were to be different, could it be considered that the different types of dead-burned magnesite are not similar products. The fact that dead-burned magnesite from whatever source can be used interchangeably by end users confirms that it is a like product. It was thus not considered necessary to appoint such an expert for these reasons and for those given in recitals 10, 11 and 12 of Regulation (EEC) No 2799/92.

The Council confirms these findings and conclusions.

D. Dumping**(a) Reference country**

- (7) In Regulation (EEC) No 2799/92 the Commission found that Turkey was an appropriate reference country for the determination of normal value for the People's Republic of China. After the imposition of provisional duties some of the exporters objected to the use of Turkey as a reference country and proposed Czechoslovakia as being more appro-

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No L 282, 26. 9. 1992, p. 15.

priate because of the nature of its reserves, its processing techniques, and the range of the MgO (magnesium oxide) grades. They argued that the former Czechoslovakia, while being a market economy, has an economic structure closer to that of China.

The Commission recalls however that, in accordance with Regulation (EEC) No 1765/82⁽¹⁾, the former Czechoslovakia cannot be regarded as a market economy during the investigation period of July 1990 to June 1991. According to the provisions of Article 2 (5) of Regulation (EEC) No 2423/88, prices and costs in such a non-market economy cannot be used as a basis for establishing normal value.

When selecting a market economy country in which normal value can be established, the Commission takes several factors into account. It considers the access to raw materials, the representativity of the market in relation to the quantities exported by the exporting country and whether costs and prices of the product in question in that country are formed by competitive market forces.

After a full examination of conditions in Turkey in the light of the above considerations, the Commission concluded, as in recital 15 of Regulation (EEC) No 2799/92 that Turkey is an appropriate reference country.

The Council confirms these findings and conclusions.

(b) *Normal value*

(8) With regard to the price situation in Turkey, the Commission found that the high proportion of sales between related companies made it inappropriate to base normal value on selling prices. However, it was found, as shown in recital 16 of Regulation (EEC) No 2799/92 that the costs of production of the Turkish producer are determined through a process of competitive tendering. Costs of production are thus established in the ordinary course of trade and form an appropriate basis for normal value.

(9) The Chinese exporters argued, after the imposition of provisional duties, that the normal value as constructed for each MgO grade and as adjusted to take account of differences in conditions between China and Turkey, did not fully reflect the natural advantages of China, where they claimed dead-burned magnesite can be extracted and processed more easily than in Turkey.

The Commission, to some extent, agrees with this argument. As far as the differences in the mining and processing methods are concerned, the Commission accepts that for Chinese produced dead-burned magnesite, due to the natural advantages, some cost factors do not exist in China. In Regulation (EEC) No 2799/92 normal value was adjusted to allow beneficiation and sorting processes found in Turkey but not found in China. The Commission now considers that an additional allowance should be made for the ease of access to raw materials in China in comparison with that of Turkey. Therefore, taking into account the actual ore/spoil ratio found in Turkey and the level of adjustment suggested by the Chinese exporters, the costs of extraction have been reduced by 20 %, as compared with those established in Turkey.

On this basis, the normal value, as established for the Turkish producer, is considered to reflect the natural advantages in China. The Chinese exporters argued that a further allowance should be made in the light of the claimed proximity of the open cast mines to the kilns in China. In this respect it must be stated that the decision to locate the kilns near to the mines, and to move them as the mines move, is one which is influenced by the non-market cost structure in China and that to make adjustments on this account would be incompatible with the aims of Article 2 (5) of Regulation (EEC) No 2423/88.

(10) The normal value thus established is confirmed by the Council.

(c) *Export price*

(11) The Council confirms the method used to establish export prices set out in recital 18 of Regulation (EEC) No 2799/92 as no substantiated comments in this respect were made by interested parties.

E. Comparison and dumping margin

(12) The Chinese exporters argued that Chinese producers use simple, low cost, coke-burning, shaft kilns and that an adjustment of 10 % should be made to reflect lower burning costs in China. The Commission established, however, that the Turkish producer also uses shaft kilns. By way of contrast the Commission accepted that an allowance should be made to reflect the higher cost of the fuel oil used by the Turkish producer and costs of production have thus been reduced by 3 %. A number of importers and end users both before and after the imposition of provisional measures alleged that when importing Chinese dead-burned magnesite they had to carry out themselves operations such as analysis of the product, monitoring of loading of the product and removal of foreign substances. It

⁽¹⁾ OJ No L 195, 5. 7. 1982.

was alleged that this requires often the use, by the importers, of personnel in China. These operations, in the case of the Turkish producers, are normally done by the producers themselves and do not require any intervention of the purchasers. It was requested by these importers and end users that an allowance under Article 2 (9) of Regulation (EEC) No 2423/88 should be granted to take account of differences in conditions and terms of sale affecting price comparability. The Commission considers on the basis of the information collected that the request for the allowance is justified. On the basis of the information available from the Turkish producer, these costs have been evaluated to be 6 % of the constructed sales price and, for purposes of the comparison, normal value has been adjusted accordingly.

No other observation having been raised by any other party, the findings and conclusions in recital 19 of Regulation (EEC) No 2799/92 are hereby confirmed by the Council.

The final examination of the facts showed the existence of dumping, the margin of dumping being equal to the amount by which the normal value exceeds the price for export to the Community. This margin is equal to ECU 47 per tonne.

- (13) For the purpose of the provisional findings the Commission has established a single dumping margin for all Chinese exporters. The cooperating Chinese exporters contested the single dumping margin and argued that the Commission should calculate a dumping margin for each cooperating exporter.

The Commission recalls however that, with regard to exports from a non-market economy, individual treatment must remain a strict exception to be applied solely in cases where the producer concerned has provided evidence that it is free to establish export prices without the influence of the State authorities. The State, through its control, could modify the pattern of production and trade, so as to take advantage of the lowest dumping margin and thus undermine the effectiveness of any measures. In this respect, as explained in recital 21 of Regulation (EEC) No 2799/92, these exporters which are State controlled enterprises are not independent of any State influence and are not free

in the fixing of their export prices. Therefore only one dumping margin for all Chinese exports has been established. The Council confirms the above findings and conclusions.

F. Injury

- (14) The Commission concluded in Regulation (EEC) No 2799/92 (see recitals 22 to 32) that the Community industry had suffered material injury as a result of the dumped imports of dead-burned magnesite originating in the People's Republic of China. Imports of the product concerned from the People's Republic of China increased from 117 000 tonnes in 1988 to over 176 000 tonnes during the investigation period of 1 July 1990 to 30 June 1991, the market share of the Community producers decreased in a growing market and their prices were significantly depressed. All sales by Community producers were loss making or at a low profit level. In this respect no new arguments were put forward by interested parties. The Council, therefore, confirms the Commission findings and conclusions as set out in recital 32 of Regulation (EEC) No 2799/92.
- (15) The Chinese exporters argued that there can be no injury for grades above 92 % MgO as the Community producers of these grades have, allegedly, continually increased sales, production volume and capacity utilization.

As established in recital 32 of Regulation (EEC) No 2799/92, the Commission did not find, during its investigation, that Community producers had increased sales, production volume and capacity utilization for these grades. In addition, this argument ignores the fact that according to Article 4 (4) of Regulation (EEC) No 2423/88 injury has to be established in relation to the Community production of the like product, which consists of all types and grades of dead-burned magnesite which are largely interchangeable. If sales in the Community by the Community producers of certain grades are not affected by dumped imports in an identical way to other grades, this has to be seen in the global context of the Community industry's performance on the Community market for the like product as a whole, which means all types and grades. This argument has, therefore, to be rejected. The Council confirms the above findings and conclusions.

G. Causation of injury

- (16) As set out in recitals 33 and 34 of Regulation (EEC) No 2799/92, the Commission found that the Community industry had suffered material injury through the effect of dumped imports within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88. However, after the imposition of provisional measures, the Chinese exporters and some importers argued that the rising costs of production incurred by Community producers indicated that injury was self-inflicted and not attributable to imports from China. They also argued that injury had been caused by imports from North Korea.
- (17) With regard to the first argument, the Commission did not find that Community producers' costs had risen significantly between 1988 and the investigation period. The worsening financial position of the Community industry was the result of the downward pressure on prices from dumped imports from China while costs remained stable. The Commission, therefore, cannot accept that there was any self-inflicted injury on the part of the Community industry due to rising costs of production and this argument, therefore, has to be rejected.
- (18) With regard to imports from North Korea the Commission notes that China is by far the largest source of imports of dead-burned magnesite into the Community. North Korea accounted for 15 % of imports of dead-burned magnesite into the Community during the reference period, whereas China accounted for 46 % of the imports. Accordingly, while it cannot be excluded that factors other than dumped imports from China also had negative effects on the Community industry, it must be concluded that the very substantial expansion in volume and the low prices of the dumped Chinese exports have been responsible for the fall in market share and deteriorating financial position of the Community producers. These exports, taken in isolation, must, therefore, be considered to have caused material injury to the Community industry.
- (19) The refractory producers argued that imports from China used by them had not caused injury to the Community producers as the Community producers did not offer for sale dead-burned magnesite with the appropriate chemical profile.

In this respect, the Commission recalls that all the products imported and the dead-burned magnesite produced by the Community industry are like products having the same basic and identical physical and chemical characteristics and the same applications. The Commission found, in addition, that the Community industry is able to provide all types of magnesite, including those which meet the requirements of the abovementioned users. The fact that, in this specific case, the Community

industry could not sell these types of magnesite to these users, while the Chinese exporters could, due to their low prices, is a further indication that the Community industry was injured by the dumped imports from China.

The Council confirms the above findings and conclusions.

H. Duty

- (20) As far as the amount of the duty is concerned, the Commission established in recital 44 of Regulation (EEC) No 2799/92 that only a duty equal to the full dumping margin (as established in recital 12 of this Regulation), which would bring the Chinese prices up to the normal value, is sufficient to remove the injury, caused by dumping, experienced by the Community industry. No arguments concerning this duty amount were put forward; subsequent to the imposition of the provisional duty, the Council, therefore, confirms the Commission's findings and conclusions in this respect.

As far as the form of the duty is concerned, the Commission considers that the structure of a State-controlled economy gives the Chinese exporters considerable room for manoeuvre to further decrease their export prices and such falls in price by Chinese exporters have indeed taken place since 1988. The dead-burned magnesite market is very sensitive to price instability thus the form of the duty should be such as to prevent further price decreases by the Chinese exporters. Therefore, neither a fixed amount of duty nor an *ad valorem* duty seem to be appropriate.

In these circumstances it is considered that a minimum price at which the Chinese magnesite should be sold on the Community market should be established. This minimum price has been calculated on the basis of the weighted average normal value of dead-burned magnesite as established in recital 9, taking into account the adjustments mentioned in recital 12. This minimum price adjusted to cif Community frontier value is ECU 120 per tonne for all grades. Consequently, the duty should be equal to the difference between this minimum price and the net, free at Community frontier price before customs clearance. This is confirmed by the Council.

I. Community interest

- (21) In assessing the need for the measures, two basic elements were taken into account. The first is that to prevent distortions of competition arising from unfair commercial practices and thus to re-establish open and fair competition on the Community market is the purpose of anti-dumping measures and is fundamentally in the general Community interest. The second is that, in the particular

circumstances of the present proceeding, to refrain from re-establishing a fair market situation would endanger the future existence of the dead-burned magnesite industry since the Community industry is at present unable to generate the profits necessary to continue trading. The Community dead-burned magnesite industry would cease to be a source of technical expertise, employment and investment (see recital 40 of Regulation (EEC) No 2799/92).

- (22) Certain importers and end users argued that any increase in costs for refractory producers would seriously affect their ability to compete with other producers outside the Community.

The Commission accepts that this industry is currently facing a difficult trading situation both within and outside the Community which could be exacerbated by increases in the price of dead-burned magnesite. The Commission considers, however, that the impact of the duty in the form of a minimum price per tonne, as established in recital 20, will be such as to enable users of the higher grades to buy dead-burned magnesite at prices which are not significantly higher than those of their competitors outside the Community and thus maintain their competitive position. In addition, in general, while there might be a short term price advantage to users if no duty is imposed, to refrain from establishing fair competition on the Community market would, in the longer term, lead to less competition and higher prices.

- (23) Some importers argued that there was no need to protect the Community industry in respect of supplies of dead-burned magnesite which it cannot deliver.

While it is true that production in the Community is, at present, insufficient to meet demand for the product concerned, the Commission found that the Community industry is currently operating below a reasonable capacity utilization level and has large reserves available. It was only the low priced dumped imports from China which prevented the Community industry from utilizing existing capacity and expanding production facilities. In addition, this argument is based on a mistaken view of the effects of anti-dumping duties. Even with the application of duties, Community consumers will still be able to buy Chinese magnesite at competitive prices. Indeed, as in this proceeding, where the duty is equal to the dumping margin, but lower than the amount required to fully remove the injury, it is only the unfair element of the exporters'

price advantage which will be eliminated. There are also many other non-Community suppliers of dead-burned magnesite on the Community market. The Commission sees no danger of any shortage of supply.

- (24) The Chinese exporters repeated the argument that it was not in the Community interest to impose ineffective measures in that anti-dumping duties imposed on Chinese dead-burned magnesite would result in a large increase in low priced imports from North Korea. As indicated in recital 41 of Regulation (EEC) No 2799/92, the Commission would be made aware of Chinese imports being replaced to a large extent by allegedly dumped imports from North Korea and in such circumstances appropriate action would be considered.

- (25) For the reasons given above and in recitals 40 to 43 of Regulation (EEC) No 2799/92 the Commission concludes that the Community interest calls for intervention in this case. The Council confirms the above findings and conclusions.

J. Collection of provisional duty

- (26) The Council considers that it is not appropriate, in view of the change in the form of the duty, in this particular case, to definitively collect the provisional anti-dumping duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of dead-burned (sintered) magnesia falling within CN code 2519 90 30 originating in the People's Republic of China.
2. The amount of the duty shall be the difference between ECU 120 per tonne and the net, free-at-Community-frontier price before customs clearance, if this price is lower.
3. The provisions in force concerning customs duties shall apply.

Article 2

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, 6 December 1993.

For the Council

The President

W. CLAES

COMMISSION REGULATION (EC) No 3387/93
of 10 December 1993
amending Regulation (EC) No 3197/93 on the supply of vegetable oil as food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3972/86 of 22 December 1986 on food-aid policy and food-aid management ⁽¹⁾, as last amended by Regulation (EC) No 1930/90 ⁽²⁾, and in particular Article 6 (1) (c) thereof,

Whereas Commission Regulation (EC) No 3197/93 ⁽³⁾ issued an invitation to tender for the supply, as food aid, of 305 tonnes of vegetable oil; whereas some of the conditions specified in the Annex to the Regulation should be altered,

Article 1

Regulation (EC) No 3197/93 is hereby amended as follows:

Point 10 of the Annex is replaced by the following:

'10. Packaging and marking ⁽⁶⁾ ⁽⁷⁾: See Official Journal No C 114, of 29 April 1991, p. 1 (under III.A.2.2, III.A.2.3 and III.A.3)

- PET 1 litre bottles, without cardboard crosspieces
- Markings in French.'

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, 10 December 1993.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 370, 30. 12. 1986, p. 1.

⁽²⁾ OJ No L 174, 7. 7. 1990, p. 6.

⁽³⁾ OJ No L 288, 23. 11. 1993, p. 7.

COMMISSION REGULATION (EC) No 3388/93
of 10 December 1993
closing an invitation to tender for the supply of cereals as food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3972/86 of 22 December 1986 on food-aid policy and food-aid management ⁽¹⁾, as last amended by Regulation (EEC) No 1930/90 ⁽²⁾, and in particular Article 6 (1) (c) thereof,

Whereas, by Regulation (EC) No 3196/93 ⁽³⁾, the Commission issued an invitation to tender for the supply of 7 500 tonnes of cereals as food aid ; whereas the conditions of the supply, as regards lot A, should be reviewed and the invitation to tender for that lot should consequently be closed,

HAS ADOPTED THIS REGULATION :

Article 1

For lot A of Annex to Regulation (EC) No 3196/93 the invitation to tender is closed.

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, 10 December 1993.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 370, 30. 12. 1986, p. 1.

⁽²⁾ OJ No L 174, 7. 7. 1990, p. 6.

⁽³⁾ OJ No L 288, 23. 11. 1993, p. 4.

COMMISSION REGULATION (EC) No 3389/93

of 10 December 1993

on the issuing of a standing invitation to tender for the resale on the internal market of 100 000 tonnes of barley held by the Danish intervention agency

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals⁽¹⁾, as amended by Commission Regulation (EEC) No 2193/93⁽²⁾, and in particular Article 5 thereof,

Having regard to Commission Regulation (EEC) No 2131/93 of 28 July 1993 laying down the procedure and conditions for the disposal of cereals held by the intervention agencies⁽³⁾,

Whereas, in the present market situation, a standing invitation to tender for the resale on the internal market of 100 000 tonnes of barley held by the Danish intervention agency should be issued;

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

HAS ADOPTED THIS REGULATION:

Article 1

The Danish intervention agency shall issue a standing invitation to tender for the resale on the internal market of 100 000 tonnes of barley held by it in accordance with Regulation (EEC) No 2131/93.

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

Done at Brussels, 10 December 1993.

Article 2

1. The final date for the submission of tenders for the first partial invitation to tender shall be 16 December 1993.

2. The final date for the submission of tenders for the last partial invitation to tender shall expire on 24 February 1994.

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

EF — Direktoratet,
Nyrupsgade 26,
DK — 1602 København V,
telephone 3392 70 00,
fax 3392 69 48,
telex 15137.

Article 3

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

Article 4

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

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ No L 196, 5. 8. 1993, p. 22.

⁽³⁾ OJ No L 191, 31. 7. 1993, p. 76.

COMMISSION REGULATION (EC) No 3390/93
of 9 December 1993
concerning the stopping of fishing for herring by vessels flying the flag of the
United Kingdom

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

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

Whereas Council Regulation (EEC) No 3919/92 of 20 December 1992 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1993 and certain conditions under which they may be fished ⁽³⁾, as last amended by Regulation (EC) No 3177/93 ⁽⁴⁾, provides for herring quotas for 1993;

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

Whereas, according to the information communicated to the Commission, catches of herring in the waters of ICES divisions II a (EC zone), IV a, b by vessels flying the flag of the United Kingdom or registered in the United Kingdom have reached the quota allocated for 1993; whereas the United Kingdom has prohibited fishing for

this stock as from 27 November 1993; whereas it is therefore necessary to abide by that date,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of herring in the waters of ICES divisions II a (EC zone), IV a, b by vessels flying the flag of the United Kingdom or registered in the United Kingdom are deemed to have exhausted the quota allocated to the United Kingdom for 1993.

Fishing for herring in the waters of ICES divisions II a (EC zone), IV a, b by vessels flying the flag of the United Kingdom or registered in the United Kingdom is prohibited, as well as the retention on board, the transshipment and the landing of such stock captured by the abovementioned vessels after the date of application of this Regulation.

Article 2

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

It shall apply with effect from 27 November 1993.

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

Done at Brussels, 9 December 1993.

For the Commission

Yannis PALEOKRASSAS

Member of the Commission

⁽¹⁾ OJ No L 207, 29. 7. 1987, p. 1.

⁽²⁾ OJ No L 306, 11. 11. 1988, p. 2.

⁽³⁾ OJ No L 397, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 285, 20. 11. 1993, p. 1.

COMMISSION REGULATION (EC) No 3391/93
of 9 December 1993
concerning the stopping of fishing for common sole by vessels flying the flag of
France

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

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

Whereas Council Regulation (EEC) No 3919/92 of 20 December 1992 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1993 and certain conditions under which they may be fished ⁽³⁾, as last amended by Regulation (EC) No 3177/93 ⁽⁴⁾, provides for common sole quotas for 1993;

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

Whereas, according to the information communicated to the Commission, catches of common sole in the waters of ICES divisions VII d by vessels flying the flag of France

or registered in France have reached the quota allocated for 1993,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of common sole in the waters of ICES division VII d by vessels flying the flag of France or registered in France are deemed to have exhausted the quota allocated to France for 1993.

Fishing for common sole in the waters of ICES division VII d by vessels flying the flag of France or registered in France is prohibited, as well as the retention on board, the transshipment and the landing of such stock captured by the abovementioned vessels after the date of entry into force of this Regulation.

Article 2

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, 9 December 1993.

For the Commission

Yannis PALEOKRASSAS

Member of the Commission

⁽¹⁾ OJ No L 207, 29. 7. 1987, p. 1.

⁽²⁾ OJ No L 306, 11. 11. 1988, p. 2.

⁽³⁾ OJ No L 397, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 285, 20. 11. 1993, p. 1.

COMMISSION REGULATION (EC) No 3392/93

of 10 December 1993

on detailed rules for the application of Council Regulation (EEC) No 1842/83
laying down general rules for the supply of milk and certain milk products at
reduced prices to school children

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products⁽¹⁾, as last amended by Regulation (EEC) No 2701/92⁽²⁾, and in particular Article 26 (4) thereof,

Having regard to Council Regulation (EEC) No 1842/83 of 30 June 1983 laying down general rules for the supply of milk and certain milk products at reduced prices to school children⁽³⁾, as last amended by Regulation (EEC) No 2748/93⁽⁴⁾, and in particular Article 2 thereof,

Whereas Article 1 (3) of Regulation (EEC) No 1842/83 provides for the Community aid amounts to be set by reference to the milk target price for the milk year in question; whereas following amendment of that provision the aid amounts set in Article 4 (1) of Commission Regulation (EEC) No 2167/83⁽⁵⁾, as last amended by Regulation (EEC) No 1861/93⁽⁶⁾, must be adjusted;

Whereas in the light of experience and in view of the need to limit expenditure on the scheme some of the implementing rules should be amended;

Whereas in view of the budgetary considerations referred to, the derogation in Article 2 (2) of Regulation (EEC) No 1842/83 with regard to the maximum quantity of 0,25 litres should be discontinued;

Whereas the Community aid amounts, as set, should reflect developments in production techniques, of cheese in particular;

Whereas the use of milk products in the preparation of meals served to school children is beset by control difficulties and does not seem to make any substantial contri-

bution to attaining the aims behind the aid scheme; whereas this distribution possibility should therefore be restricted;

Whereas to simplify administrative procedures under the school milk programme annual vouchers should be discontinued and administration based solely on approval of the interested parties;

Whereas Member States should be required, for the various products distributed, to set maximum prices for school children in order to guarantee that the aid is passed on through the price;

Whereas the list of products on which Community aid can be granted should be revised in accordance with the aims behind the aid scheme;

Whereas, in view of the many amendments already made to Regulation (EEC) No 2167/83 and in the interests of clarity, that Regulation should be replaced;

Whereas the Management Committee for Milk and Milk Products has not issued an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

1. The recipients of Community aid indicated in Article 1 (2) of Regulation (EEC) No 1842/83 shall be pupils regularly attending an educational establishment,

— including children attending nursery school or some other pre-school educational establishment run or recognized by the competent authority of the Member State, but

— excluding students at universities and comparable higher educational establishments.

However, Member States may decide to exclude pupils in secondary education.

2. The aid shall also cover periods of residence by pupils of the educational establishments indicated in paragraph 1 at holiday camps run by one of the bodies indicated in the first and second indents of Article 7 (1).

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 215, 30. 7. 1992, p. 64.

⁽³⁾ OJ No L 183, 7. 7. 1983, p. 1.

⁽⁴⁾ OJ No L 249, 7. 10. 1993, p. 1.

⁽⁵⁾ OJ No L 206, 30. 7. 1983, p. 75.

⁽⁶⁾ OJ No L 170, 13. 7. 1993, p. 14.

Article 2

1. Member States shall pay Community aid on the milk products of categories I and II set out in the Annex. They may optionally pay it on the milk products of categories III to VI of the Annex.

2. In the French overseas departments whole milk flavoured with chocolate or otherwise as indicated in the Annex may be reconstituted milk.

3. Member States may authorize the addition of a maximum of five milligrams of fluorine per kilogram to the products listed under categories I and II in the Annex.

Article 3

1. For products listed under categories III to VI of the Annex calculation of the maximum quantity of 0,25 litres of milk per pupil per school day specified in Article 2 (2) of Regulation (EEC) No 1842/83 shall be on the following basis :

- 100 kg of category III products shall count as 300 kg of whole milk,
- 100 kg of category IV products shall count as 765 kg of whole milk,
- 100 kg of category V products shall count as 850 kg of whole milk,
- 100 kg of category VI products shall count as 935 kg of whole milk.

2. For calculation of the Community aid and for purposes of the restriction indicated in paragraph 1 reference shall be made to the total quantities of milk products eligible for aid during the period for which application has been made.

3. The granting of the aid shall be conditional on a written commitment given by the educational establishment or organizing authority, as appropriate, to the competent authority not to use the subsidized milk products in the preparation of meals served to pupils.

The Commission may, however, grant Member States a derogation from this restriction on presentation of a duly substantiated request.

Article 4

1. The Community aid shall be :

- (a) ECU 24,76 per 100 kg for category I (whole milk products);

(b) ECU 15,63 per 100 kg for category II (semi-skimmed milk) products ;

(c) for products of categories III, IV, V and VI an amount calculated per 100 kg using the equivalences specified in Article 3 (1).

2. If, however, the Community aid would be higher than the supplier's selling price to the educational establishment it shall be reduced to ensure that it does not exceed the price of the product concerned.

3. If the rate of the Community aid, expressed in ecus, is altered, the rate applicable on the first day of the month in question shall be valid for quantities supplied at reduced prices during that month.

However, if the aid application under Article 7 (4) is lodged after the school term the rate of aid shall be that applicable on the first day of the term.

4. Should the quantities as referred to in paragraph 1 be expressed in litres, conversion into kilograms shall be by application of the coefficient 1,0300.

Article 5

1. Community aid shall be granted only :

- (a) for the supply of Community-produced foodstuffs as indicated in the Annex, purchased in the Member State in which the educational establishment is located ;
- (b) to applicants as indicated in Article 7 (1) approved by the competent authority of the Member State in conformity with the provisions of Article 6.

2. Member States may if necessary check at the premises of suppliers to educational establishments the commercial documents relating to deliveries.

Article 6

1. Approval under Article 5 (1) (b) shall be conditional on a written commitment by the applicant to the competent authority :

- (a) to make the milk products available only to pupils attached to its establishment or to the establishments for which it is applying for aid, and to repay an excess aid paid, should it be found :

— that aid has been received on quantities in excess of those yielded by application of Article 3,

— that products purchased under this Regulation have been deflected from their intended use ; and

- (b) to make supporting documents available to the competent authority on request and to allow on site inspection.

2. Should the aid be applied for by the supplier to the educational establishment approval shall be conditional, in addition to the requirements of paragraph 1, on a written commitment by him to:

- (a) keep records indicating the manufacturer of the milk products in question, the names and addresses of the educational establishments or other applicants as indicated in Article 7 (1) and the quantities of milk products sold to them, and to
- (b) submit to any check decided on by the Member State to be made, in particular as regards scrutiny of records and product quality control.

3. Approval shall be withdrawn if serious infringement of the provisions of this Regulation is established. At the interested party's request approval may be reinstated following exhaustive checks, but only after a minimum period of suspension set by the Member State in line with the seriousness of the infringement.

4. For the 1993/94 school year vouchers issued under Article 6 of Regulation (EEC) No 2167/83 shall confer approval for the purposes of this Article.

Article 7

1. Application for payment shall be made by:

- the educational establishment, or
- an administrative authority applying in regard to the products distributed to the pupils for whom it is responsible, or
- by the supplier of products to the educational establishment, if the Member State so provides.

2. Application for payment must be made on a standard printed form as prescribed by the competent authority of the Member State, and must provide at least the following information:

- the quantities of each category of product distributed,
- the name and address of the educational establishment or administrative authority,
- the product prices.

Amounts must be substantiated by invoices held available to the controlling authority. These invoices must show separately the price of each product indicated in the Annex and be receipted or accompanied by proof of payment.

3. Without prejudice to paragraph 2, aid shall be paid to suppliers to educational establishments only:

- on submission of a receipt for the quantities actually delivered, or
- on the basis of an inspection report made by the competent authority prior to final payment of the aid,

showing that the requirements for payment are met, or

- if the Member State so authorizes, on submission of the statement of account for an account held by the supplier by credit of which, and in no other way, the quantities delivered are paid for.

4. Except in cases of *force majeure*, applications for payment of the aid shall not be valid unless lodged by the last day of the fourth month following the month or school term of delivery of the products.

If this time limit is exceeded by less than two months the aid shall be paid but reduced by:

- 5 % if the application is less than one month late,
- 10 % in other cases.

5. The aid shall be paid by the competent authority within four months of the date on which the application is lodged, except in cases where administrative enquiries regarding entitlement to the aid have been initiated.

The competent authorities of Member States are, however, authorized to pay an advance within three months of the date on which the application is lodged, against a security for 110 % of the amount advanced. In such cases:

- the competent authority is authorized to pay the advance at the applicant's request, without requiring the supporting documents indicated in paragraph 3 on the basis of the quantities delivered; the supplier shall, within one month of payment of the advance, submit to the competent authority the documents necessary for final payment of the aid unless that authority draws up a report as indicated in the second indent of paragraph 3,
- final payment shall be made by the end of the sixth month following the end of the school year concerned or, where applicable, the holiday camp period.

Article 8

Member States may empower local authorities to pay the aid and administer the scheme. In certain cases determined by the Member State local authorities may be replaced by an association, approved by the Member State, to which the schools in question belong.

Article 9

Member States shall encourage programmes providing information on milk products when subsidized products are distributed in schools.

Article 10

1. Member States shall take the necessary measures to ensure that the amount of the aid is reflected in the price paid by the beneficiary.

To that end they shall set maximum prices to be paid by pupils for the various products listed in the Annex that are distributed on their territory. Those prices shall be notified to the Commission with information justifying their levels.

2. Member States shall take whatever supervisory action is needed to ensure that the provisions of this Regulation are respected.

Such action shall include scrutiny of invoices for delivery of the products listed in the Annex and checks on compliance with the maximum quantities receiving aid.

Action shall be supplemented by on-site inspection designed to check, in particular:

- compliance with the maximum prices indicated in paragraph 1,

- the records referred to in Article 6 (2),
- the use of the subsidized products in accordance with the provisions of this Regulation, in particular where there are grounds for suspecting deflection.

Article 11

Member States shall notify to the Commission:

- (a) within three months of entry into force of this Regulation, the detailed provisions which they have adopted for its application;
- (b) before 1 November of each year, the quantities on which aid was paid in the previous school year.

Article 12

Regulation (EEC) No 2167/83 is hereby repealed.

Article 13

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

It shall apply from 1 January 1994.

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

Done at Brussels, 10 December 1993.

For the Commission

René STEICHEN

Member of the Commission

*ANNEX***List of the products eligible for Community aid under Article 2 (1) of Regulation (EEC) No 1842/83***Category I*

- (a) Whole milk, pasteurized or given UHT treatment ;
- (b) Whole milk flavoured with chocolate or otherwise, pasteurized or sterilized or given UHT treatment and containing at least 90% whole milk by weight ;
- (c) Whole milk yoghurt.

Category II

- (a) Semi-skimmed milk, pasteurized or given UHT treatment ;
- (b) Semi-skimmed milk, flavoured with chocolate or otherwise, pasteurized or sterilized or given UHT treatment and containing at least 90 % semi-skimmed milk by weight.

Category III

Fresh and processed cheeses with a fat content by weight of the dry matter of not less than 40 %.

Category IV

Other cheeses with a fat content by weight of the dry matter of not less than 45 %.

Category V

Grana padano cheese.

Category VI

Parmigiano-Reggiano cheese.

COMMISSION REGULATION (EC) No 3393/93

of 10 December 1993

laying down detailed rules governing the granting of private storage aid for certain cheeses manufactured on the smaller Aegean islands

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2019/93 of 19 July 1993 introducing specific measures for the smaller Aegean islands concerning certain agricultural products⁽¹⁾, and in particular Article 6 (3) thereof,

Whereas Article 6 (2) of that Regulation provides for the granting of private storage aid for four types of cheese manufactured on the smaller Aegean islands; whereas the detailed rules for the application of this provision should in all main points be identical to those for similar measures for other cheese; whereas the amount of the aid should be set using the same criteria as in the case of those measures;

Whereas Article 1 (1) of Commission Regulation (EEC) No 1756/93 of 30 June 1993 fixing the operative events for the agricultural conversion rate applicable to milk and milk products⁽²⁾, as last amended by Regulation (EEC) No 2866/93⁽³⁾, lays down the conversion rate to be applied for the purposes of private storage aid measures in the milk sector;

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

HAS ADOPTED THIS REGULATION:

Article 1

Private storage aid shall be granted for a maximum quantity of 5 000 tonnes per year of locally manufactured cheese as referred to in Article 6 (2) of Regulation (EEC) No 2019/93.

The Greek authorities shall lay down the criteria for the division of this quantity between the four types of cheese concerned, on the one hand, and between the various islands, on the other. Those criteria shall be communicated to the Commission.

Article 2

1. The responsible agency designated by Greece shall not conclude storage contracts unless the following requirements are met:

⁽¹⁾ OJ No L 184, 27. 7. 1993, p. 1.

⁽²⁾ OJ No L 161, 2. 7. 1993, p. 48.

⁽³⁾ OJ No L 262, 21. 10. 1993, p. 24.

(a) the quantity of cheese to which the contract relates is not less than two tonnes;

(b) on the date specified in the contract as being the date of commencement of storage, the cheese is at least

— 90 days old in the case of Graviera, Ladotyri and Kefalograviera,

— 60 days in the case of Feta;

(c) the cheese has undergone tests which show that it meets the condition laid down in (b) and that it is of first quality;

(d) the storer undertakes:

— to keep the cheese during the entire period of storage in premises where the maximum temperature is + 16 °C,

— not, during the term of the contract, to alter the composition of the lot which is the subject of the contract without authorization from the responsible agency. If the condition concerning the minimum quantity for contracts continues to be met, the agency may authorize an alteration limited to the removal or replacement of cheeses found to have deteriorated to such an extent that they can no longer be stored.

In the event of removal from store of certain quantities:

(i) if the aforesaid quantities are replaced with the authorization of the agency, the contract shall be deemed not to have undergone any alteration;

(ii) if the aforesaid quantities are not replaced, the contract shall be deemed to have been concluded *ab initio* for the quantity retained.

Any supervisory costs arising from an alteration shall be met by the storer,

— to keep stock accounts and to inform the agency each week of the quantity of cheese put into storage during the previous week and of any planned withdrawals.

2. The storage contract shall be concluded:

(a) in writing, stating the date when storage covered by the contract begins; this may not be earlier than the day following that on which entry of the cheese covered by the contract into storage is completed;

(b) after completion of entry of the cheese covered by the contract into storage and at the latest 40 days after the date on which the storage covered by the contract begins.

Article 3

1. No aid shall be granted in respect of storage under contract for less than 60 days.
2. The aid payable may not exceed an amount corresponding to 150 days storage under contract.

By way of derogation from the second indent of Article 2 (1) (d), when the period of 60 days specified in paragraph 1 has elapsed, the storer may remove all or part of the quantity under contract.

The date of the start of operations to remove cheese covered by the contract shall not be included in the period of storage under contract.

Article 4

The amount of aid shall be ECU 2,28 per tonne per day.

Aid shall be paid not later than 90 days from the last day of storage under contract.

Article 5

1. Greece shall ensure that the conditions granting entitlement to payment of the aid are fulfilled.

2. The contractor shall make available to the authority responsible for verifying execution of the measure all documentation permitting the following particulars of products placed in private storage to be verified:

- (a) ownership at the time of entry into storage,
- (b) origin and date of manufacture of the cheeses,
- (c) date of entry into storage,
- (d) presence in the store,
- (e) date of removal from storage.

3. The contractor or, where applicable, the operator of the store shall keep stock accounts available at the store, covering:

- (a) identification, by contract number, of products placed in private storage,
- (b) the dates of entry into and removal from storage,
- (c) the number of cheeses in each lot and their weight,
- (d) the location of the products in the store.

4. Products stored must be easily identifiable by contract. A special mark shall be affixed to cheese covered by a contract.

5. Without prejudice to Article 2 (1) (d), on entry into storage, the responsible agency shall conduct checks in particular to ensure that products stored are eligible for the aid and to prevent any possibility of substitution of products during storage under contract.

6. The agency responsible for controls shall undertake:

- (a) an unannounced check to see that the products are present in the store. The sample concerned must be representative and must correspond to at least 10 % of the overall quantity under contract for a private storage aid measure. Such checks must include, in addition to an examination of the accounts referred to in paragraph 3, a physical check of the weight and type of product and their identification. Such physical checks must relate to at least 5 % of the quantity subject to the unannounced check;
- (b) a check to see that the products are present at the end of the storage period under contract.

7. Checks conducted pursuant to paragraphs 5 and 6 must be the subject of a report stating:

- the date of the check,
- its duration,
- the operations conducted.

The report must be signed by the official responsible and countersigned by the contractor or, where applicable, by the store operator.

8. In the case of irregularities affecting at least 5 % of the quantities of the products checked the check shall be extended to a larger sample to be determined by the responsible agency.

Greece shall notify such cases to the Commission within four weeks.

9. Greece may provide that the costs of checks will be borne partly or fully by the contractor.

Article 6

Greece shall communicate to the Commission not later than the 10th day of each month, in respect of the preceding month, the quantities of cheese for which storage contracts shall have been concluded, with a breakdown by category of cheese referred to in Article 2 (1) (b).

Article 7

This Regulation shall enter into force on the seventh 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 December 1993.

For the Commission

René STEICHEN

Member of the Commission

COMMISSION REGULATION (EC) No 3394/93

of 10 December 1993

amending Regulation (EEC) No 606/86 laying down detailed rules for applying the supplementary trade mechanism to milk products imported into Spain from the Community of Ten and Portugal

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

Having regard to the Act of Accession of Spain and Portugal, and in particular Article 83 (1) thereof,

Having regard to Council Regulation (EEC) No 3817/92 of 28 December 1992 laying down general rules for applying the supplementary trade mechanism⁽¹⁾, applicable to deliveries to Spain of products other than fruit and vegetables, and in particular Article 9 thereof,

Having regard to Council Regulation (EEC) No 3792/85 of 20 December 1985 laying down the arrangements applying to trade in agricultural products between Spain and Portugal⁽²⁾, as last amended by Regulation (EEC) No 3296/88⁽³⁾, and in particular the first subparagraph of Article 5 (1) thereof,

Whereas, pursuant to the Act of Accession of Spain and Portugal, indicative ceilings should be set for 1994 for imports into Spain from the Community of Ten and from Portugal; whereas, given the potential for exports from the Community of Ten and from Portugal and in order to continue to open up the Spanish market gradually, the said ceilings should be increased by 30 %; whereas to

this end the Annex to Commission Regulation (EEC) No 606/86⁽⁴⁾, as last amended by Regulation (EEC) No 3827/92⁽⁵⁾, should be replaced by the Annex hereto;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 606/86 is hereby amended as follows:

1. in Article 1 (1) '1993' is replaced by '1994';
2. the Annex is replaced by the Annex to this Regulation.

Article 2

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

It shall apply from 1 January 1994.

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

Done at Brussels, 10 December 1993.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 387, 31. 12. 1992, p. 12.

⁽²⁾ OJ No L 367, 31. 12. 1985, p. 7.

⁽³⁾ OJ No L 293, 27. 10. 1988, p. 7.

⁽⁴⁾ OJ No L 58, 1. 3. 1986, p. 28.

⁽⁵⁾ OJ No L 387, 31. 12. 1992, p. 42.

ANNEX

Indicative ceilings

(tonnes)		
CN code	Description	Quantity Community of Ten and Portugal
ex 0401	Milk and cream not concentrated nor containing added sugar or other sweetening matter, in immediate packings of a net content not exceeding two litres	192 018
ex 0403	Buttermilk, curdled milk and cream, yoghurt, kephir and other fermented or acidified milk and cream, not concentrated or containing added sugar or other sweetening matter, nor flavoured, nor containing added fruit or cocoa in immediate packings of a net content not exceeding two litres	
ex 0404	Whey, not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents, in immediate packings of a net content not exceeding two litres	

COMMISSION REGULATION (EC) No 3395/93

of 10 December 1993

adopting derogatory arrangements in the beef and veal sector as a result of
certain animal health measures

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal ⁽¹⁾, as last amended by Regulation (EEC) No 747/93 ⁽²⁾, and in particular Article 23 thereof,Whereas the second indent of Article 6 (4) of Commission Regulation (EEC) No 3619/92 of 15 December 1992 introducing management measures for imports of certain bovine animals for 1993 ⁽³⁾, as amended by Regulation (EEC) No 2292/93 ⁽⁴⁾, provides for the issue of a certain number of import licences in 1993; whereas, in the light of the situation as regards imports resulting from the application of animal health measures relating to the outbreak of foot-and-mouth disease in certain countries, the term of validity of the said licences should be suitably extended;Whereas the urgency of the matter requires that this Regulation enter into force on the day of its publication in the *Official Journal of the European Communities*;

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

1. Notwithstanding the provisions of Article 6 (6) of Regulation (EEC) No 3619/92, the term of validity of the licences issued in accordance with the second and third indent of Article 6 (4) of that Regulation shall be extended to 31 January 1994 at the request of the operator in question.

2. The request referred to in paragraph 1 above must be accompanied by the original of the 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, 10 December 1993.

For the Commission

René STEICHEN

Member of the Commission⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 24.⁽²⁾ OJ No L 77, 31. 3. 1993, p. 15.⁽³⁾ OJ No L 367, 16. 12. 1992, p. 17.⁽⁴⁾ OJ No L 206, 18. 8. 1993, p. 3.

COMMISSION REGULATION (EC) No 3396/93

of 10 December 1993

on the issuing of standing invitations to tender for the sale of common wheat of breadmaking quality held by the French and German intervention agencies for export to certain ACP countries in the 1993/94 marketing year

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals⁽¹⁾, as amended by Commission Regulation (EEC) No 2193/93⁽²⁾, and in particular Article 5 thereof,

Whereas Commission Regulation (EEC) No 2131/93⁽³⁾ lays down the procedure and conditions for the sale of cereals held by intervention agencies;

Whereas, with a view to supplying the markets of the ACP countries, favoured partners of the Community, significant quantities of common wheat are required; whereas these markets are usually supplied on the basis of annual contracts to ensure stable prices for the ACP countries over a long period; whereas it is therefore necessary to issue a specific invitation to tender to ensure that users in these countries have access to common wheat of breadmaking quality in the 1993/94 marketing year under conditions appropriate to the highly competitive situation on the world market;

Whereas the French and German intervention agencies hold significant stocks of common wheat of high breadmaking quality; whereas part of the wheat coming from the intervention stocks held by the aforementioned agencies should therefore be resold to the ACP countries so as to meet their quantitative and qualitative needs; whereas to avoid encroaching on the economic effects of the following marketing year, the common wheat successfully tendered for must be sent to the countries of destination by 31 August 1994 at the latest;

Whereas the specific nature of the operation and the accounting position of the common wheat in question require greater flexibility in the mechanisms and obligations governing the resale of intervention stocks and also require the exclusion of any refund or monthly increase; whereas special procedures must be laid down to ensure that the operations and their monitoring are properly

effected; whereas to that end provision should be made for a security lodgment scheme which ensures that the aims are met while avoiding excessive costs for the operators; whereas derogations should accordingly be made to certain rules, in particular those laid down in Regulation (EEC) No 2131/93;

Whereas, where removal of the wheat is delayed by more than five days, or the release of one of the securities required is delayed, for reasons imputable to the intervention agency the Member State concerned will have to pay compensation;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. Two standing invitations to tender are hereby issued for the 1993/94 marketing year for the export of:
 - 100 000 tonnes of common wheat of breadmaking quality, held by the French intervention agency,
 - 50 000 tonnes of common wheat of breadmaking quality, held by the German intervention agency.
2. The common wheat must be exported to an ACP State or to several States within one of the groups of ACP States listed in Annex I.
3. The regions in which the 100 000 tonnes of French and 50 000 tonnes of German common wheat of breadmaking quality are stored are listed in Annex II.
4. The intervention agencies concerned shall prepare a notice of invitation to tender indicating for each lot or, where appropriate, each part lot:
 - the location,
 - and at least the following features:
 - specific weight,
 - moisture content,
 - Hagberg falling number,
 - impurity contents and sprouted grains,
 - protein content.

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ No L 196, 5. 8. 1993, p. 22.

⁽³⁾ OJ No L 191, 31. 7. 1993, p. 76.

5. They shall publish the notice of invitation to tender at least two days before the date set for the first partial invitation to tender.

Article 2

Subject to the provisions of this Regulation, the sales of common wheat of breadmaking quality referred to in Article 1 shall take place in accordance with the procedure and conditions laid down by Regulation (EEC) No 2131/93.

Article 3

1. The time limit for submitting tenders for the first partial invitations to tender shall be 9 p.m. (Brussels time) on Thursday 16 December 1993.

2. The time limit for submitting tenders for the second partial invitation to tender shall be 9 p.m. (Brussels time) on the following Thursday.

The time limit for the last partial invitation to tender shall be 6 January 1994.

3. Tenders must be submitted to the intervention agency in question.

Article 4

1. Tenders shall only be admissible if:

- the tenderer provides written proof from an official body in the country of destination or a company having its overseas subsidiary in the said country, that he has concluded for the quantity in question a commercial supply contract for common wheat of breadmaking quality for export to an ACP State or to several States within one of the groups of ACP States listed in Annex I. Such proof shall be lodged with the intervention agency at least two working days before the date of the first invitation to tender,
- they are accompanied by an application for an export licence for the destination in question.

The proof provided for in the first indent shall also indicate the quality provided for in the contract, the time limit for delivery and the price terms.

The Member State shall send the Commission a copy of the said proof forthwith, for information.

2. Tenders may not exceed the quantity laid down in the commercial contract submitted. Where on the basis of the said contract the tenderer simultaneously participates in invitations to tender in the two Member States concerned, he shall be required to mention this in his bid.

When transmitting the tenders submitted, the Member States shall inform the Commission of the above,

mentioning if necessary the names of the tenderers involved.

Article 5

1. No export refund shall be granted for exports carried out pursuant to this Regulation.

2. The validity of the export licences issued in accordance with this Regulation shall expire on 30 June 1994.

3. The licence obliges the operator to export to the ACP State or States for which the licence application was submitted. However, up to a limit of 10 % of the quantity for which the licence was issued, the operator may effect his contract at another destination on condition that it belongs to the same group of countries listed in Annex I.

4. The export licences shall be issued as soon as the successful tenderers have been selected.

5. Article 9 of Commission Regulation (EEC) No 3719/88 ⁽¹⁾ notwithstanding, the rights deriving from the licence referred to in this Article shall not be transferable.

Article 6

1. The successful tenderer shall notify the storer and the intervention agency in writing of his intention to remove the merchandise at least 10 days in advance.

2. Before the lot tendered for is removed, the intervention agency and the successful tenderer shall take a reference sample in accordance with the method laid down in Commission Regulation (EEC) No 689/92 ⁽²⁾.

Where the final results from analysis of this sample indicate a significant difference between the quality of the wheat to be removed and the quality as described in the notice of invitation to tender referred to in Article 1 of this Regulation, the successful tenderer can refuse the merchandise.

A significant difference shall be a discrepancy of more than a kilo for the specific weight, a percentage point for the moisture content, 10 points for the Hagberg falling index, a percentage point for the protein content, a percentage point for the impurities referred to under B2 and 4 and a percentage point for the impurities referred to under B5, without however modifying the percentages admissible for noxious grains and ergot, of the Annex to Regulation (EEC) No 689/92.

⁽¹⁾ OJ No L 331, 2. 12. 1988, p. 1.

⁽²⁾ OJ No L 74, 20. 3. 1992, p. 18.

3. Where the successful tenderer refuses the merchandise, as provided for in the second sentence of paragraph 2 above, the intervention agency shall supply him with another lot of intervention common wheat of the requisite quality, without extra charge, within eight days at the most.

4. If removal of the wheat is delayed by more than five days with relation to the date of acceptance of the lot to be removed by the successful tenderer for reasons imputable to the intervention agency, the Member State shall be responsible for the payment of compensation.

5. All risks and storage costs shall be borne by the successful tenderer from the time of removal.

Article 7

The successful tenderer shall pay for the common wheat before removing it at the price indicated in the tender. The payment due for each of the lots to be removed shall be indivisible.

Article 8

1. The security lodged pursuant to Article 13 (4) of Regulation (EEC) No 2131/93 must be released once the export licences have been issued to the successful tenderers.

2. The obligation to export and import into one of the countries of destination listed in Annex I shall be covered by a security amounting to ECU 70 per tonne of which ECU 25 per tonne shall be lodged upon issue of the export licence, with the balance of ECU 45 being lodged before removal of the cereals.

Article 15 (2) of Commission Regulation (EEC) No 3002/92⁽¹⁾ notwithstanding:

- the amount of ECU 45 per tonne must be released within 20 working days of the date on which the successful tenderer supplies proof that the wheat removed has left the customs territory of the Community,
- the amount of ECU 25 per tonne must be released within 15 working days of the date on which the successful tenderer supplies proof of entry for consumption into the ACP State or States referred to in Article 5 (3). This proof shall be supplied in ac-

cordance with Articles 18 and 47 of Commission Regulation (EEC) No 3665/87⁽²⁾.

3. Except in duly substantiated exceptional cases, in particular the opening of an administrative enquiry, any release of the securities provided for in this Article after the time limits specified in this same Article shall confer an entitlement to compensation from the Member State amounting to 0,015 ECU/10 tonne for each day's delay.

This compensation shall not be charged to the EAGGF.

Article 9

1. Article 12 of Regulation (EEC) No 3002/92 notwithstanding, the documents relating to the sale of common wheat in accordance with this Regulation and in particular the export licence, the removal order referred to in Article 3 (1) (b) of Regulation (EEC) No 3002/92, the export declaration and, where appropriate, the T5 control copy must bear the words:

- Trigo blando panificable de intervención sin derecho a restitución, destinado a (nombre del Estado o de los Estados ACP), Reglamento (CE) n° 3396/93,
- Bageegnet blød hvede fra intervention uden restitutionsydelse bestemt for (navnet på det eller de pågældende AVS-lande), forordning (EF) nr. 3396/93,
- Interventions-Brotweichweizen ohne Ausfuhrerstattung, Bestimmung (Name des AKP-Staates oder der AKP-Staaten) — Verordnung (EG) Nr. 3396/93,
- μαλακός αρτοποιήσιμος σίτος παρέμβασης, που δεν παρέχει δικαίωμα επιστροφής, προοριζόμενος για (όνομα της χώρας ΑΚΕ ή των χωρών ΑΚΕ), κανονισμός (ΕΚ) αριθ. 3396/93,
- Intervention common wheat of breadmaking quality not eligible for refund, bound for (name of the ACP State or States), Regulation (EC) No 3396/93,
- Blé tendre d'intervention panifiable ne donnant pas droit à restitution, destiné à (nom de l'État ACP ou des États ACP), règlement (CE) n° 3396/93,
- Frumento tenero d'intervento panificabile non dante diritto a restituzione, destinato al (nome del paese o dei paesi ACP), regolamento (CE) n. 3396/93,
- Zachte broodtarwe uit interventie, zonder recht op restitutie, bestemd voor (naam van de ACS-Staat of de ACS-Staten), Verordening (EG) nr. 3396/93,
- Trigo brando panificável de intervenção que não dá direito a uma restituição, destinado a (nome do Estado ou dos Estados ACP), Regulamento (CE) n° 3396/93.

⁽¹⁾ OJ No L 301, 17. 10. 1992, p. 17.

⁽²⁾ OJ No L 351, 14. 12. 1987, p. 1.

2. Placement of the common wheat tendered for and removed under one of the customs warehouse or free zone schemes must terminate by 31 August 1994 at the latest.

Article 10

1. The French and German intervention agencies shall inform the Commission of the tenders received within three hours of the expiry of the time limit for submitting tenders. The information must be sent in the form laid

down in Annex III to one of the telex or fax numbers listed in Annex IV.

2. They shall inform the Commission on a monthly basis of the quantities of common wheat removed pursuant to this Regulation.

Article 11

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, 10 December 1993.

For the Commission

René STEICHEN

Member of the Commission

ANNEX I

Group of ACP States signatories to the Lomé Convention

Group I

Angola
Zambia
Malawi
Mozambique
Namibia
Botswana
Zimbabwe
Lesotho
Swaziland

ANNEX II

Region of storage	Quantities (tonnes)
FRANCE : Orléans	100 000
GERMANY : Schleswig-Holstein/Hamburg Niedersachsen/Bremen Berlin/Brandenburg Mecklenburg-Vorpommern Sachsen Sachsen-Anhalt Thüringen	21 331 23 934 4 638

ANNEX III

Standing invitation to tender for the export of 100 000 tonnes of common wheat of breadmaking quality held by the French intervention agency and 50 000 tonnes of common wheat of breadmaking quality held by the German intervention agency

[Regulation (EC) No 3396/93]

1	2	3	4	5	6	7
Registration number of the tenderer	Lot number	Quantity in tonnes	Offer price (ECU/tonne) ⁽¹⁾	Increases (+) Reductions (-) (ECU/tonne) p.m.	Commercial costs (ECU/tonne)	Destination
1 2 3 etc.						

⁽¹⁾ This price includes the increases and reductions relating to the lot for which the tender is submitted.

ANNEX IV

The only telex and fax numbers in Brussels to be used are :

DG VI/C/1 (for the attention of Mr Thibault/Mr Brus):

— telex : 22037 AGREC B,
22070 AGREC B (Greek characters),

— fax : 295 25 15
296 10 97
296 20 05.

COMMISSION REGULATION (EC) No 3397/93

of 10 December 1993

amending Regulation (EEC) No 1627/89 on the buying-in of beef by invitation to tender

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

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal ⁽¹⁾, as last amended by Regulation (EEC) No 747/93 ⁽²⁾, and in particular Article 6 (7) thereof,

Whereas Commission Regulation (EEC) No 1627/89 of 9 June 1989 on the buying-in of beef by invitation to tender ⁽³⁾, as last amended by Regulation (EEC) No 2921/93 ⁽⁴⁾, opens buying-in by invitation to tender in certain Member States or regions of a Member State for certain quality groups ;

Whereas the application of Article 6 (2), (3) and (4) of Regulation (EEC) No 805/68 and the need to limit intervention to the buying-in of the quantities necessary to ensure reasonable support for the market result, on the

basis of the prices of which the Commission is aware, in an amendment, in accordance with the Annex hereto, to the list of Member States or regions of a Member State where buying-in is open by invitation to tender, and the list of the quality groups which may be bought in,

HAS ADOPTED THIS REGULATION :

Article 1

The Annex to Regulation (EEC) No 1627/89 is hereby replaced by the Annex hereto.

Article 2

This Regulation shall enter into force on 13 December 1993.

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

Done at Brussels, 10 December 1993.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 24.

⁽²⁾ OJ No L 77, 31. 3. 1993, p. 15.

⁽³⁾ OJ No L 159, 10. 6. 1989, p. 36.

⁽⁴⁾ OJ No L 264, 23. 10. 1993, p. 42.

*ANEXO — BILAG — ANHANG — ΠΑΡΑΡΤΗΜΑ — ANNEX — ANNEXE — ALLEGATO —
BIJLAGE — ANEXO*

Estados miembros o regiones de Estados miembros y grupos de calidades previstos en el apartado 1 del artículo 1

Medlemsstater eller regioner og kvalitetsgrupper, jf. artikel 1, stk. 1

Mitgliedstaaten oder Gebiete eines Mitgliedstaats sowie die in Artikel 1 Absatz 1 genannten Qualitätsgruppen

Κράτη μέλη ή περιοχές κρατών μελών και ομάδες ποιότητας που αναφέρονται στο άρθρο 1 παράγραφος 1

Member States or regions of a Member State and quality groups referred to in Article 1 (1)

États membres ou régions d'États membres et groupes de qualités visés à l'article 1^{er}, paragraphe 1

Stati membri o regioni di Stati membri e gruppi di qualità di cui all'articolo 1, paragrafo 1

In artikel 1, lid 1 bedoelde Lid-Staten of gebieden van een Lid-Staat en kwaliteitsgroepen

Estados-membros ou regiões de Estados-membros e grupos de qualidades referidos no n.º 1 do artigo 1.º

Estados miembros o regiones de Estados miembros	Categoría A			Categoría C		
Medlemsstat eller region	Kategori A			Kategori C		
Mitgliedstaaten oder Gebiete eines Mitgliedstaats	Kategorie A			Kategorie C		
Κράτος μέλος ή περιοχές κράτους μέλους	Κατηγορία Α			Κατηγορία Γ		
Member States or regions of a Member State	Category A			Category C		
États membres ou régions d'États membres	Catégorie A			Catégorie C		
Stati membri o regioni di Stati membri	Categoria A			Categoria C		
Lid-Staat of gebied van een Lid-Staat	Categorie A			Categorie C		
Estados-membros ou regiões de Estados-membros	Categoria A			Categoria C		
	U	R	O	U	R	O
Belgique/België		×				
Denmark		×	×			
Great Britain				×	×	
Ireland				×	×	×
Northern Ireland				×	×	

COMMISSION REGULATION (EC) No 3398/93
of 10 December 1993
amending Regulation (EC) No 3340/93 introducing a countervailing charge on
fresh clementines originating in Morocco

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European 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 Commission Regulation (EC) No 3340/93⁽³⁾ introduced a countervailing charge on fresh clementines originating in Morocco;

Whereas Article 26 (1) of Regulation (EEC) No 1035/72 laid down the conditions under which a charge introduced in application of Article 25 of that Regulation is

amended; whereas, if those conditions are taken into consideration, the countervailing charge on the import of fresh clementines originating in Morocco must be altered,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 1 of Regulation (EC) No 3340/93, 'ECU 3,34' is hereby replaced by 'ECU 1,19'.

Article 2

This Regulation shall enter into force on 11 December 1993.

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

Done at Brussels, 10 December 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 299, 4. 12. 1993, p. 35.

COMMISSION REGULATION (EC) No 3399/93
of 10 December 1993
fixing the import levies on rice and broken rice

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

Having regard to Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice ⁽¹⁾, as last amended by Regulation (EEC) No 1544/93 ⁽²⁾, and in particular Article 11 (2) thereof,

Having regard to Commission Regulation (EEC) No 833/87 of 23 March 1987 laying down detailed rules for the application of Council Regulation (EEC) No 3877/86 on imports of rice of the long-grain aromatic Basmati variety falling within CN codes 1006 10, 1006 20 and 1006 30 ⁽³⁾, as last amended by Regulation (EEC) No 674/91 ⁽⁴⁾, and in particular Article 8 thereof,

Whereas the import levies on rice and broken rice were fixed by Commission Regulation (EEC) No 2666/93 ⁽⁵⁾, as last amended by Regulation (EC) No 3330/93 ⁽⁶⁾,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 11 December 1993.

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

Done at Brussels, 10 December 1993.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽²⁾ OJ No L 154, 25. 6. 1993, p. 5.

⁽³⁾ OJ No L 80, 24. 3. 1987, p. 20.

⁽⁴⁾ OJ No L 75, 21. 3. 1991, p. 29.

⁽⁵⁾ OJ No L 245, 1. 10. 1993, p. 4.

⁽⁶⁾ OJ No L 299, 4. 12. 1993, p. 8.

ANNEX

to the Commission Regulation of 10 December 1993 fixing the import levies on rice and broken rice

(ECU/tonne)

CN code	Levies (°)		
	Arrangement in Regulation (EEC) No 3877/86 (°)	ACP Bangladesh (°) (°) (°)	Third countries (except ACP) (°)
1006 10 21	—	140,83	288,86
1006 10 23	—	120,83	248,86
1006 10 25	—	120,83	248,86
1006 10 27	186,65	120,83	248,86
1006 10 92	—	140,83	288,86
1006 10 94	—	120,83	248,86
1006 10 96	—	120,83	248,86
1006 10 98	186,65	120,83	248,86
1006 20 11	—	176,93	361,07
1006 20 13	—	151,94	311,08
1006 20 15	—	151,94	311,08
1006 20 17	233,31	151,94	311,08
1006 20 92	—	176,93	361,07
1006 20 94	—	151,94	311,08
1006 20 96	—	151,94	311,08
1006 20 98	233,31	151,94	311,08
1006 30 21	—	219,81	463,48
1006 30 23	—	247,25	518,28
1006 30 25	—	247,25	518,28
1006 30 27	388,71	247,25	518,28
1006 30 42	—	219,81	463,48
1006 30 44	—	247,25	518,28
1006 30 46	—	247,25	518,28
1006 30 48	388,71	247,25	518,28
1006 30 61	—	234,45	493,61
1006 30 63	—	265,45	555,60
1006 30 65	—	265,45	555,60
1006 30 67	416,70	265,45	555,60
1006 30 92	—	234,45	493,61
1006 30 94	—	265,45	555,60
1006 30 96	—	265,45	555,60
1006 30 98	416,70	265,45	555,60
1006 40 00	—	47,92	101,84

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

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

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

(°) The levy on imports of rice, not including broken rice (CN code 1006 40 00), originating in Bangladesh is applicable under the arrangements laid down in Regulations (EEC) No 3491/90 and (EEC) No 862/91.

(°) The levy on imports of rice of the long-grain aromatic Basmati variety is applicable under the arrangements laid down in amended Regulation (EEC) No 3877/86.

(°) No import levy applies to products originating in the OCT pursuant to Article 101 (1) of Decision 91/482/EEC, subject to the provisions of Decision 93/127/EEC.

COMMISSION REGULATION (EC) No 3400/93**of 10 December 1993****fixing the premiums to be added to the import levies on rice and broken rice**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice ⁽¹⁾, as last amended by Regulation (EEC) No 1544/93 ⁽²⁾, and in particular Article 13 (6) thereof,

Whereas the premiums to be added to the levies on rice and broken rice were fixed by Commission Regulation (EEC) No 2667/93 ⁽³⁾, as last amended by Regulation (EC) No 3331/93 ⁽⁴⁾;

Whereas, on the basis of today's cif prices and cif forward delivery prices, the premiums at present in force, which are to be added to the levies, should be altered to the amounts set out in the Annex hereto,

Article 1

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

Article 2

This Regulation shall enter into force on 11 December 1993.

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

Done at Brussels, 10 December 1993.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 166, 25. 6. 1976, p. 1.
⁽²⁾ OJ No L 154, 25. 6. 1993, p. 5.
⁽³⁾ OJ No L 245, 1. 10. 1993, p. 7.
⁽⁴⁾ OJ No L 299, 4. 12. 1993, p. 10.

ANNEX

to the Commission Regulation of 10 December 1993 fixing the premiums to be added to the import levies on rice and broken rice

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

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 24 November 1993

relating to a proceeding pursuant to Article 85 of the EEC Treaty
(IV/32031 — Auditel)

(Only the Italian text is authentic)

(93/668/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European 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 Articles 2 and 3 (1) and Article 6 thereof,

Having regard to the notification and the application for negative clearance or, alternatively, for exemption, submitted in accordance with Articles 2 and 4 of Regulation No 17, by Mr Giulio Malgara, chairman of Auditel Srl, on 15 September 1986, on behalf of the members of Auditel and for the company Auditel, as decided by Auditel's board of directors on 7 April 1986, of:

- the instrument of incorporation and the articles of associations of the company Auditel,
- the agreement between the shareholders of Auditel Srl,
- the agreement between the Auditel Srl and AGB Italia SpA,

Having regard to the applications made pursuant to Article 3 of Regulation No 17 by A. C. Nielsen Italia SpA (hereinafter 'Nielsen') on 11 June 1987 and by Marketing TV Services Srl ('MTVS') on 7 August 1987,

Having regard to the Commission's decision on 7 October 1991 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission, in accordance with Article 19 (1) of Regulation No 17 and with 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⁾,

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

Whereas:

I. THE FACTS

The notification covers three agreements:

- the instrument of incorporation and the articles of association of the company Auditel,
- the agreement between the shareholders of Auditel Srl,
- the agreement between Auditel Srl and AGB Italia SpA.

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

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

A. The instrument of incorporation and the articles

- (1) The instrument of incorporation and the articles of association relate to the private limited company 'Auditel', Largo Toscanini 1, Milan, whose purpose is to record objectively and impartially and to disseminate systematically information, divided into national, regional and subregional areas, on audiences for television broadcasts.

B. The agreement between shareholders of Auditel Srl

- (2) The Agreement between the shareholders of Auditel Srl lays down the requirements incumbent on the members. The members are divided into three groups:

1. the public television channel (RAI Radio Televisione Italiana);
2. the private television channels (Canale 5, Rete 10, Rete Quattro, Gruppo STP-RV, FRT Federazione Radio e Televisioni);
3. the associations of the following operators: advertisers (UPA Utenti Pubblicità Associati), advertising agencies (ASSAP Associazione Italiana Agenzie Pubblicità e Servizio Completo), organizations dealing in advertising techniques (OTEP Associazione Italiana delle Organizzazioni Professionali di Tecnica Pubblicitaria) and agencies specializing in advertising media (AMA Agenzie Media Associate).

The cost of the operation is borne by the first two groups, which account for virtually the whole of the television audience in Italy.

- (3) Article 11 of the agreement provided that 'Auditel's partners undertake, as regards all matters which may be of advertising or business importance, to use exclusively the services provided by Auditel and to recognize the validity only of the figures resulting from Auditel's measurements and research'.

This requirement was subsequently amended on two occasions.

- (4) The first amendment on 9 April 1987 stipulated that the requirement related only to the figures resulting from the measurement of audience ratings and not to the breakdowns and analyses of the rating figures carried out by Auditel for specific commercials and programmes.

- (5) The second amendment, transmitted on 8 July 1992 after the statement of objections had been sent and after the hearing, provides that 'the partners undertake, in their activities, with regard solely to the measurement of audience ratings (audience-

share figure for a specific time-period), to use exclusively Auditel's measurements, the sole aim being to avoid disagreements on television audience shares and distortions in the information provided to the public by the press, radio or television'.

As became clear at the hearing, the purpose of Article 11 is in practice to prevent a 'ratings war' between the main Italian television channels.

By letter of 11 June 1993 the lawyer for Auditel gave notice of a modification to Article 11 according to which it would read 'the members of Auditel undertake, as far as the data on television viewing levels (viewing in a defined limited period) is concerned, to use the data, collected by, or on behalf of, Auditel, as a reference point in case of legal or other disputes'.

- (6) Conscious of the fact that the Commission could well refuse to exempt this clause, Auditel's lawyers indicated by letter of 23 June 1993 that Article 11 was being withdrawn while stating that it could not have any restrictive effects.

The decision to withdraw Article 11 was adopted by the Administrative Council of Auditel on 24 July 1993 and a copy of that decision was conveyed to the Commission on 10 September 1993.

C. The Auditel/AGB agreement

- (7) The Auditel/AGB agreement concerns the setting-up and administration by AGB of the entire audience-measurement system and the analysis and processing of the figures.

By letter dated 1 December 1991, Auditel Srl informed the Commission that a new agreement, which had been signed on 25 October 1991, had entered into force on 1 November 1991 and was to run until 31 December 1996, had replaced the notified agreement.

Under the new agreement, AGB is responsible for administering and maintaining the system, the electronic equipment (meters) remaining the property of Auditel.

D. The market for audience-rating measurements

- (8) The relevant market is the market for figures showing the audience for television broadcasts i.e. the figures showing the number of persons who were watching a given channel at a given point in time.

These basic figures are then broken down so as to identify viewers as closely as possible in order to allow advertising to be targeted.

E. The complaints

II. LEGAL ASSESSMENT

(9) (a) *The complaint submitted by Nielsen*

According to the complaint submitted by Nielsen, which specializes in market studies and market research, Auditel's agreements commit the following infringements of Articles 85 and 86:

1. infringements of Article 85:

- the mutual exclusivity granted between Auditel and AGB for a five-year period for setting-up and administering the system,
- the requirement imposed on Auditel's members by Article 11 of the agreement;

2. infringements of Article 86:

- Article 11 gives Auditel a dominant position on the market for audience ratings data and Auditel is abusing it by imposing standard contracts which give it full freedom as regards prices, conditions of use and duration.

(10) (b) *The complaint submitted by MTVS*

MTVS groups together three companies whose activities involve the establishment of audience-rating data and the certification of transmission at a given time and of the number and duration of the commercials.

According to MTVS, the infringements of Articles 85 and 86 are as follows:

1. infringements of Article 85:

- the requirement imposed by Article 11 of the agreement between Auditel's members,
- the exclusivity granted to AGB,
- the sharing of the costs of Auditel's operation between the television channel members, allowing data to be supplied on the market without competition;

2. Infringements of Article 86:

Auditel is abusing its dominant position on the market by having the data available before its competitors and by setting prices at a level that bears no relation to the real costs of production.

A. Article 85 (1)

1. *Undertakings*

- (11) Auditel Srl and the members of Auditel are undertakings within the meaning of Article 85 of the EC Treaty.

2. *Agreements*

- (12) The agreements notified and, in particular, the agreement between the shareholders of Auditel Srl, are agreements between undertakings within the meaning of Article 85 (1) of the Treaty.

3. *Restrictions*

- (13) Article 11 of the agreement between the members, both in the version of 8 July 1992 and in the previous versions, provides that the partners undertake, in their activities, with regard solely to the measurement of audience ratings, to use exclusively Auditel's measurements, the sole aim being to avoid disagreements on audience shares and distortions in the information provided to the public by the press, radio or television.

- (14) This amended version had the advantage over the previous version of indicating clearly, first, that the audience rating referred to is simply the overall audience rating and, secondly, that the purpose of the Article is to avoid a 'ratings war' between the private and public television channels.

- (15) As was explained by an Auditel representative at the hearing, this requirement is aimed essentially at two groups amongst Auditel's members, namely the private and public television channels, which were behind the 'ratings war'.

- (16) Since the final rates for advertisements are determined on the basis of the number of viewers who were watching the programme during which the advertisement was broadcast, each broadcasting channel is bound by the Auditel audience rating and may not refer to any other figures that are more favourable for it, as they were previously able to do.

- (17) At the hearing, an Auditel representative argued that, in the case of the undertakings belonging to the third group which were interested in Auditel's figures and which, through their professional association, formed part of the group only indirectly, the requirement was not valid since they did not sign the agreement individually, the agreement having been signed by their professional association.

(18) However, even in such a situation, the members of the third group, which, before Auditel was set up, were free to dispute the figures used by the broadcasting channels, are necessarily dependent on Auditel's figures just as much as the public and private channels. Even if they have available figures that are more favourable to them and even if any disagreement on their part does not lead to a 'ratings war' between the public and private channels, such figures are unusable.

(19) This is because, in negotiations on advertising rates, the private television channels and the public channel were required by Article 11 to take as their reference the Auditel audience rating and could not have referred to other ratings put forward by members of the third group.

(20) The restriction of competition therefore continued to apply directly to the private channels and the public channel and indirectly to the other members of Auditel.

The requirement constitutes a restriction of competition in that it deprives the members of any freedom to use figures from any other source.

(21) According to Auditel, the members may commission their own audience-rating measurements and subsequent analyses or market research, provided that their results are not made public; in addition, it is possible to instruct Auditel or others to produce and publish breakdowns of the audience figures for individual commercials and programmes.

(22) However, this was not sufficient to reduce the restrictive scope of the requirement; either such figures were unusable, since it was prohibited to make them public and hence to use them as a basis for determining advertising rates, or the analytical breakdowns which could have been made public had necessarily been derived from Auditel's figures, whose use is compulsory.

4. Effect on trade between Member States

(23) Auditel's audience ratings may have an appreciable effect on trade between Member States: either directly, as regards advertising in general and the programmes to be broadcast, or indirectly as regards the products to be advertised.

(24) The ratings are the basis on which advertisers and operators decide on the amount of their advertising investment, how to allocate them as between the different media and which media of the same type to opt for.

(25) As far as the television channels are concerned, Auditel's figures on the number of viewers per broadcast and on their composition (age, socio-economic group and cultural level) determine the choice of programmes, their scheduling and their advertising rates.

(26) That being so, there is an appreciable effect on trade between Member States since:

- advertising agencies from other Member States operate in Italy both directly and through branches,
- some of the programmes broadcast originate in other Member States,
- advertising time is bought by advertisers or operators in order to advertise products originating in other Member States⁽¹⁾,
- at least one Italian television channel (RAI) can be received in other Member States.

B. Article 85 (3)

(27) In order to qualify for exemption under Article 85 (3), the four conditions laid down therein must be met.

However, Article 11 of the agreement does not meet the following two conditions in particular:

1. Indispensability of the restrictions imposed

(28) The undertaking provided for in Article 11 of the agreement was not indispensable.

(29) The participation of virtually all of the sector's commercial operators in the notified agreements is intended to ensure that the audience ratings are objective, reliable and homogeneous.

⁽¹⁾ 52 % of Italian imports come from within the Community; of these 52 %, over 24 % are consumer goods (30 % foodstuffs and 70 % other products) which require television advertising in order to promote their sale.

- (30) Consequently, the requirement that members use Auditel's figures for their business purposes and for their analyses is superfluous. For the public television channel and the private channels, which bear the costs of the operation, it is a logical consequence of their investment that they should recognize the reliability of the figures and use them.

The justification of Article 11 as a necessary means of preventing a ratings war between the main television channels cannot be accepted; the clause in question does not serve to derive possible favourable effects from the agreement, namely by improving the production or distribution of a service while allowing consumers a fair share of the resulting benefit.

In the case of the third group of members, the reliability of the figures and their use are a consequence of their participation in Auditel and the fact that the figures are used by the other groups of shareholders as well, namely the television channels which are the business partners of the advertising agencies and advertisers.

2. Elimination of competition

- (31) Furthermore, the fact that each member can, in addition to further breakdowns of Auditel's figures, have other audience ratings measurements and breakdowns carried out shows that other sources of audience rating measurements exist. The fact that the results of such research were not made public once they had been used shows that such figures are valid and that they are capable of competing with Auditel's figures, obtained using the AGB method.
- (32) However, such potential competition could not actually take place. Such figures are unusable, firstly because they could not be made public and, secondly, because the members were obliged, for the purposes of their analytical breakdowns, to use only Auditel's figures.
- (33) This situation also has repercussions on other companies that compile or analyse figures, since they are confronted by the fact that the only figures recognized as valid on the market were Auditel's.

- (34) The agreement thus afforded the opportunity for eliminating competition. Even if there are other systems⁽¹⁾ for measuring audience ratings, the fact that such figures cannot be used placed Auditel in a *de facto* monopoly position, eliminating all competition.

C. Article 86

- (35) Since Article 11 of the agreement will be annulled by this decision, Auditel will in future no longer have a monopoly position which could constitute an abuse within the meaning of Article 86.

In any case, the complaints made in this regard concern the exclusivity afforded by Article 11 of the agreement, the deletion of which will follow from termination of the infringement of Article 85.

- (36) As regards the alleged infringement of Article 86, the information brought to the Commission's attention does not point to the conclusion that Auditel was guilty of such an infringement.

D. Article 15 (5) of Regulation No 17

- (37) Pursuant to Article 15 (5) (a) of Regulation No 17, the fines provided for in the event of infringement of Article 85 of the Treaty may not be imposed in respect of acts taking place after notification to the Commission and before its decision pursuant to Article 85 (3), provided that they fall within the limits of the activity described in the notification.

Since Auditel's activity does fall within the limits of the activity described in the notification, fines should not be imposed.

E. Article 3 of Regulation No 17

- (38) Pursuant to Article 3 of Regulation No 17, the Commission may by decision find that there is infringement of Article 85 of the EC Treaty and require the undertakings concerned to bring such an infringement to an end.

In this particular case the withdrawal of Article 11 on 24 July 1993 can be regarded as terminating the anti-competitive effects of the infringement.

⁽¹⁾ In 1986, in choosing the system, Auditel contacted 36 companies or research institutes; 15 submitted projects in response to the invitation to tender.

Given that the parties have denied that Article 11 constituted an infringement of Community law (see point 6 above) the Commission considers that there is a risk of the parties returning to the same, or similar conduct in the future.

In these circumstances the Commission therefore has a legitimate interest in adopting a decision declaring that Article 11 of the agreement between the members of Auditel, in both its 8 July 1992 version and its earlier versions, constituted an infringement of Article 85 (1) and did not fulfil the conditions for an exemption under Article 85 (3).

HAS ADOPTED THIS DECISION:

Article 1

Until its formal deletion on 24 July 1993, Article 11 of the agreement between the members of Auditel, as last amended on 8 July 1992, and in its previous forms constituted an infringement of Article 85 (1) of the EC Treaty.

Article 2

The request for the exemption of Article 11 of the agreement pursuant to Article 85 (3) of the EC Treaty is hereby rejected.

Article 3

On the basis of the information available to it, the Commission need not take action pursuant to Articles 85 (1) and 86 of the EC Treaty in respect of:

- the instrument of incorporation and the articles of association of Auditel Srl,
- the agreements between Auditel Srl and AGB Italia SpA,
- the provisions still in force in the agreement between the shareholders of Auditel Srl,
- the conduct of Auditel Srl on the audience-ratings market.

Article 4

This Decision is addressed to:

Auditel Srl,
Largo Toscanini 1,
I-20122 Milan.

Done at Brussels, 24 November 1993.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION

of 30 November 1993

fixing for the Netherlands the maximum amount of the compensation eligible for Community financing of the programme for restructuring milk production laid down in Article 8 of Council Regulation (EEC) No 3950/92

(Only the Dutch text is authentic)

(93/669/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EEC) No 2491/93 of 9 September 1993, laying down detailed rules for the application of Council Regulation (EEC) No 3950/92 as regards Community financing of the programme for restructuring milk production⁽¹⁾, and in particular Article 1 (2) thereof,

Whereas the milk restructuring programme in the Netherlands forms part of an overall programme to redevelop the land and create natural areas withdrawn from agricultural production;

Whereas the aim of improving the environment is explicitly laid down in Article 8 of Council Regulation (EEC) No 3950/92⁽²⁾, as last amended by Regulation (EEC) No 1560/93⁽³⁾; whereas a significant amount of the land to be acquired is still given over to milk production; whereas the acquisition of this land is hindered by the fact that the public authorities cannot offer the producers holding reference quantities the same level of compensation as that available on the land market; whereas in the absence of sufficient funding, the reference quantities relating to the said land will not return to the national reserve and, since they cannot therefore be reallocated on a targeted basis, will not be included in the restructuring of milk production;

Whereas on the basis of the above, the application on the part of the Netherlands to increase the maximum amount of the compensation eligible for Community financing pursuant to Article 1 (2) of Regulation (EEC) No 2491/93 relates to an exceptional and duly substantiated situation,

HAS ADOPTED THIS DECISION:

Article 1

Within the limits of the Community financing set out in Article 8 (3) of Regulation (EEC) No 3950/92, the Netherlands is hereby authorized to pay in accordance with Regulation (EEC) 2491/93 compensation up to a maximum of ECU 150 per 100 kilograms of the reference quantities released as part of land acquisition by the public authorities for environmental purposes.

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 30 November 1993.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 229, 10. 9. 1993, p. 5.

⁽²⁾ OJ No L 405, 31. 12. 1992, p. 1.

⁽³⁾ OJ No L 154, 25. 6. 1993, p. 30.

COMMISSION DECISION

of 1 December 1993

concerning the Community's financial contribution to expenditure by the United Kingdom on the establishment of the Community vineyard register

(Only the English text is authentic)

(93/670/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2392/86 of 24 July 1986 establishing a Community vineyard register⁽¹⁾, as amended by Regulation (EEC) No 3577/90⁽²⁾, and in particular Article 9 (3) thereof,

After consulting the European Agricultural Guidance and Guarantee Fund Committee,

Whereas Article 9 (1) of Regulation (EEC) No 2392/86 states the Community shall contribute 50 % of the actual cost of financing the establishment of the Community vineyard register in the Member States;

Whereas Article 9 (3) of Regulation (EEC) No 2392/86 states that the contribution shall be in the form of reimbursements decided on by the Commission in accordance with the procedure laid down in Article 7 (1) of Council Regulation (EEC) No 729/90 of 21 April 1970 on the financing of the common agricultural policy⁽³⁾, as last amended by Regulation (EEC) No 2048/88⁽⁴⁾, and that arrangements may be decided on for advance payments to Member States; whereas Article 9 (4) of Regulation (EEC) No 2392/86 states that Articles 8 and 9 of Regulation (EEC) No 729/70 shall apply to the Community contribution to the establishment of the register;

Whereas the United Kingdom Government has transmitted to the Commission the necessary documents to be

able to decide on the amount to be taken into account concerning expenditure on establishing the register;

Whereas the Commission has initiated the inspections provided for in Article 9 (2) of Regulation (EEC) No 729/70,

HAS ADOPTED THIS DECISION:

Article 1

The Community's financial contribution to the expenditure incurred by the United Kingdom for the establishment of the Community vineyard register for the full amount shall be as stated in column 2 in the Annex to this Decision.

Article 2

This Decision is addressed to the United Kingdom.

Done at Brussels, 1 December 1993.

For the Commission

René STEICHEN

Member of the Commission⁽¹⁾ OJ No L 208, 31. 7. 1986, p. 1.⁽²⁾ OJ No L 353, 17. 12. 1990, p. 23.⁽³⁾ OJ No L 94, 28. 4. 1970, p. 13.⁽⁴⁾ OJ No L 185, 15. 7. 1988, p. 1.

ANNEX

Year	(in £)	
	Expenditure	Community contribution (50 %)
	1	2
1989	28 620	14 310
1990	31 800	15 900
1991	34 400	17 200
1992	24 500	12 250

COMMISSION DECISION

of 10 December 1993

amending for the second time Decision 93/566/EC concerning certain protection measures relating to classical swine fever in Germany and replacing Decision 93/539/EEC

(93/671/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS DECISION:

Having regard to the Treaty establishing the European Community,

Article 1

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market⁽¹⁾, as last amended by Council Directive 92/118/EEC⁽²⁾ and, in particular, Article 10 (4) thereof,

Commission Decision 93/566/EC is hereby amended as follows:

1. In Article 2 (2) (a) is replaced by:

'(a) to fresh pigmeat which:

- (i) is obtained from slaughter pigs, with the exception of pigs coming from the protection zones, fulfilling the conditions given in Annex IV, chapter 1, and slaughtered in an abattoir situated within, or an abattoir licensed by the competent authorities situated outside, the area described in Annex I;

the names and locations of those abattoirs outside the restricted areas to be used for slaughtering pigs from within the areas shall be set out on a list to be submitted to the Commission,

and

- (ii) is labelled in accordance with the Annex of Council Directive 72/461/EEC of 12 December 1972 on health problems affecting intra-Community trade in fresh meat⁽³⁾,

and

- (iii) is stored under conditions given in Annex IV, chapter II, the storage facilities may be situated outside the area described in Annex I,

and

- (iv) is transported to a meat processing plant for heat treatment in accordance with Article 4 (1), of Council Directive 80/215/EEC of 22 January 1980 on health problems affecting intra-Community trade in meat products⁽⁴⁾. The plant may be situated outside the area described in Annex I and it shall be included in a list submitted to the Commission. The transport shall take place in accordance with the provisions of Annex IV, chapter III.

Whereas as a result of outbreaks of classical swine fever in different parts of Germany, the Commission adopted Decision 93/566/EC of 4 November 1993 concerning certain protection measures relating to classical swine fever in Germany and repealing Decision 93/539/EEC⁽⁵⁾ as amended by Decision 93/621/EC⁽⁶⁾;

Whereas pigs kept in holdings situated within the areas subject to special protection measures (93/566/EC), can only be slaughtered at abattoirs located within the said areas;

Whereas because of insufficient slaughter capacity in those areas, it is necessary, subject to certain control measures, to bring pigs to abattoirs situated outside the restricted areas for slaughter;

Whereas the provisions of Decision 93/566/EC permit the transport of fresh pigmeat from areas covered by special protection measures to canning plants situated outside these areas, where the meat shall undergo a defined heat treatment;

Whereas in the light of the need for applying heat treatments other than the one defined it is necessary to adjust the measures adopted by Decision 93/566/EC;

Whereas the measures provided for in this Decision are in accordance with the opinion of the Standing Veterinary Committee,

⁽¹⁾ OJ No L 224, 18. 8. 1990, p. 29.

⁽²⁾ OJ No L 62, 15. 3. 1993, p. 49.

⁽³⁾ OJ No L 273, 5. 11. 1993, p. 60.

⁽⁴⁾ OJ No L 297, 2. 12. 1993, p. 36.

⁽⁵⁾ OJ No. L 302, 31. 12. 1972, p. 24.

⁽⁶⁾ OJ No L 47, 21. 2. 1980, p. 28.

2. In Article 4 (1), (2) and (3), '93/621/EC' is replaced by '93/671/EC'.

3. In Annex IV, chapter 1, include the following after point 6:

'6 (a) On arrival at the slaughterhouse, the pigs must be kept separately and are either:

- slaughtered separately from pigs other than those referred to in the present chapter, or
- the day on which pigs referred to in the present chapter are slaughtered, no other pigs can enter or be slaughtered at the same slaughterhouse'.

Article 2

Member States shall amend the measures which they apply to trade so as to bring them into compliance with this Decision. They shall immediately inform the Commission thereof.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 10 December 1993.

For the Commission

René STEICHEN

Member of the Commission