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Contents

I *Acts whose publication is obligatory*

- ★ **Council Regulation (EC) No 3135/94 of 15 December 1994 amending Annex I to Regulation (EEC) No 2455/92 concerning the export and import of certain dangerous chemicals** 1
- ★ **Council Regulation (EC) No 3136/94 of 15 December 1994 fixing the guide prices for the fishery products listed in Annex I (A), (D) and (E) of Regulation (EEC) No 3759/92 for the 1995 fishing year** 4
- ★ **Council Regulation (EC) No 3137/94 of 15 December 1994 fixing the guide prices for the fishery products listed in Annex II to Regulation (EEC) No 3759/92 for the 1995 fishing year** 7
- ★ **Council Regulation (EC) No 3138/94 of 15 December 1994 fixing the Community producer price for tuna intended for the industrial manufacture of products falling within CN code 1604 for the 1995 fishing year** 9
- Commission Regulation (EC) No 3139/94 of 21 December 1994 altering the export refunds on white sugar and raw sugar exported in the natural state 10
- ★ **Commission Regulation (EC) No 3140/94 of 21 December 1994 authorizing the conclusion of long-term private storage contracts for table wine, grape must, concentrated grape must and rectified concentrated grape must in respect of the 1994/95 wine year** 12
- ★ **Commission Regulation (EC) No 3141/94 of 21 December 1994 fixing the standard fee per farm return for the 1995 accounting year of the farm accountancy data network** 14
- ★ **Commission Regulation (EC) No 3142/94 of 21 December 1994 amending Regulation (EEC) No 3846/87 establishing an agricultural product nomenclature for export refunds** 15

Price : ECU 18

(Continued overleaf)

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other Acts are printed in bold type and preceded by an asterisk.

★ Commission Regulation (EC) No 3143/94 of 21 December 1994 amending Regulation (EC) No 548/94 laying down detailed rules for the application of Council Regulation (EC) No 287/94 laying down special measures for the import of olive oil from Tunisia	16
★ Commission Regulation (EC) No 3144/94 of 21 December 1994 opening and providing for the administration of Community tariff quotas for certain agricultural products originating in the African, Caribbean and Pacific States	17
★ Commission Regulation (EC) No 3145/94 of 21 December 1994 amending Regulation (EC) No 2865/94 adopting exceptional support measures for the market in pigmeat in Belgium	21
★ Commission Regulation (EC) No 3146/94 of 21 December 1994 adopting exceptional support measures for the market in pigmeat in Germany ...	23
★ Commission Regulation (EC) No 3147/94 of 21 December 1994 amending Regulation (EC) No 2763/94 opening and providing for the administration of Community tariff quotas for certain agricultural products originating in the African, Caribbean and Pacific States	26
★ Commission Regulation (EC) No 3148/94 of 21 December 1994 amending Regulation (EEC) No 2251/92 on quality inspection of fresh fruit and vegetables	28
★ Commission Regulation (EC) No 3149/94 of 21 December 1994 derogating from Regulation (EEC) No 2604/90 as regards improving the production of apples	29
★ Commission Regulation (EC) No 3150/94 of 21 December 1994 re-establishing the levying of customs duties applicable to products falling within CN code 3102 30, originating in Poland, to which the tariff ceilings set out in Council Regulation (EEC) No 3918/92 apply	30
★ Commission Regulation (EC) No 3151/94 of 21 December 1994 introducing a further derogation from the detailed rules for the delivery by producers of the table wine they are required to deliver for compulsory distillation in respect of the 1993/94 wine year	32
★ Commission Regulation (EC) No 3152/94 of 21 December 1994 amending Regulation (EC) No 2630/94 opening individual sales by invitation to tender for the export of vinous alcohol held by intervention agencies and Regulation (EEC) No 377/93 laying down detailed rules for the disposal of alcohol obtained from the distillation operations referred to in Articles 35, 36 and 39 of Regulation (EEC) No 822/87 and held by intervention agencies	34
Commission Regulation (EC) No 3153/94 of 21 December 1994 amending Regulation (EC) No 2162/94 increasing to 882 000 tonnes the quantity of barley held by the United Kingdom intervention agency for which a standing invitation to tender for export has been opened	36
Commission Regulation (EC) No 3154/94 of 21 December 1994 amending Regulation (EC) No 1080/94 increasing to 1 100 000 tonnes the quantity of rye held by the German intervention agency for which a standing invitation to tender for export has been opened	38
Commission Regulation (EC) No 3155/94 of 21 December 1994 on the issuing of a standing invitation to tender for the resale on the internal market of 7 748 tonnes of bread-making wheat held by the Greek intervention agency	40
Commission Regulation (EC) No 3156/94 of 21 December 1994 fixing the maximum export refund for white sugar for the 30th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1021/94	41

Commission Regulation (EC) No 3157/94 of 21 December 1994 suspending advance fixing of the import levy for certain cereals	42
Commission Regulation (EC) No 3158/94 of 21 December 1994 suspending advance fixing of the import levy for rice	43
Commission Regulation (EC) No 3159/94 of 21 December 1994 fixing the maximum export refunds on olive oil for the second partial invitation to tender under the standing invitation to tender issued by Regulation (EC) No 2517/94	44
Commission Regulation (EC) No 3160/94 of 21 December 1994 fixing the export refunds on olive oil	46

II *Acts whose publication is not obligatory*

Commission

94/811/EC :

- ★ **Commission Decision of 8 June 1994 declaring the compatibility of a concentration with the common market (Case No IV/M.269 — Shell/Montecatini)** 48

94/812/EC :

- ★ **Commission Decision of 15 December 1994 amending Decision 93/467/EEC authorizing Member States to provide for derogations from certain provisions of Council Directive 77/93/EEC, in respect of oak (*Quercus* L.) logs with bark attached, originating in Canada or the United States of America** 71

Corrigenda

- ★ **Corrigendum to Commission Regulation (EC) No 2954/94 of 5 December 1994 setting detailed rules for application of Council Regulation (EC) No 1503/94 establishing a system of compensation for the additional costs incurred in the marketing of certain fishery products from the Azores, Madeira, the Canary Islands and the French department of Guyana as a result of their very remote location (OJ No L 312 of 6. 12. 1994)** 72

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 3135/94
of 15 December 1994
amending Annex I to Regulation (EEC) No 2455/92 concerning the export and
import of certain dangerous chemicals

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130s, paragraph 1 thereof,

Having regard to Council Regulation (EEC) No 2455/92 of 23 July 1992 concerning the export and import of certain dangerous chemicals⁽¹⁾, and in particular Article 11 thereof and Annex I thereto,

Having regard to the proposal from the Commission⁽²⁾,

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

Acting in conformity with the procedure referred to in Article 189c of the Treaty⁽⁴⁾,

Whereas the said Annex I lists the chemicals banned or severely restricted in the Community; whereas Article 11 of the same Regulation requires this list to be reviewed at regular intervals and amended as necessary;

Whereas as a result of amendments and the adaptation to technical progress of Directive 79/117/EEC⁽⁵⁾, which

prohibits the placing on the market and use of plant protection products containing certain active substances, the list of chemicals contained in Annex I to Regulation (EEC) No 2455/92 and of Directive 76/769/EEC, which restricts the marketing and use of certain dangerous substances and preparations⁽⁶⁾, the list of chemicals contained in Annex I to Regulation (EEC) No 2455/92 should be amended and additional chemicals added thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The Table in the Annex to this Regulation shall replace the Table in Annex I to Regulation (EEC) No 2455/92.

Article 2

This Regulation shall enter into force one month after 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, 15 December 1994.

For the Council

The President

A. MERKEL

⁽¹⁾ OJ No L 251, 29. 8. 1992, p. 13.

⁽²⁾ OJ No C 112, 22. 4. 1993, p. 12.

⁽³⁾ OJ No C 249, 13. 9. 1993, p. 5.

⁽⁴⁾ Opinion of the European Parliament of 9 March 1994 (OJ No C 91, 28. 3. 1994, p. 98), Joint Council Position of 8 June 1994 (OJ No C 213, 3. 8. 1994, p. 1) and European Parliament Decision of 17 November 1994 (not yet published in the Official Journal).

⁽⁵⁾ OJ No L 33, 8. 2. 1979, p. 36. Directive as last amended by Directive 91/188/EEC (OJ No L 92, 13. 4. 1991, p. 42).

⁽⁶⁾ OJ No L 262, 27. 9. 1976, p. 201. Directive as last amended by Directive 91/339/EEC (OJ No L 186, 12. 7. 1991, p. 64).

ANNEX

ANNEX I

Chemical	CAS No (a)	EINECS No (b)	Use category (c)	Use limitation (d)
1. Mercuric oxide	21908-53-2	244-654-7	p	b
2. Mercurous chloride (calomel)	10112-91-1	233-307-5	p	b
3. Other inorganic mercury compounds			p	b
4. Alkyl mercury compounds			p	b
5. Alkoxyalkyl and aryl mercury compounds			p	b
6. Aldrin	309-00-2	206-215-8	p	b
7. Chlordane	57-74-9	200-349-0	p	b
8. Dieldrin	60-57-1	200-484-5	p	b
9. DDT	50-29-3	200-024-3	p	b
10. Endrin	72-20-8	200-775-7	p	b
11. HCH containing less than 99,0 % of the gamma isomer	608-73-1	210-168-9	p	b
12. Heptachlor	76-44-8	200-962-3	p	b
13. Hexachlorobenzene	118-74-1	204-273-9	p	b
14. Camphechlor (toxaphene)	8001-35-2	232-283-3	p	b
15. Polychlorinated biphenyls (PCB), except mono- and dichlorinated biphenyls	1336-36-3	215-648-1	i	b
16. Polychlorinated terphenyls (PCT)	61788-33-8	262-968-2	i	b
17. Preparations with a PCB or PCT content higher than 0,005 % by weight			i	b
18. Tris (2,3-dibromopropyl) phosphate	126-72-7	204-799-9	i	sr
19. Tris-aziridinyl-phosphin oxide	545-55-1	208-892-5	i	sr
20. Polybrominated biphenyls (PBB)			i	sr
21. Asbestos fibres :				
Crocidolite	12001-28-4		i	b
Amosite	12172-73-5		i	b
Anthophyllite	77536-67-5		i	b
Actinolite	77536-66-4		i	b
Tremolite	77536-68-6		i	b
22. Nitrofen	1836-75-5	217-406-0	p	b
23. 1,2 Dibromoethane	106-93-4	203-444-5	p	b
24. 1,2 Dichloroethane	107-06-2	203-458-1	p	b
25. Pentachlorophenol and its salts and esters	87-86-5	201-778-6	i	sr
26. Ugilec 121			i	b
27. Ugilec 141	76253-60-6	278-404-3	i	sr
28. DBBT	99688-47-8		i	b
29. Ethylene oxide	75-21-8	200-849-9	p	b
30. Dinoseb, its acetate and salts	88-85-7	201-861-7	p	b
31. Binapacryl	485-31-4	207-612-9	p	b
32. Capadafol	2425-06-1	219-363-3	p	b
33. Dicofol containing < 78 %, p,p'-dicofol or > 1 g/kg of DDT and DDT related compounds	115-32-2	204-082-0	p	b

Chemical	CAS No (a)	EINECS No (b)	Use category (c)	Use limitation (d)
34. (a) Maleic hydrazide, and its salts, other than its choline, potassium and sodium salts; (b) Choline, potassium and sodium salts of maleic hydrazide containing more than 1 mg/Kg of free hydrazine expressed on the basis of the acid equivalent	123-33-1	204-619-9	p	b
35. Quintozene containing more than 1 g/Kg of hexachlorobenzene or > 10 g/Kg of pentachlorobenzene	82-68-8	201-435-0	p	b
36. 2-Naphthylamine	91-59-8	202-080-4	i	sr
37. Benzidine	92-87-5	202-199-1	i	sr
38. 4-Nitrobiphenyl	92-93-3	202-204-7	i	sr
39. 4-Aminobiphenyl	92-67-1	202-177-1	i	sr

(a) CAS = Chemical Abstracts Service.

(b) EINECS = European Inventory of Existing Commercial Chemical Substances.

(c) Use category:

p : plant protection product

i : industrial chemical

(d) Use limitation:

sr : severe restriction

b : ban

COUNCIL REGULATION (EC) No 3136/94

of 15 December 1994

fixing the guide prices for the fishery products listed in Annex I (A), (D) and (E)
of Regulation (EEC) No 3759/92 for the 1995 fishing year

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3759/92 of 17 December 1992 on the common organization of the market in fishery and aquaculture products⁽¹⁾, and in particular Article 9 (3) thereof,

Having regard to the proposal from the Commission,

Whereas Article 9 (1) and (2) of Regulation (EEC) No 3759/92 provides that a guide price shall be fixed for each of the products listed in Annex I (A), (D) and (E) to the Regulation at a level which will help to stabilize market prices and avoid the formation of surpluses in the Community; whereas that level must also help support producers' income and at the same time take account of consumers' interests;

Whereas the guide price shall be based on the average of prices as defined in Article 9 (2) of that Regulation and on an assessment of production and demand prospects;

Whereas the application of these criteria involves, for the 1995 fishing year, an increase for certain products and the stabilization or decrease of prices for others compared with prices applicable during the current fishing year;

Whereas, moreover, in accordance with Articles 169 and 356 of the Act of Accession of Spain and Portugal, a tenth

approximation of guide prices must take place on 1 January 1995 for Atlantic sardines of the species *Sardinia pilchardus*;Whereas the prices or amounts fixed in ecus by this Regulation are determined in accordance with the agri-monetary system applicable in 1994 as provided for in Regulation (EEC) No 3813/92⁽²⁾, and in particular Article 13 (2) thereof; whereas, as a result, they should enter into force in that year,

HAS ADOPTED THIS REGULATION:

Article 1

The guide prices for the fishing year from 1 January to 31 December 1995 for the products listed in Annex I (A), (D) and (E) to Regulation (EEC) No 3759/92 and the commercial categories to which they relate are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 January 1995.

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

Done at Brussels, 15 December 1994.

*For the Council**The President*

A. MERKEL

⁽¹⁾ OJ No L 388, 31. 12. 1992, p. 1. Regulation as amended by Regulation (EEC) No 1891/93 (OJ No L 172, 15. 7. 1993, p. 1).

⁽²⁾ OJ No L 387, 28. 12. 1992, p. 1. Regulation as amended by Regulation (EC) No 3528/93 (OJ No L 320, 22. 12. 1993, p. 32).

ANNEX

Species	Commercial specifications (1)			Guide price (ECU/tonne)
	Freshness category	Size	Presentation	
1. Herrings of the species <i>Clupea harengus</i>	Extra, A	1	Whole fish	From 1 January to 14 July 1995 and from 1 October to 31 December 1995 } 242 From 15 July to 30 September 1995 } 162
2. Sardines of the species <i>Sardina pilchardus</i>	Extra	3	Whole fish	425
3. Picked dogfish (<i>Squalus acanthias</i>)	Extra, A	2	{ Whole fish Gutted fish with head }	875
4. Catshanks (<i>Scyliorhinus</i> spp.)	Extra, A	1	{ Whole fish Gutted fish with head }	654
5. Redfish (<i>Sebastes</i> spp.)	A	2	Whole fish	910
6. Cod of the species <i>Gadus morhua</i>	A or A	2 3	Gutted fish with head } Gutted fish with head	1 273
7. Coalfish (<i>Pollachius virens</i>)	A or A	2 3	Gutted fish with head } Gutted fish with head	644
8. Haddock (<i>Melanogrammus aeglefinus</i>)	A or A	2 3	Gutted fish, with head } Gutted fish, with head	898
9. Whiting (<i>Merlangius merlangus</i>)	A or A	2 3	Gutted fish, with head } Gutted fish, with head	762
10. Ling (<i>Molva</i> spp.)	Extra, A	1, 2	Gutted fish, with head	934
11. Mackerel of the species <i>Scomber scombrus</i>	Extra or A	1 2	Whole fish } Whole fish	237
12. Mackerel of the species <i>Scomber japonicus</i>	Extra or A	1 2	Whole fish } Whole fish	284
13. Anchovies (<i>Engraulis</i> spp.)	Extra	2	Whole fish	967
14. Plaice (<i>Pleuronectes platessa</i>)	A or A	2 3	Gutted fish, with head } Gutted fish, with head	From 1 January to 30 April 1995 } 802 From 1 May to 31 December 1995 } 1 103

Species	Commercial specifications (1)			Guide price (ECU/tonne)
	Freshness category	Size	Presentation	
15. Hake of the species <i>Merluccius merluccius</i>	A	1	Gutted fish with head	3 124
16. Megrim (<i>Lepidorhombus</i> spp.)	Extra, A	1, 2	Whole fish, or gutted fish with head	1 954
17. Ray's bream (<i>Brama</i> spp.)	Extra, A	2, 3	Whole fish	1 461
18. Monkfish (<i>Lophius</i> spp.)	Extra, A	2, 3	Whole, or gutted with head	2 217
	Extra, A	2, 3	Without head	4 513
19. Shrimps of the species <i>Crangon crangon</i>	A	1	Simply boiled in water	1 747
20. Edible crab (<i>Cancer pagurus</i>)	—	1	Whole	1 463
21. Norway lobster (<i>Nephrops norvegicus</i>)	E, A	1, 2	Whole	4 248
	E, A	2	Tails	5 566
22. Dab (<i>Limanda limanda</i>)	Extra, A	1	Gutted fish with head	743
23. Flounder (<i>Platichthys flesus</i>)	Extra, A	1	Gutted fish with head	449
24. Albacore or longfinned tuna (<i>Thunnus alalunga</i>)	Extra, A	1 1	Whole fish Gutted fish with head	1 777 2 074
25. Cuttlefish (<i>Sepia officinalis</i> and <i>Rossia macrosoma</i>)	Extra, A	1, 2	Whole fish	1 310
26. Sole (<i>Soles</i> spp.)	Extra, A	2, 3	Gutted fish with head	4 987

(1) The freshness categories, sizes and presentation are defined in Article 2 of Regulation (EEC) No 3759/92.

COUNCIL REGULATION (EC) No 3137/94**of 15 December 1994****fixing the guide prices for the fishery products listed in Annex II to Regulation (EEC) No 3759/92 for the 1995 fishing year**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3759/92 of 17 December 1992 on the common organization of the market in fishery and aquaculture products⁽¹⁾, and in particular Article 9 (3),

Having regard to the proposal from the Commission,

Whereas Article 9 (1) of Regulation (EEC) No 3759/92 provides that a guide price shall be fixed annually for each of the products or groups of products listed in Annex II to that Regulation;

Whereas, according to the data available at present concerning prices for the products in question and the criteria laid down in Article 9 (2) of that Regulation, these prices should be increased, maintained or decreased according to the species for the 1995 fishing year;

Whereas the prices or amounts fixed in ecus by this Regulation are determined in accordance with the agri-

monetary system applicable in 1994 as provided for in Regulation (EEC) No 3813/92⁽²⁾ and in particular Article 13 (2) thereof; whereas, as a result, they should enter into force in that year,

HAS ADOPTED THIS REGULATION:

Article 1

The guide prices for the fishing year 1 January to 31 December 1995 for the products listed in Annex II to Regulation (EEC) No 3759/92 and the commercial categories to which they relate are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 January 1995.

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

Done at Brussels, 15 December 1994.

For the Council

The President

A. MERKEL

⁽¹⁾ OJ No L 388, 31. 12. 1992, p. 1. Regulation as amended by Regulation (EEC) No 1891/93 (OJ No L 172, 15. 7. 1993, p. 1).

⁽²⁾ OJ No L 387, 28. 12. 1992, p. 1. Regulation as amended by Regulation (EC) No 3528/93 (OJ No L 320, 22. 12. 1993, p. 32).

ANNEX

Group of products	Commercial specifications	(ECU/tonne) Guide price
1. Sea bream (<i>Dentex dentex</i> and <i>Pagellus</i> spp.)	Frozen, in lots or in original packages containing the same products	1 265
2. Squid of the species <i>Loligo patagonica</i>	Frozen, not cleaned, in original packages containing the same products	922
3. Squid (<i>Ommastresphes sagittatus</i>)	Frozen, not cleaned, in original packages containing the same products	796
4. <i>Illex argentinus</i>	Frozen, not cleaned, in original packages containing the same products	758
5. Cuttlefish of the species (<i>Sepia officinalis</i> , <i>Rossia macrosoma</i>) and <i>Sepiola rondeletti</i>	Frozen, in original packages containing the same products	1 583
6. Octopus (<i>Octopus</i> spp.)	Frozen, in original packages containing the same products	1 422
7. Lesser or Greenland halibut (<i>Reinhardtius hippoglossoides</i>)	Frozen, in original packages containing the same products	1 526
8. Whole of hake of the genus <i>Merluccius</i> spp.	Frozen, in original packages containing the same products	1 101
9. Fillets of hake of the genus <i>Merluccius</i> spp.	Frozen, in original packages containing the same products	1 388
10. — Prawns of the species <i>Parapenaeus longirostris</i>	Frozen, in original packages containing the same products	4 838
— Other species of the family <i>Penaeidae</i>	Frozen, in original packages containing the same products	6 483

COUNCIL REGULATION (EC) No 3138/94**of 15 December 1994****fixing the Community producer price for tuna intended for the industrial manufacture of products falling within CN code 1604 for the 1995 fishing year**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3759/92 of 17 December 1992 on the common organization of the market in fishery and aquaculture products⁽¹⁾, and in particular Article 17 (3) thereof,

Having regard to the proposal from the Commission,

Whereas Article 17 (1) of Regulation (EEC) No 3759/92 provides that a Community producer price shall be fixed for tunas (of the genus *Thunnus*), skipjack or stripe-bellied bonito *Euthynnus (Katsuwonus) pelamis* and other species of the genus *Euthynnus* intended for the industrial manufacture of products falling within CN code 1604;

Whereas, on the basis of the criteria laid down in Article 17 (2) of the abovementioned Regulation, the price for the 1995 fishing year should be decreased;

Whereas the prices or amounts fixed in ecus by this Regulation are determined in accordance with the agrimonetary system applicable in 1994 as provided for in Regulation (EEC) No 3813/92⁽²⁾, and in particular Article 13 (2) thereof; whereas, as a result, they should enter into force in that year,

HAS ADOPTED THIS REGULATION:

Article 1

The Community producer price for the fishing year 1 January to 31 December 1995 for tunas (of the genus *Thunnus*), skipjack or stripe-bellied bonito *Euthynnus (Katsuwonus) pelamis* and other species of the genus *Euthynnus* for the industrial manufacture of products falling within CN code 1604 and the commercial category to which it relates are hereby fixed as follows:

(ECU/tonnes)		
Product	Commercial specifications	Community production price
Yellowfin tunas (<i>Thunnus albacares</i>)	Whole, weighing more than 10 kg each	1 008

Article 2

This Regulation shall enter into force on 1 January 1995.

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

Done at Brussels, 15 December 1994.

*For the Council**The President*

A. MERKEL

⁽¹⁾ OJ No L 388, 31. 12. 1992, p. 1. Regulation as amended by Regulation (EEC) No 1891/93 (OJ No L 172, 15. 7. 1993, p. 1).

⁽²⁾ OJ No L 387, 31. 12. 1992, p. 1. Regulation as amended by Regulation (EC) No 3528/93 (OJ No L 320, 22. 12. 1993, p. 32).

COMMISSION REGULATION (EC) No 3139/94**of 21 December 1994****altering the export refunds on white sugar and raw sugar exported in the natural state**

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

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector ⁽¹⁾, as last amended by Regulation (EC) No 133/94 ⁽²⁾, and in particular the second subparagraph of Article 19 (4) thereof,

Whereas the refunds on white sugar and raw sugar exported in the natural state were fixed by Commission Regulation (EC) No 3037/94 ⁽³⁾, as amended by Regulation (EC) No 3112/94 ⁽⁴⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EC) No 3037/94 to the information known to the Commission that the export refunds at present in force should be altered to the amounts set out in the Annex hereto;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92 ⁽⁵⁾, as amended by Regulation (EC) No 3528/93 ⁽⁶⁾, are used to convert amounts expressed in third country currencies and are used as the basis for determining the agricultural

conversion rates of the Member States' currencies; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93 ⁽⁷⁾, as amended by Regulation (EC) No 547/94 ⁽⁸⁾;

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

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 (1) (a) of Regulation (EEC) No 1785/81, undenatured and exported in the natural state, as fixed in the Annex to amended Regulation (EC) No 3037/94 are hereby altered to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 22 December 1994.

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

Done at Brussels, 21 December 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 22, 27. 1. 1994, p. 7.

⁽³⁾ OJ No L 322, 15. 12. 1994, p. 8.

⁽⁴⁾ OJ No L 328, 20. 12. 1994, p. 52.

⁽⁵⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁶⁾ OJ No L 320, 22. 12. 1993, p. 32.

⁽⁷⁾ OJ No L 108, 1. 5. 1993, p. 106.

⁽⁸⁾ OJ No L 69, 12. 3. 1994, p. 1.

ANNEX

to the Commission Regulation of 21 December 1994 altering the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Amount of refund ⁽³⁾
	— ECU/100 kg —
1701 11 90 100	26,67 ⁽¹⁾
1701 11 90 910	25,68 ⁽¹⁾
1701 11 90 950	⁽²⁾
1701 12 90 100	26,67 ⁽¹⁾
1701 12 90 910	25,68 ⁽¹⁾
1701 12 90 950	⁽²⁾
	— ECU/1 % of sucrose × 100 kg —
1701 91 00 000	0,2899
	— ECU/100 kg —
1701 99 10 100	28,99
1701 99 10 910	28,94
1701 99 10 950	28,94
	— ECU/1 % of sucrose × 100 kg —
1701 99 90 100	0,2899

⁽¹⁾ Applicable to raw sugar with a yield of 92 % ; if the yield is other than 92 %, the refund applicable is calculated in accordance with the provisions of Article 5 (3) of Regulation (EEC) No 766/68.

⁽²⁾ Fixing suspended by Commission Regulation (EEC) No 2689/85 (OJ No L 255, 26. 9. 1985, p. 12), as amended by Regulation (EEC) No 3251/85 (OJ No L 309, 21. 11. 1985, p. 14).

⁽³⁾ Refunds on exports to the Federal Republic of Yugoslavia (Serbia and Montenegro) may be granted only where the conditions laid down in Regulation (EEC) No 990/93 are observed.

COMMISSION REGULATION (EC) No 3140/94**of 21 December 1994****authorizing the conclusion of long-term private storage contracts for table wine, grape must, concentrated grape must and rectified concentrated grape must in respect of the 1994/95 wine year**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Economic Community,

Article 1

Having regard to Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine⁽¹⁾, as last amended by Regulation (EC) No 1891/94⁽²⁾, and in particular Articles 32 (5) and 81 thereof,

During the period 21 December 1994 to 15 February 1995 long-term private storage contracts may be concluded, in accordance with the provisions of Regulation (EEC) No 1059/83, for:

- table wines, provided that the conditions of Article 6 (3) of that Regulation are met, and
- grape must, concentrated grape must and rectified concentrated grape must.

Article 2

Whereas the forward estimate drawn up for the 1994/95 wine year indicates that the quantities of table wine available at the beginning of the wine year exceed by more than four months' supply those normally used up over the year; whereas the conditions for authorization of long-term storage contracts specified in Article 32 (4) of Regulation (EEC) No 822/87 are therefore met;

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

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

By derogation to Article 6 (3) of Regulation (EEC) No 1059/83, table wines produced in Portugal must have a reduced sugar level not greater than 4 grams per litre.

Article 3

Whereas the market for must and concentrated must for grape juice production is expanding and to promote uses of vine products other than winemaking permission should be granted for must and concentrated grape must placed under a storage contract covered by Commission Regulation (EEC) No 1059/83⁽³⁾, as last amended by Regulation (EEC) No 2192/93⁽⁴⁾, that is intended for grape juice production to be sold from the fifth month of the contract onwards on simple notification by the producer to the intervention agency; whereas to promote export of these products this same possibility should apply;

Producers who, within the limits laid down in the first subparagraph of Article 5 (1) of Regulation (EEC) No 1059/83, wish to conclude a long-term storage contract for a table wine shall, when submitting applications for conclusion of a contract, advise the intervention agency of the total quantity of table wine they have produced during the current wine year.

For this purpose producers shall submit a copy of the production declaration(s) drawn up pursuant to Article 2 of Commission Regulation (EEC) No 3929/87⁽⁵⁾.

Article 4

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

1. For the 1994/95 wine year, producers who have not applied for an advance pursuant to Article 14 (2) of Regu-

⁽¹⁾ OJ No L 84, 27. 3. 1987, p. 1.

⁽²⁾ OJ No L 197, 30. 7. 1994, p. 42.

⁽³⁾ OJ No L 116, 30. 4. 1983, p. 77.

⁽⁴⁾ OJ No L 196, 5. 8. 1993, p. 19.

⁽⁵⁾ OJ No L 369, 29. 12. 1987, p. 59.

lation (EEC) No 1059/83 may, from the first day of the fifth month of storage onwards, sell the grape must or concentrated grape must in question for exportation or for production of grape juice.

2. In such cases producers shall inform the intervention agency in accordance with the terms of Article 1a of Regulation (EEC) No 1059/83.

The intervention agency shall check that the must or concentrated grape must is turned into grape juice or exported.

Article 5

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, 21 December 1994.

For the Commission

René STEICHEN

Member of the Commission

ANNEX

MINIMUM QUALITY CONDITIONS FOR TABLE WINES

I. White wines

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

II. Red wines

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

Rosé wines must comply with the conditions laid down above for red wines except as regards their sulphur dioxide content to which the same maximums as those fixed for white wines apply.

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

COMMISSION REGULATION (EC) No 3141/94**of 21 December 1994****fixing the standard fee per farm return for the 1995 accounting year of the farm
accountancy data network**

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

Having regard to Council Regulation No 79/65/EEC of 15 June 1965 setting up a network for the collection of accountancy data on the incomes and business operation of agricultural holdings in the European Economic Community ⁽¹⁾, as last amended by Regulation (EEC) No 3577/90 ⁽²⁾, and in particular Article 9 thereof,

Whereas Article 5 of Commission Regulation (EEC) No 1915/83 of 13 July 1983 on certain detailed implementing rules concerning the keeping of accounts for the purpose of determining the incomes of agricultural holdings ⁽³⁾ provides that a standard fee shall be fixed to be paid by the Commission to the Member States for each farm return completed;

Whereas Commission Regulation (EC) No 3376/93 ⁽⁴⁾ fixes the standard fee for the 1994 accounting year at ECU 115 per farm return;

Whereas, as a result of the general rise in costs and its effects on the cost of completing the farm return, the fee should be revised;

Whereas the Community Committee on the Farm Accountancy Data Network has not delivered an opinion within the time-limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The standard fee paid by the Commission to Member States for each duly completed farm return is hereby fixed at ECU 120 for the 1995 accounting year.

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 for the 1995 accounting year.

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

Done at Brussels, 21 December 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No 109, 23. 6. 1965, p. 1859/65.

⁽²⁾ OJ No L 353, 17. 12. 1990, p. 23.

⁽³⁾ OJ No L 190, 14. 7. 1983, p. 25.

⁽⁴⁾ OJ No L 303, 10. 12. 1993, p. 11.

COMMISSION REGULATION (EC) No 3142/94
of 21 December 1994
amending Regulation (EEC) No 3846/87 establishing an agricultural product
nomenclature for export refunds

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Norway, Austria, Finland and Sweden ⁽¹⁾, and in particular Article 169 (2) thereof,

Whereas Commission Regulation (EEC) No 3846/87 ⁽²⁾, as last amended by Regulation (EC) No 2079/94 ⁽³⁾, establishes an agricultural product nomenclature for export refunds; whereas the accession requires the said nomenclature to be adjusted, particularly as regards certain cheeses falling within CN code 0406;

Whereas pursuant to Article 2 (3) of the Accession Treaty, the institutions of the European Communities may adopt before accession the measures referred to in Article 169 of the Act, which measures shall enter into force only subject to and on the date of the entry into force of the Treaty,

HAS ADOPTED THIS REGULATION:

Article 1

The following CN code is inserted after CN code 0406 90 35 in section 10 of the Annex to Regulation (EEC) No 3846/87:

CN code	Description of goods	Product code
'0406 90 37	— — — — — Finlandia	0406 90 37 000'

Article 2

This Regulation shall enter into force on 1 January 1995 subject to the entry into force of the Treaty of Accession of Norway, Austria, Finland and Sweden.

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

Done at Brussels, 21 December 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No C 241, 29. 8. 1994, p. 21.

⁽²⁾ OJ No L 366, 24. 12. 1987, p. 1.

⁽³⁾ OJ No L 215, 20. 8. 1994, p. 2.

COMMISSION REGULATION (EC) No 3143/94**of 21 December 1994****amending Regulation (EC) No 548/94 laying down detailed rules for the application of Council Regulation (EC) No 287/94 laying down special measures for the import of olive oil from Tunisia**

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 287/94 of 7 February 1994 laying down special measures for the import of olive oil from Tunisia⁽¹⁾, and in particular Article 3 thereof,

Whereas Commission Regulation (EC) No 548/94⁽²⁾ fixes the rhythm of imports of olive oil from Tunisia for which import licences may be issued ; whereas, given the current situation on the Community olive oil market, the date for the commencement of imports may be brought forward and the monthly quantities amended without any risk of market disturbances ;

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

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

Done at Brussels, 21 December 1994.

Article 1

Regulation (EC) No 548/94 is hereby amended as follows :

1. In Article 1, the date '1 March' is replaced by '1 January'.
2. The first subparagraph of Article 2 (1) is replaced by the following :
'1. Licences may be issued in accordance with the conditions laid down in Article 2 of Regulation (EC) No 287/94 for up to 7 000 tonnes per month in January and February and for up to 10 000 tonnes per month from March to October. If the quantity authorized for one month is not all used during the month in question, the remainder shall be added to the quantity for the following month but may not be carried over thereafter.'

Article 2

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

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 39, 10. 2. 1994, p. 1.

⁽²⁾ OJ No L 69, 12. 3. 1994, p. 3.

COMMISSION REGULATION (EC) No 3144/94

of 21 December 1994

opening and providing for the administration of Community tariff quotas for certain agricultural products originating in the African, Caribbean and Pacific States

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 715/90 of 5 March 1990 on the arrangements applicable to agricultural products and certain goods resulting from the processing of agricultural products originating in the ACP States or in the overseas countries and territories (OCT) ⁽¹⁾, as amended by Regulation (EC) No 2484/94 ⁽²⁾, extended by Regulation (EEC) No 444/92 ⁽³⁾, and in particular Article 27 thereof,

Whereas Articles 16 of Regulation (EEC) No 715/90 provide for the opening by the Community of quotas for imports of the following:

- 1 000 tonnes of fresh apples falling within CN code 0808 10, for the period 1 January to 31 December,
- 1 000 tonnes of fresh pears falling within CN codes 0808 20 10 to 0808 20 39, for the period 1 January to 31 December, and
- 400 tonnes of seedless table grapes falling within CN code ex 0806 10 15 for the period 1 December to 31 January

originating in the countries in question;

Whereas it is in particular necessary to ensure that all Community importers enjoy equal and uninterrupted access to the abovementioned quotas and that the rates laid down for those quotas should apply consistently to all imports of the products concerned into all Member States until the quotas have been used up;

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

HAS ADOPTED THIS REGULATION:

Article 1

The customs duties applicable to imports into the Community of the following products originating in the African, Caribbean and Pacific States shall be suspended at the levels indicated and within the limits of the Community tariff quotas as shown below:

Order No	CN code ⁽¹⁾	Taric subdivision	Description	Volume	Rate of duty (%)
09.1610	0808 10 10		Apples, fresh from 1 January to 31 December 1995	1 000	4,5 MIN 0,2 ECU/100 kg/net
	0808 10 51				4 MIN 1,1 ECU/100 kg/net
	0808 10 53				4 MIN 1,1 ECU/100 kg/net
	0808 10 59				4 MIN 1,1 ECU/100 kg/net
	0808 10 61				3 MIN 0,7 ECU/100 kg/net
	0808 10 63				3 MIN 0,7 ECU/100 kg/net
	0808 10 69				3 MIN 0,7 ECU/100 kg/net
	0808 10 71	*10			2,7
		*20			2,9+0,5 ECU/100 kg/net
		*30			2,9+1 ECU/100 kg/net
		*40			2,9+1,5 ECU/100 kg/net
		*50			2,9+2 ECU/100 kg/net
		*60			2,9+14,3 ECU/100 kg/net

⁽¹⁾ OJ No L 84, 30. 3. 1990, p. 85.

⁽²⁾ OJ No L 265, 15. 10. 1994, p. 3.

⁽³⁾ OJ No L 52, 27. 2. 1992, p. 7.

Order No	CN code (')	Taric subdivision	Description	Volume	Rate of duty (%)
09.1610 (cont'd)	0808 10 73	*10			2,7
		*20			2,9+0,5 ECU/100 kg/net
		*30			2,9+1 ECU/100 kg/net
		*40			2,9+1,5 ECU/100 kg/net
		*50			2,9+2 ECU/100 kg/net
		*60			2,9+14,3 ECU/100 kg/net
	0808 10 79	*10			2,7
		*20			2,9+0,5 ECU/100 kg/net
		*30			2,9+1 ECU/100 kg/net
		*40			2,9+1,5 ECU/100 kg/net
		*50			2,9+2 ECU/100 kg/net
		*60			2,9+14,3 ECU/100 kg/net
	0808 10 92	*10			6,6
		*20			6,7+0,5 ECU/100 kg/net
		*30			6,7+1 ECU/100 kg/net
		*40			6,7+1,5 ECU/100 kg/net
		*50			6,7+2 ECU/100 kg/net
		*60			6,7+14,3 ECU/100 kg/net
	0808 10 94	*10			6,6
		*20			6,7+0,5 ECU/100 kg/net
		*30			6,7+1 ECU/100 kg/net
		*40			6,7+1,5 ECU/100 kg/net
		*50			6,7+2 ECU/100 kg/net
		*60			6,7+14,3 ECU/100 kg/net
	0808 10 98	*10			6,6
		*20			6,7+0,5 ECU/100 kg/net
		*30			6,7+1 ECU/100 kg/net
		*40			6,7+1,5 ECU/100 kg/net
		*50			6,7+2 ECU/100 kg/net
		*60			6,7+14,3 ECU/100 kg/net
09.1612	0808 20 10		Pears, fresh from 1 January to 31 December 1995	1 000	4,5 MIN 0,2 ECU/100 kg/net
	0808 20 31				5 MIN 0,7 ECU/100 kg/net
	0808 20 37				2,5 MIN 1 ECU/100 kg/net
	0808 20 41	*11			2,5 MIN 1 ECU/100 kg/net
		*19			
		*51			2,3 MIN 0,9 ECU/100 kg/net
		*59			
	0808 20 47	*11			2,3
		*19			
		*21			2,4+0,5 ECU/100 kg/net
		*29			
		*31			2,4+1 ECU/100 kg/net
		*39			
		*41			2,4+1,5 ECU/100 kg/net
		*49			
		*51			2,4+2 ECU/100 kg/net
		*59			
		*61			2,4+14,3 ECU/100 kg/net
		*69			

Order No	CN code (1)	Taric subdivision	Description	Volume	Rate of duty (%)
09.1612 (cont'd)	0808 20 51	*11			4,6
		*19			
		*21			4,8 + 0,5 ECU/100 kg/net
		*29			
		*31			4,8 + 1 ECU/100 kg/net
		*39			
		*41			4,8 + 1,5 ECU/100 kg/net
		*49			
		*51			4,8 + 2 ECU/100 kg/net
		*59			
	0808 20 57	*61			4,8 + 14,3 ECU/100 kg/net
		*69			
		*11			6,3
		*19			
		*21			6,3 + 0,4 ECU/100 kg/net
		*29			
		*31			6,3 + 0,8 ECU/100 kg/net
		*39			
		*41			6,3 + 1,3 ECU/100 kg/net
		*49			
	0808 20 67	*51			6,3 + 1,7 ECU/100 kg/net
		*59			
		*61			6,3 + 14,3 ECU/100 kg/net
		*69			
		*11			6,3
		*19			
		*21			6,3 + 0,5 ECU/100 kg/net
		*29			
		*31			6,3 + 1,1 ECU/100 kg/net
		*39			
		*41			6,3 + 1,7 ECU/100 kg/net
		*49			
		*51			6,3 + 2,2 ECU/100 kg/net
		*59			
		*61			6,3 + 14,3 ECU/100 kg/net
		*69			
09.1615	ex 0806 10 15 ex 0806 10 29 (2)		— — — — other : — Seedless table grapes : — From 1 December to 31 January 1995	400	0

(1) See Taric codes in the Annex.

(2) CN code from 1 January 1995.

Article 2

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

shall, by notifying the Commission, draw an amount corresponding to requirements from the quota.

Article 3

Where an importer preserves an entry for release for free circulation in a Member State in respect of a product covered by this Regulation, applying to take advantage of the preferential arrangements, and the entry is accepted by the customs authorities, the Member State concerned

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

Drawings shall be granted by the Commission in chronological order of the dates on which the customs authorities of the Member States concerned accepted the entries for release for free circulation to the extent that the available balance so permits.

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

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

Article 4

Each Member State shall ensure that importers of the products concerned have free access to the quotas for such time as the residual balance of the quotas so 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 the day following its publication in the *Official Journal of the European Communities*.

It shall apply with effect from 1 January 1995 for quotas under the order Nos 09.1610 and 09.1612 and from 1 December 1994 for quota No 09.1615.

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

Done at Brussels, 21 December 1994.

For the Commission

Christiane SCRIVENER

Member of the Commission

ANNEX

Order No	CN code	Taric code
09.1615	ex 0806 10 15 ex 0806 10 29	0806 10 15*33 0806 10 29*11

COMMISSION REGULATION (EC) No 3145/94

of 21 December 1994

amending Regulation (EC) No 2865/94 adopting exceptional support measures
for the market in pigmeat in Belgium

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organization of the market in pigmeat⁽¹⁾, as last amended by Regulation (EEC) No 1249/89⁽²⁾, and in particular Article 20,

Whereas, because of the outbreak of classical swine fever in certain production regions in Belgium, exceptional support measures for the market in pigmeat were adopted for that Member State in Commission Regulation (EC) No 2865/94⁽³⁾;

Whereas, during the first four weeks of application of the support measures, the purchase of fattened pigs was based on heavy pigs; it is now appropriate to lower the average weight of eligible pigs and to set a corresponding purchase price for different categories of weight;

Whereas, due to the continuation of the veterinary and commercial restrictions, it is appropriate to include old sows in the buying-in scheme provided for by Regulation (EC) No 2865/94; this amendment should apply from 13 December 1994 in order to reduce the economic losses to the producers concerned;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2865/94 is hereby amended as follows:

1. Article 1 is replaced by the following:

'Article 1

1. From 25 October 1994 the Belgian intervention agency shall, according to the needs resulting from the

veterinary and sanitary situation, buy piglets falling under CN code 0103 91 10 weighing 8 kg or more on average per batch.

2. From 14 November 1994 the Belgian intervention agency shall, according to the needs resulting from the veterinary and sanitary situation, buy fattened pigs falling under CN code 0103 91 19 weighing 100 kg or more on average per batch.

3. From 13 December 1994 the Belgian intervention agency shall, according to the needs resulting from the veterinary and sanitary situation, buy old sows falling under CN code 0103 92 11 weighing 160 kg or more on average per batch.

4. The purchase of the first 35 000 fattened pigs and old sows and first 38 500 piglets shall be financed from the Community budget.

5. Belgium is hereby authorized to purchase, in addition, at its own expense and on the terms laid down in this Regulation, a further 15 000 fattened pigs and old sows and 16 500 piglets.'

2. Article 2 is replaced by the following:

'Article 2

1. Only fattened pigs, old sows and piglets raised in the zones listed in the Annex to this Regulation can be bought in, provided that the veterinary provisions laid down by the Belgian authorities apply in the areas on the day the animals are bought in.

2. Only old sows resulting from the normal rotation can be bought in.'

3. Article 4 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The farm-gate buying-in price of fattened pigs shall be:

— ECU 86 per 100 kilograms slaughtered weight for fattened pigs weighing 95 kilograms or more on average per batch, but less than 100 kilograms,

— ECU 102 per 100 kilograms slaughtered for fattened pigs weighing 100 kilograms or more on average per batch, but less than 130 kilograms,

⁽¹⁾ OJ No L 282, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 129, 11. 5. 1989, p. 12.

⁽³⁾ OJ No L 303, 26. 11. 1994, p. 25.

- ECU 92 per 100 kilograms slaughtered weight for fattened pigs weighing 130 kilograms or more on average per batch.

A coefficient of 0,81 is applied on the buying-in price.'

- (b) The following paragraph is added :

'3. The farm-gate buying-in price for old sows shall be ECU 78 per 100 kilograms slaughtered weight for old sows weighing 160 kilograms or more on average per batch.

A coefficient of 0,78 is applied on the buying-in price.'

4. The following phrase is added to Article 6 :

'— the number and total weight of the old sows bought in.'

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 13 December 1994, with the exception of the provisions of Article 1 (2) of Regulation (EC) No 2865/94 as amended by this Regulation and of the provisions of Article 1 point 3 (a) of this Regulation.

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

Done at Brussels, 21 December 1994.

For the Commission

René STEICHEN

Member of the Commission

COMMISSION REGULATION (EC) No 3146/94

of 21 December 1994

adopting exceptional support measures for the market in pigmeat in Germany

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2759/75 of 29 October 1975, on the common organization of the market in pigmeat⁽¹⁾, as last amended by Commission Regulation (EEC) No 1249/89⁽²⁾, and in particular Articles 20 and 22, second paragraph thereof,

Whereas, because of the outbreak of classical swine fever in certain production regions in Germany, protection and surveillance zones have been established by the German authorities pursuant to Article 9 of Council Directive 80/217/EEC introducing Community measures for the control of classical swine fever⁽³⁾, as last amended by Decision 93/384/EEC⁽⁴⁾; whereas, consequently, in these zones the trade in live pigs, fresh pigmeat and pigmeat products which have not been subjected to heat treatment is temporarily prohibited;

Whereas restrictions on the free movement of goods resulting from the application of veterinary measures are likely to bring about a serious disturbance of the pigmeat market in Germany; whereas exceptional market support measures, to apply for no longer than is strictly necessary, must accordingly be adopted with respect solely to live animals from the affected areas;

Whereas, with the aim of preventing a further spread of the disease, the pigs produced in the said zones should either be separated from normal trade in products intended for human consumption and processed into products intended for uses other than human consumption, or be used for the manufacture of processed products which have undergone heat treatment so as to prevent any risk to health; whereas provision should be made to export these products so as to avoid disturbance on the Community market; whereas no export refund should be granted, given the quite low price level at which the

processing industry can find supplies; whereas the traditional trade links with third countries for these products should be maintained and any disturbance of the markets in these countries should be avoided;

Whereas it is appropriate to grant an aid for the delivery to the competent authorities of live fattened pigs coming from the affected zones;

Whereas in view of the extent of the disease and, in particular, of its duration, and consequently of the magnitude of the efforts needed to support the market, it would be appropriate for such efforts to be shared by the Community and the Member State concerned;

Whereas provision should be made for the German authorities to adopt all necessary control and surveillance measures and to inform the Commission accordingly;

Whereas the restrictions on the free movement of live pigs have been operative for several weeks now in the zones in question, provoking a substantial increase in the weight of the animals and consequently leading to an intolerable situation where the welfare of the animals is concerned; whereas retroactive application of this Regulation from 13 December 1994 is therefore justified;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. From 13 December 1994 producers may benefit, on request, from an aid granted by the competent German authorities for the delivery of fattened pigs falling under CN code 0103 92 13 weighing 120 kilograms or more on average per batch.

2. The aid granted to the first 14 000 fattened pigs is financed by the Community budget.

3. Germany is authorized to grant, in addition, at its own expense and on the terms laid down in this Regulation an aid for the following 6 000 fattened pigs.

⁽¹⁾ OJ No L 282, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 129, 11. 5. 1989, p. 12.

⁽³⁾ OJ No L 47, 21. 2. 1980, p. 11.

⁽⁴⁾ OJ No L 166, 8. 7. 1993, p. 34.

Article 2

Only live fattened pigs raised in the protection and surveillance zones located within the administrative regions listed in the Annex to this Regulation can be delivered, provided that the veterinary provisions laid down by the German authorities apply in the zones on the day the animals are delivered.

Article 3

On the day they are delivered, the animals shall be weighed and slaughtered in such a way as to prevent the disease from spreading.

They shall be transported without delay to a rendering plant and processed into products falling within CN codes 1501 00 11, 1506 00 00 and 2301 10 00.

However, the pigs may be transported to a slaughterhouse where they shall be slaughtered forthwith and may be stored as whole or half carcasses in a cold store.

These operations shall be carried out under the permanent supervision of the competent German authorities.

Article 4

1. Article 3 notwithstanding, the German authorities may decide to use the pigs slaughtered for the manufacture of processed products falling within CN code heading 1602. In this case, the meat shall undergo heat treatment raising the centre temperature to at least 70 °C.

2. The processed products referred to in paragraph 1 must be exported before 1 July 1995. No export refund shall be granted. The competent authorities shall take the necessary measures to ensure that these provisions are complied with and shall inform the Commission thereof.

The said measures shall include in particular the obligation on the part of the operators to supply at 15 day intervals the data relating to the exports and to complete the customs export formalities in Germany, as well as the obligatory inclusion on the export declaration, and where appropriate on the T5 control copy, of the following:

'Regulation (EC) No 3146/94; export without refund'.

3. The German authorities shall take all the necessary measures to ensure that the carcasses or half-carcasses are fully processed and that veterinary requirements during storage, transport and processing are observed. These measures shall include a permanent on-the-spot check of the meat processing by the competent authorities. Germany shall notify the Commission of the practical administrative and monitoring measures it has taken within 15 days of the adoption of this Regulation.

4. The profits resulting from the sale of any meat of pigs slaughtered by the German authorities for processing shall be divided between the Community and Germany on the basis of the scale used to grant the aid. Any loss resulting from the sales transaction shall not be charged to the Community budget. The sale of the meat to the processing industry by the German authorities should be carried out by means of a tender system.

5. Germany shall ensure by appropriate means that sales of processed products falling within CN heading 1602 are carried out under fair competitive conditions and do not give rise to undue profit on the part of the operators.

6. The German authorities shall inform the Commission on a regular basis of the progress of the sales, particularly as regards the prices achieved, the quantities sold and the countries of destination. The authorities shall notify the Commission of the measures taken pursuant to paragraph 5 above.

Article 5

1. The aid provided for in Article 1 (1), at farm gate, shall be:

- ECU 108 per 100 kilograms slaughtered weight for fattened pigs weighing 120 kilograms or more on average per batch,
- ECU 92 per 100 kilograms slaughtered weight for fattened pigs weighing less than 120 kilograms but more than 110 kilograms on average per batch.

2. The aid is fixed on the basis of the established slaughtered weight. If, however, the animals are only weighed live, a coefficient of 0,81 is applied on the aid.

Article 6

The competent German authorities shall adopt all measures necessary to ensure compliance with the provisions of this Regulation and in particular with Article 2 thereof. They shall inform the Commission accordingly as soon as possible.

Article 7

The competent German authorities shall send the Commission each Wednesday the number and total weight of the fattened pigs delivered in the previous week.

Article 8

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 13 December 1994.

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

Done at Brussels, 21 December 1994.

For the Commission

René STEICHEN

Member of the Commission

ANNEX

The Kreise :

- Erding
- Freising
- Landshut (the city of Landshut included)
- Mühldorf am Inn.

COMMISSION REGULATION (EC) No 3147/94

of 21 December 1994

amending Regulation (EC) No 2763/94 opening and providing for the administration of Community tariff quotas for certain agricultural products originating in the African, Caribbean and Pacific States

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to Council Regulation (EEC) No 715/90 of 5 March 1990 on the arrangements applicable to agricultural products and certain goods resulting from the processing of agricultural products originating in the ACP States or in the overseas countries and territories (OCT)⁽¹⁾, extended by Regulation (EEC) No 444/92⁽²⁾, and in particular Article 27 thereof,

under CN code ex 0702 00 10 ; whereas, following the result of the GATT negotiations, in as much as the CN and Taric as well as the rate foreseen for the modifications in question will be applicable from 1 January 1995 ; it is appropriate to modify this Regulation in a manner that will allow these products to benefit from the system granted previously by the said Regulation,

HAS ADOPTED THIS REGULATION :

Article 1

Whereas under Regulation (EC) No 2763/94⁽³⁾ the Commission opened Community tariff quotas for certain agricultural products for 1995 at reduced rate, among others, for tomatoes in a fresh or refrigerated state, falling

The table and Annex shown in Regulation (EC) No 2763/94 are to be replaced by following table :

Order No	CN code	Taric Subdivision	Description	Volume	Rate of duty (%)
09.1601	0702 00 15	*19	Tomatoes, other than cherry tomatoes, fresh or refrigerated from 15 November 1994 to 30 April 1995	2 000	4,2
		*29			4,2+0,7 ECU/100 kg/net
		*39			4,2+1,4 ECU/100 kg/net
		*49			4,2+2,1 ECU/100 kg/net
		*59			4,2+2,9 ECU/100 kg/net
		*69			4,2+14,4 ECU/100 kg/net
	0702 00 20	*13			4,2
		*63			
		*17			4,2+0,9 ECU/100 kg/net
		*67			
		*23			4,2+1,9 ECU/100 kg/net
		*73			
		*27			4,2+2,8 ECU/100 kg/net
		*77			
		*33			4,2+3,8 ECU/100 kg/net
		*83			
		*37			4,2+14,4 ECU/100 kg/net
		*87			

⁽¹⁾ OJ No L 84, 30. 3. 1990, p. 85.

⁽²⁾ OJ No L 52, 27. 2. 1992, p. 7.

⁽³⁾ OJ No L 294, 15. 11. 1994, p. 6.

Order No	CN code	Taric Subdivision	Description	Volume	Rate of duty (%)
09.1601 <i>(cont'd)</i>	0702 00 45	*12			4,2
		*32			
		*52			
		*14			4,2 + 0,5 ECU/100 kg/net
		*34			
		*54			
		*17			4,2 + 1,1 ECU/100 kg/net
		*37			
		*57			
		*22			4,2 + 1,6 ECU/100 kg/net
		*42			
		*62			
		*24			4,2 + 2,2 ECU/100 kg/net
		*44			
		*64			
	0702 00 15	*27			4,2 + 2,2 ECU/100 kg/net
		*47			
		*67			
		*19			4,2
		*29			4,2 + 0,6 ECU/100 kg/net
		*39			4,2 + 1,2 ECU/100 kg/net
		*49			4,2 + 1,7 ECU/100 kg/net
		*59			4,2 + 2,3 ECU/100 kg/net
		*69			4,2 + 14,4 ECU/100 kg/net

Article 2

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

It is applicable from 1 January 1995.

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

Done at Brussels, 21 December 1994.

For the Commission
Christiane SCRIVENER
Member of the Commission

COMMISSION REGULATION (EC) No 3148/94
of 21 December 1994
amending Regulation (EEC) No 2251/92 on quality inspection of fresh fruit and
vegetables

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 Commission Regulation (EC) No 2753/94⁽²⁾, and in particular Articles 8 and 12 (3) thereof,

Whereas in the fruit and vegetables sector commercial requirements indicate that it is necessary to be certain of the country of origin of the marketed products; whereas experience acquired in this connection indicates that better measures are needed to prevent the possibility that the indication of origin can be altered during the various marketing stages of the products; whereas the provisions of Commission Regulation (EEC) No 2251/92 of 29 July 1992 on quality inspection of fresh fruit and vegetables⁽³⁾, as last amended by Regulation (EEC) No 785/93⁽⁴⁾, should be supplemented to that effect;

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

HAS ADOPTED THIS REGULATION:

Article 1

The following paragraph 5 is hereby added to Chapter V, Article 11, of Regulation (EEC) No 2251/92:

'5. For the purposes of applying this Regulation and in respect of products for which quality standards exist, invoices and accompanying documents must indicate the country of origin of the products. This requirement is not necessary at the retail stage for the final consumer.'

Article 2

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

It shall apply from 1 January 1995.

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

Done at Brussels, 21 December 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 118, 20. 5. 1972, p. 1.

⁽²⁾ OJ No L 292, 12. 11. 1994, p. 3.

⁽³⁾ OJ No L 219, 4. 8. 1992, p. 9.

⁽⁴⁾ OJ No L 79, 1. 4. 1993, p. 55.

COMMISSION REGULATION (EC) No 3149/94
of 21 December 1994
derogating from Regulation (EEC) No 2604/90 as regards improving the
production of apples

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

Having regard to Council Regulation (EEC) No 1200/90 of 7 May 1990 on the improvement of the Community production of apples⁽¹⁾, as last amended by Regulation (EC) No 1890/94⁽²⁾, and in particular Article 6 thereof,

Having regard to the Treaty of Accession of Norway, Austria, Finland and Sweden, and in particular Article 149(1) thereof,

Whereas under Commission Regulation (EEC) No 2604/90 of 7 September 1990 laying down detailed rules for the application of Regulation (EEC) No 1200/90 on the improvement of the Community production of apples and amending Regulation (EEC) No 3322/89 determining the operative events applicable in the fruit and vegetable sector⁽³⁾, as amended by Regulation (EC) No 2264/94⁽⁴⁾, the final date for submitting applications for the grubbing-up premium for the 1994/95 marketing year is 1 December 1994;

Whereas Austria and Sweden have already submitted applications to participate in the Community programme for grubbing up apple trees; whereas these applications

should be accepted; whereas, for various administrative reasons, the Member States have been unable to complete their respective legislative programmes in time; whereas the time limit for lodging applications should accordingly be extended into January 1995;

Whereas the Management Committee for Fruit and Vegetables has not delivered an opinion within the time-limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

By way of derogation from the first subparagraph of Article 3 of Regulation (EEC) No 2604/90, applications for the grubbing-up premium may be submitted to the competent authorities during the month of January 1995.

Article 2

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

It shall apply from 1 January 1995.

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

Done at Brussels, 21 December 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 119, 11. 5. 1990, p. 63.

⁽²⁾ OJ No L 197, 30. 7. 1994, p. 41.

⁽³⁾ OJ No L 245, 8. 9. 1990, p. 23.

⁽⁴⁾ OJ No L 246, 21. 9. 1994, p. 2.

COMMISSION REGULATION (EC) No 3150/94

of 21 December 1994

re-establishing the levying of customs duties applicable to products falling within CN code 3102 30, originating in Poland, to which the tariff ceilings set out in Council Regulation (EEC) No 3918/92 apply

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

Having regard to Council Regulation (EEC) No 3918/92 of 28 December 1992 opening and providing for the administration of Community tariff quotas and ceilings for certain agricultural and industrial products and establishing a reduced variable component for certain processed agricultural products originating in Hungary, Poland and the territory of the former Czech and Slovak Federal Republic (CSFR)⁽¹⁾, as last amended by Regulation (EC) No 2622/94⁽²⁾, and in particular Article 6 thereof,

Whereas, pursuant to Article 1 of that Regulation, Hungary, Poland and the territory of the former Czech and Slovak Federal Republic (CSFR) shall benefit from preferential tariff arrangements, in particular the preferential tariff ceilings laid down in column 6 of Annex I to that Regulation; whereas, pursuant to Article 6, as soon as the ceilings have been reached, the Commission may adopt a regulation re-establishing the customs duties applicable to the third countries in question until the end of the calendar year;

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

Whereas, it is appropriate to reintroduce the levying of customs duties for the products in question,

HAS ADOPTED THIS REGULATION:

Article 1

As from 25 December 1994, the levying of customs duties, suspended for 1994 pursuant to Regulation (EEC) No 3918/92, shall be reintroduced on imports into the Community of the products listed in the Annex, originating in Poland.

Article 2

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

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

Done at Brussels, 21 December 1994.

For the Commission

Christiane SCRIVENER

Member of the Commission

⁽¹⁾ OJ No L 396, 31. 12. 1992, p. 12.

⁽²⁾ OJ No L 280, 29. 10. 1994, p. 3.

ANNEX

Order No	CN code	Description	Origin
21.0099	3102 30	Ammonium nitrate, whether or not in aqueous solution :	Poland
	3102 30 10	— in aqueous solution	
	3102 30 90	— other	

COMMISSION REGULATION (EC) No 3151/94

of 21 December 1994

introducing a further derogation from the detailed rules for the delivery by producers of the table wine they are required to deliver for compulsory distillation in respect of the 1993/94 wine year

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine ⁽¹⁾, as last amended by Council Regulation (EEC) No 1891/94 ⁽²⁾, and in particular Article 39 (9) thereof,

Whereas Commission Regulation (EC) No 343/94 ⁽³⁾, as amended by Regulation (EC) No 827/94 ⁽⁴⁾, opens compulsory distillation of table wine as provided for in Article 39 of Regulation (EEC) No 822/87 for the 1993/94 wine year; whereas Commission Regulation (EC) No 465/94 ⁽⁵⁾, as last amended by Regulation (EC) No 610/94 ⁽⁶⁾, lays down the percentages of table wine production to be delivered for compulsory distillation by each person subject to the obligation;

Whereas, in accordance with Article 12 (4) of Commission Regulation (EEC) No 441/88 of 17 February 1988 laying down detailed rules for applying compulsory distillation as referred to in Article 39 of Council Regulation (EC) No 822/87 ⁽⁷⁾, as last amended by Regulation (EEC) No 2587/94 ⁽⁸⁾, producers are required to deliver table wine to a distillery by 31 July 1994 at the latest;

Whereas, pursuant to Article 12 (5) of Regulation (EEC) No 441/88, these distillation operations may not take place after the end of the wine year in question;

Whereas Council Regulation (EEC) No 2046/89 ⁽⁹⁾, as last amended by Regulation (EC) No 1892/94 ⁽¹⁰⁾, lays down in particular the necessary characteristics of the products that may be distilled;

Whereas, to take account of the Community provisions on concluding long-term storage contracts, as decided by Council Regulation (EC) No 1891/94, the time limits have been extended by Commission Regulation (EC) No 1960/94 ⁽¹¹⁾; whereas, however, for reasons peculiar to certain wine-producing regions, it has not been possible to satisfy the delivery obligations by the time-limit laid down; whereas, to avoid penalizing the wine producers concerned too heavily, they should still be permitted to discharge their obligations as regards compulsory distilla-

tion for the 1993/94 wine year, with the appropriate penalty measures taken into account; whereas provision should accordingly also be made for the compulsory delivery of the spirits produced to the intervention agency, as well as the maximum time limit for the distillation operations;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. For the 1993/94 wine year and by way of derogation from Regulation (EC) No 343/94, the second subparagraph of Article 12 (4) and Article 12 (5) of Regulation (EEC) No 441/88, persons subject to the obligation to deliver for compulsory distillation as provided for in Article 39 of Regulation (EEC) No 822/87 may deliver the table wine to a distillery at the latest 120 days after 11 September 1994 under the following conditions:

- purchase price of table wines: ECU 0,42/%/ - vol/hl,
- amount of aid for which the distiller qualifies: Nil,
- price to be paid to the distiller by the intervention agency for the raw alcohol subject to compulsory delivery: ECU 0,75/%/ - vol/hl.

2. The distillation operations in question may not take place after 20 February 1995. The spirits obtained from this distillation must be delivered to the intervention agencies by 20 April 1995 at the latest.

3. Regulation (EEC) No 2046/89 notwithstanding, any producer who wants to take advantage of this opportunity must send the competent intervention agency before 10 February 1995:

- the references of the contract concluded pursuant to this Regulation, along with the name of the distiller,
- the quantities of table wine delivered,

⁽¹⁾ OJ No L 84, 27. 3. 1987, p. 1.

⁽²⁾ OJ No L 197, 30. 7. 1994, p. 42.

⁽³⁾ OJ No L 44, 17. 2. 1994, p. 9.

⁽⁴⁾ OJ No L 95, 14. 4. 1994, p. 10.

⁽⁵⁾ OJ No L 58, 2. 3. 1994, p. 2.

⁽⁶⁾ OJ No L 77, 19. 3. 1994, p. 12.

⁽⁷⁾ OJ No L 45, 18. 2. 1988, p. 15.

⁽⁸⁾ OJ No L 274, 26. 10. 1994, p. 2.

⁽⁹⁾ OJ No L 202, 14. 7. 1989, p. 14.

⁽¹⁰⁾ OJ No L 197, 30. 7. 1994, p. 44.

⁽¹¹⁾ OJ No L 198, 30. 7. 1994, p. 96.

— particulars of the quantities of table wine which have been delivered for compulsory distillation for the 1993/94 wine year pursuant to Regulation (EC) No 465/94.

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, 21 December 1994.

For the Commission

René STEICHEN

Member of the Commission

COMMISSION REGULATION (EC) No 3152/94**of 21 December 1994****amending Regulation (EC) No 2630/94 opening individual sales by invitation to tender for the export of vinous alcohol held by intervention agencies and Regulation (EEC) No 377/93 laying down detailed rules for the disposal of alcohol obtained from the distillation operations referred to in Articles 35, 36 and 39 of Regulation (EEC) No 822/87 and held by intervention agencies**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION :

Having regard to the Treaty establishing the European Community,

*Article 1*Having regard to Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine ⁽¹⁾, as last amended by Regulation (EC) No 1891/94 ⁽²⁾,The following is added to the end of Article 35(c) of Commission Regulation (EEC) No 377/93 ⁽³⁾ :

'and, where appropriate, for the removal guarantees expressed in ecus per hectolitre of alcohol at 100 % vol.'

Having regard to Council Regulation (EEC) No 3877/88 of 12 December 1988 laying down general rules for the disposal of alcohol obtained from the distillation operations referred to in Articles 35, 36 and 39 of Regulation (EEC) No 822/87 and held by intervention agencies ⁽⁴⁾,*Article 2*Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy ⁽⁵⁾, as amended by Regulation (EC) No 3528/93 ⁽⁶⁾, and in particular Article 6 thereof,

The text of Article 4 of Regulation (EC) No 2630/94 is replaced by the following :

'The sales shall take place in accordance with Articles 13, 14, 15, 16, 18 (5) and (6) and 30 to 38 of Regulation (EEC) No 377/93'.

Whereas Commission Regulation (EC) No 2630/94 ⁽⁷⁾ provides for the lodging of removal and performance guarantees ; whereas the operative events for the agricultural conversion rates to be applied should be specified for those guarantees as an addition to the provisions laid down in Commission Regulation (EEC) No 2192/93 concerning certain operative events for the agricultural conversion rates used in the wine sector ⁽⁷⁾ ;*Article 3*

The text of Chapter IV, 'Award of contract', of the Annex to Regulation (EC) No 2630/94 is replaced, for the each of the invitations to tender referred to in that Annex, by the following :

'IV. Award of contract

Whereas Article 4 of Regulation (EC) No 2630/94 and Chapter IV, 'Award of contract', of the Annex to that Regulation should be amended for each invitation to tender as regards the time allowed for the lodging of the performance guarantee ;

The successful tenderer must provide proof that a performance guarantee of ECU 25 per hectolitre of alcohol at 100 % vol. has been lodged with each intervention agency concerned by the date of issue of a removal order for the quantity of alcohol in question at the latest.'

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

*Article 4*This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.⁽¹⁾ OJ No L 84, 27. 3. 1987, p. 1.⁽²⁾ OJ No L 197, 30. 7. 1994, p. 42.⁽³⁾ OJ No L 346, 15. 12. 1988, p. 7.⁽⁴⁾ OJ No L 387, 31. 12. 1992, p. 1.⁽⁵⁾ OJ No L 320, 22. 12. 1993, p. 32.⁽⁶⁾ OJ No L 280, 29. 10. 1994, p. 20.⁽⁷⁾ OJ No L 196, 5. 8. 1993, p. 19.⁽⁸⁾ OJ No L 43, 20. 2. 1993, p. 6.

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

Done at Brussels, 21 December 1994.

For the Commission

René STEICHEN

Member of the Commission

COMMISSION REGULATION (EC) No 3153/94

of 21 December 1994

amending Regulation (EC) No 2162/94 increasing to 882 000 tonnes the quantity of barley held by the United Kingdom intervention agency for which a standing invitation to tender for export has been opened

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 (EC) No 1866/94 ⁽²⁾, and in particular Article 5 thereof,

Whereas Commission Regulation (EEC) No 2131/93 ⁽³⁾, as amended by Regulation (EC) No 120/94 ⁽⁴⁾, lays down the procedure and conditions for the disposal of cereals held by the intervention agencies;

Whereas Commission Regulation (EC) No 2162/94 ⁽⁵⁾, as last amended by Regulation (EC) No 2981/94 ⁽⁶⁾, opened a standing invitation to tender for the export of 682 000 tonnes of barley by the United Kingdom intervention agency; whereas, in the communication of 15 December 1994, the United Kingdom informed the Commission of the intention of its intervention agency to increase by 200 000 tonnes the quantity for which a standing invitation to tender for export has been opened; whereas the total quantity of barley held by the United Kingdom intervention agency for which a standing invitation to tender for export has been opened should be increased to 882 000 tonnes;

Whereas this increase in the quantity put out to tender makes it necessary to alter the list of regions and quantities in store; whereas Annex I to Regulation (EC) No 2162/94 must therefore be amended;

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

Article 2 of Regulation (EC) No 2162/94 is replaced by the following:

Article 2

1. The invitation to tender shall cover a maximum of 882 000 tonnes of barley to be exported to all third countries.
2. The regions in which the 882 000 tonnes of barley are stored are stated in Annex I to this Regulation.

Article 2

Annex I to Regulation (EC) No 2162/94 is replaced by the Annex hereto.

Article 3

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

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

Done at Brussels, 21 December 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ No L 197, 30. 7. 1994, p. 1.

⁽³⁾ OJ No L 191, 31. 7. 1993, p. 76.

⁽⁴⁾ OJ No L 21, 26. 1. 1994, p. 1.

⁽⁵⁾ OJ No L 230, 3. 9. 1994, p. 3.

⁽⁶⁾ OJ No L 315, 8. 12. 1994, p. 4.

*ANNEX**'ANNEX I**(tonnes)*

Place of storage	Quantity
England	542 420
Scotland	339 560'

COMMISSION REGULATION (EC) No 3154/94

of 21 December 1994

amending Regulation (EC) No 1080/94 increasing to 1 100 000 tonnes the quantity of rye held by the German intervention agency for which a standing invitation to tender for export has been opened

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 (EC) No 1866/94⁽²⁾, and in particular Article 5 thereof,

Whereas Commission Regulation (EEC) No 2131/93⁽³⁾, as amended by Regulation (EC) No 120/94⁽⁴⁾, lays down the procedure and conditions for the disposal of cereals held by the intervention agencies;

Whereas Commission Regulation (EC) No 1080/94⁽⁵⁾, as last amended by Regulation (EC) No 3030/94⁽⁶⁾, opened a standing invitation to tender for the export of 800 000 tonnes of rye held by the German intervention agency; whereas, in the communication of 15 December 1994, Germany informed the Commission of the intention of its intervention agency to increase by 300 000 tonnes the quantity for which a standing invitation to tender for export has been opened; whereas the total quantity of rye held by the German intervention agency for which a standing invitation to tender for export has been opened should be increased to 1 100 000 tonnes;

Whereas this increase in the quantity put out to tender makes it necessary to alter the list of regions and quantities in store; whereas Annex I to Regulation (EC) No 1080/94 must therefore be amended;

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

Article 2 of Regulation (EC) No 1080/94 is replaced by the following:

Article 2

1. The invitation to tender shall cover a maximum of 1 100 000 tonnes of rye to be exported to all third countries.
2. The regions in which the 1 100 000 tonnes of rye are stored are stated in Annex I to this Regulation.

Article 2

Annex I to Regulation (EC) No 1080/94 is replaced by the Annex hereto.

Article 3

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

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

Done at Brussels, 21 December 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ No L 197, 30. 7. 1994, p. 1.

⁽³⁾ OJ No L 191, 31. 7. 1993, p. 76.

⁽⁴⁾ OJ No L 21, 26. 1. 1994, p. 1.

⁽⁵⁾ OJ No L 120, 11. 5. 1994, p. 18.

⁽⁶⁾ OJ No L 321, 14. 12. 1994, p. 19.

*ANNEX**ANNEX I*

<i>(tonnes)</i>	
Place of storage	Quantity
Schleswig-Holstein/Hamburg/ Niedersachsen/Bremen/ Nordrhein-Westfalen	749 505
Hessen/Rheinland-Pfalz/ Baden-Württemberg/Saarland/ Bayern	35 612
Berlin/Brandenburg/ Mecklenburg-Vorpommern	241 187
Sachsen/Sachsen-Anhalt/ Thüringen	73 621'

COMMISSION REGULATION (EC) No 3155/94

of 21 December 1994

on the issuing of a standing invitation to tender for the resale on the internal market of 7 748 tonnes of bread-making wheat held by the Greek 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 last amended by Regulation (EC) No 1866/94⁽²⁾, and in particular Article 5 thereof,

Whereas Commission Regulation (EEC) No 2131/93⁽³⁾, as amended by Regulation (EC) No 120/94⁽⁴⁾, lays down the procedure and conditions for the disposal of cereals held by the intervention agencies;

Whereas, in the present market situation, a standing invitation to tender for the resale on the internal market of 7 748 tonnes of bread-making wheat held by the Greek 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 Greek intervention agency shall issue pursuant to Regulation (EEC) No 2131/93 a standing invitation to tender for the resale on the internal market of 7 748 tonnes of bread-making wheat held by it.

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

Done at Brussels, 21 December 1994.

Article 2

1. The final date for the submission of tenders for the first partial invitation to tender shall be 28 December 1994.

2. The final date for the submission of tenders for the last partial invitation to tender shall expire on 5 April 1995.

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

Ministry of Agriculture (YDAGEP),
Internal Market Directorate
241, Acharnon Street,
GR-10446 Athens;
(Telex 22 17 36 YDAG GR; fax 86 29 373).

Article 3

Not later than Tuesday of the week following the final date for the submission of tenders, the Greek 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 197, 30. 7. 1994, p. 1.

⁽³⁾ OJ No L 191, 31. 7. 1993, p. 76.

⁽⁴⁾ OJ No L 21, 26. 1. 1994, p. 1.

COMMISSION REGULATION (EC) No 3156/94

of 21 December 1994

fixing the maximum export refund for white sugar for the 30th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1021/94

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector⁽¹⁾, as last amended by Regulation (EC) No 133/94⁽²⁾, and in particular the first subparagraph of Article 19 (4) (b) thereof,

Whereas Commission Regulation (EC) No 1021/94 of 29 April 1994 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar⁽³⁾ requires partial invitations to tender to be issued for the export of this sugar;

Whereas, pursuant to Article 9 (1) of Regulation (EC) No 1021/94, a maximum export refund shall be fixed, as the case may be, account being taken in particular of the state and foreseeable development of the Community and world markets in sugar, for the partial invitation to tender in question;

Whereas, following an examination of the tenders submitted in response to the 30th partial invitation to tender, the provisions set out in Article 1 should be adopted;

Whereas Council Regulation (EEC) No 990/93⁽⁴⁾ prohibits trade between the European Community and the

Federal Republic of Yugoslavia (Serbia and Montenegro); whereas this prohibition does not apply in certain situations as comprehensively listed in Articles 2, 4, 5 and 7 thereof; whereas account should be taken of this fact when fixing the refunds;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. For the 30th partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1021/94 the maximum amount of the export refund is fixed at ECU 31,440 per 100 kilograms.

2. Refunds on exports to the Federal Republic of Yugoslavia (Serbia and Montenegro) may be granted only where the conditions laid down in Regulation (EEC) No 990/93 are observed.

Article 2

This Regulation shall enter into force on 22 December 1994.

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

Done at Brussels, 21 December 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 22, 27. 1. 1994, p. 7.

⁽³⁾ OJ No L 112, 3. 5. 1994, p. 13.

⁽⁴⁾ OJ No L 102, 28. 4. 1993, p. 14.

COMMISSION REGULATION (EC) No 3157/94
of 21 December 1994
suspending advance fixing of the import levy for certain cereals

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 last amended by Regulation (EC) No 1866/94⁽²⁾, and in particular the second subparagraph of Article 12 (5) thereof,

Whereas Article 12 (5) of Regulation (EEC) No 1766/92 provides that the provisions concerning advance fixing of the levy may be suspended for certain cereals if the market situation shows that the application of these provisions is causing or is likely to cause difficulties;

Whereas, in view of the uncertainty reigning on the markets, there is a danger that the continuation of the present system could give rise to speculative operations;

whereas the advance fixing of the import levy for cereals should therefore be suspended with immediate effect,

HAS ADOPTED THIS REGULATION:

Article 1

Advance fixing of the import levy on the products referred to in Article 1 (a), (c) and (d) of Regulation (EEC) No 1766/92 is hereby suspended from 22 to 23 December 1994.

Article 2

This Regulation shall enter into force on 22 December 1994.

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

Done at Brussels, 21 December 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ No L 197, 30. 7. 1994, p. 1.

COMMISSION REGULATION (EC) No 3158/94
of 21 December 1994
suspending advance fixing of the import levy for 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 (EC) No 1869/94 ⁽²⁾, and in particular Article 13 (7) thereof,

Whereas Article 13 (7) of Regulation (EEC) No 1418/76 provides that the provisions concerning advance fixing of the levy may be suspended if the market situation shows that the application of such provisions will or is likely to cause difficulties ;

Whereas in view of the uncertainty reigning on the markets, there is a danger that the continuation of the present system could give rise to speculative operations ;

whereas the advance fixing of the import levy for cereals should therefore be suspended with immediate effect,

HAS ADOPTED THIS REGULATION :

Article 1

Advance fixing of the import levy for the products referred to in Article 1 (a), (b) and (c) of Regulation (EEC) No 1418/76 is hereby suspended from 22 to 23 December 1994.

Article 2

This Regulation shall enter into force on 22 December 1994.

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

Done at Brussels, 21 December 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽²⁾ OJ No L 197, 30. 7. 1994, p. 7.

COMMISSION REGULATION (EC) No 3159/94**of 21 December 1994****fixing the maximum export refunds on olive oil for the second partial invitation to tender under the standing invitation to tender issued by Regulation (EC) No 2517/94**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by Regulation (EC) No 3179/93⁽²⁾,

Having regard to Council Regulation (EEC) No 1650/86 of 26 May 1986 on the refunds and levies applicable to exports of olive oil⁽³⁾, and in particular Article 7 thereof,

Whereas Commission Regulation (EC) No 2517/94⁽⁴⁾ issued a standing invitation to tender with a view to determining the export refunds on olive oil;

Whereas Council Regulation (EEC) No 990/93⁽⁵⁾ prohibits trade between the European Community and the Federal Republic of Yugoslavia (Serbia and Montenegro); whereas this prohibition does not apply in certain situations as comprehensively listed in Articles 2, 4, 5 and 7 thereof; whereas account should be taken of this fact when fixing the refunds;

Whereas Article 6 of Regulation (EC) No 2517/94 provides that maximum amounts are to be fixed for the export refunds in the light in particular of the current situation and foreseeable developments on the Commu-

nity and world olive-oil markets and on the basis of the tenders received; whereas contracts are awarded to any tenderer who submits a tender at the level of the maximum refund or at a lower level;

Whereas, for the purposes of applying the above-mentioned provisions, the maximum export refunds should be set at the levels specified in the Annex;

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refunds for olive oil for the second partial invitation to tender under the standing invitation to tender issued by Regulation (EC) No 2517/94 are hereby fixed in the Annex, on the basis of the tenders submitted by 14 December 1994.

Article 2

This Regulation shall enter into force on 22 December 1994.

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

Done at Brussels, 21 December 1994.

For the Commission

René STEICHEN

Member of the Commission

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

⁽²⁾ OJ No L 285, 20. 11. 1993, p. 9.

⁽³⁾ OJ No L 145, 30. 5. 1986, p. 8.

⁽⁴⁾ OJ No L 268, 19. 10. 1994, p. 3.

⁽⁵⁾ OJ No L 102, 28. 4. 1993, p. 14.

ANNEX

to the Commission Regulation of 21 December 1994 fixing the maximum export refunds on olive oil for the second partial invitation to tender under the standing invitation to tender issued by Regulation (EC) No 2517/94

<i>(ECU/100 kg)</i>	
Product code	Amount of refund ⁽¹⁾
1509 10 90 100	38,00
1509 10 90 900	—
1509 90 00 100	45,00
1509 90 00 900	55,00
1510 00 90 100	—
1510 00 90 900	—

⁽¹⁾ Refunds on exports to the Federal Republic of Yugoslavia (Serbia and Montenegro) may be granted only where the conditions laid down in Regulation (EEC) No 990/93 are observed.

NB: The product codes and the footnotes are defined in amended Commission Regulation (EEC) No 3846/87.

COMMISSION REGULATION (EC) No 3160/94**of 21 December 1994****fixing the export refunds on olive oil**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by Regulation (EC) No 3179/93⁽²⁾,

Having regard to Council Regulation (EEC) No 1650/86 of 26 May 1986 on export refunds and levies on olive oil⁽³⁾, and in particular the first sentence of Article 3(1) thereof,

Whereas Article 20 of Regulation No 136/66/EEC provides that, where prices within the Community are higher than world market prices, the difference between these prices may be covered by a refund when olive oil is exported to third countries;

Whereas the detailed rules for fixing and granting export refunds on olive oil are contained in Regulation (EEC) No 1650/86 and Commission Regulation (EEC) No 616/72⁽⁴⁾, as last amended by Regulation (EEC) No 2962/77⁽⁵⁾;

Whereas the first indent of Article 2 of Regulation (EEC) No 1650/86 provides that the refund must be the same for the whole Community;

Whereas, in accordance with Article 4 of Regulation (EEC) No 1650/86, the refund for olive oil must be fixed in the light of the existing situation and outlook in relation to olive oil prices and availability on the Community market and olive oil prices on the world market;

Whereas, however, where the world market situation is such that the most favourable olive oil prices cannot be determined, account may be taken of the price of the main competing vegetable oils on the world market and the difference recorded between that price and the price of olive oil during a representative period;

Whereas the amount of the refund may not exceed the difference between the price of olive oil in the Community and that on the world market, adjusted, where appropriate, to take account of export costs for the products on the world market;

Whereas, in accordance with Article 5 of Regulation (EEC) No 1650/86, it may be decided that the refund shall be fixed by tender;

Whereas the tendering procedure should cover the amount of the refund and may be limited to certain countries of destination, quantities, qualities and presentations;

Whereas the second indent of Article 2 of Regulation (EEC) No 1650/86 provides that the refund on olive oil may be varied according to destination where the world market situation or the specific requirements of certain markets make this necessary;

Whereas Article 3(1) of Regulation (EEC) No 1650/86 provides that the refund must be fixed at least once every month; whereas it may, if necessary, be altered in the intervening period;

Whereas it follows from applying these detailed rules to the present situation on the market in olive oil and in particular to olive oil prices within the Community and on the markets of third countries that the refund should be as set out in the Annex hereto;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92⁽⁶⁾, as amended by Regulation (EC) No 3528/93⁽⁷⁾, are used to convert amounts expressed in third country currencies and are used as the basis for determining the agricultural conversion rates of the Member States' currencies; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93⁽⁸⁾, as amended by Regulation (EC) No 547/94⁽⁹⁾;

Whereas Council Regulation (EEC) No 990/93⁽¹⁰⁾ prohibits trade between the European Community and the Federal Republic of Yugoslavia (Serbia and Montenegro); whereas this prohibition does not apply in certain situations as comprehensively listed in Articles 2, 4, 5 and 7 thereof; whereas account should be taken of this fact when fixing the refunds;

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

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

⁽²⁾ OJ No L 285, 20. 11. 1993, p. 9.

⁽³⁾ OJ No L 145, 30. 5. 1986, p. 8.

⁽⁴⁾ OJ No L 78, 31. 3. 1972, p. 1.

⁽⁵⁾ OJ No L 348, 30. 12. 1977, p. 53.

⁽⁶⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁷⁾ OJ No L 320, 22. 12. 1993, p. 32.

⁽⁸⁾ OJ No L 108, 1. 5. 1993, p. 106.

⁽⁹⁾ OJ No L 69, 12. 3. 1994, p. 1.

⁽¹⁰⁾ OJ No L 102, 28. 4. 1993, p. 14.

HAS ADOPTED THIS REGULATION :

Article 1

The export refunds on the products listed in Article 1 (2) (c) of Regulation No 136/66/EEC shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 January 1995.

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

Done at Brussels, 21 December 1994.

For the Commission

René STEICHEN

Member of the Commission

ANNEX

to the Commission Regulation of 21 December 1994 fixing the export refunds on olive oil

<i>(ECU/100 kg)</i>	
Product code	Amount of refund ⁽¹⁾ ⁽²⁾
1509 10 90 100	35,00
1509 10 90 900	45,00
1509 90 00 100	42,00
1509 90 00 900	52,00
1510 00 90 100	8,00
1510 00 90 900	18,00

⁽¹⁾ For destinations mentioned in Article 34 of amended Commission Regulation (EEC) No 3665/87 as well as for exports to third countries.

⁽²⁾ Refunds on exports to the Federal Republic of Yugoslavia (Serbia and Montenegro) may be granted only where the conditions laid down in Regulation (EEC) No 990/93 are observed.

NB: The product codes and the footnotes are defined in amended Commission Regulation (EEC) No 3846/87.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 8 June 1994

declaring the compatibility of a concentration with the common market

(Case No IV/M. 269 — Shell/Montecatini)

(Only the English text is authentic)

(94/811/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings⁽¹⁾, and in particular Article 8 (2) thereof,

Having regard to the Commission decision of 7 February 1994 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,

Having regard to the opinion of the Advisory Committee on Concentration⁽²⁾,

Whereas :

- (1) These proceedings concern a proposed joint venture in the polyolefins sector (Sophia) between Shell Petroleum NV (hereinafter referred to as 'Shell') and Montedison Nederland NV (hereinafter referred to as 'Montedison') which was notified to the Commission on 4 January 1994 pursuant to Article 4 of Regulation (EEC) No 4064/89 (hereinafter referred to as 'the Merger Regulation').

- (2) On 26 January 1994 the Commission decided to continue the suspension of the notified concentration pursuant to Article 7 (2) of the Merger Regulation, and on 7 February 1994, initiated proceedings in this case pursuant to Article 6 (1) (c) of that Regulation.

I. THE PARTIES AND THE OPERATION

The parties

- (3) Shell is a holding company within the Royal Dutch/Shell group of companies. Montedison belongs to the Ferruzzi group of companies. Its polyolefins interests are owned by Montecatini Nederland BV through two subsidiaries, Himont Incorporation (polyolefins) and Mopletan Spa (downstream applications).

The operation as notified

- (4) Under the original concentration plan notified to the Commission, Montedison would transfer to Sophia, which is to be owned 50 % by Shell and 50 % by Montedison, all of its polyolefins interest word-wide, including production and marketing assets, intellectual property rights and R&D facilities, as well as all upstream and downstream activities. Montedison would retain only residual activities in one of the markets of the joint venture, namely the rights to license the Spheripol process

⁽¹⁾ OJ No L 395, 30. 12. 1989, p. 1. (Corrigendum : OJ No L 257, 21. 9. 1990, p. 13).

⁽²⁾ OJ No C 366, 22. 12. 1994, p. 3.

for the manufacture of polypropylene (hereinafter referred to as 'PP') to third parties in the United States of America. As to its pre-existing joint ventures in the PP production sector, Montefina Himont/Petrofina) and NSP (Himont/Statoil), under the original concentration plan, Montedison would either transfer Himont's shareholding to the other joint-venture partner (i.e. Petrofina or Statoil) or Himont's interests would be owned by Sophia.

- (5) Shell would contribute to the joint venture the major part of its world-wide PP and polyethylene (hereinafter referred to as 'PE') business. Shell would retain outside the joint venture:

- its polyolefins business in the United States of America (a PP production plant and 50 % participation in a joint venture between Shell and Union Carbide Corporation (hereinafter referred to as 'UCC') operating a PP plant at Seadrift, Texas),
- its interests in three joint ventures, one of which, ROW, is in Europe. ROW is a joint venture between Shell and BASF engaged in the production and sale of a wide range of olefins and polyolefins,
- all its existing upstream interests, in particular steam crackers producing ethylene and propylene with the exception of the Aubette platform at Berre in France,
- certain downstream activities (Wavin BV and Symalit AG),
- its non-polyolefins polymer interests.

The operation as subsequently amended

- (6) Following the Commission's Communication pursuant to Article 18 of the Merger Regulation and in order to meet the competition concerns expressed therein, the parties amended the original concentration plan by entering into commitments *vis-à-vis* the Commission set out in recitals 116 to 119. Upon fulfilment of these commitments, the original operation would be modified as follows:

- Montedison's world-wide PP technology business would remain outside Sophia by its transfer to a company (Technipol) under the sole ownership and control of Montedison. Technipol's assets would *inter alia* comprise Montedison's world-wide PP technology licen-

sing business — including licensing contracts, the exercise of the corresponding intellectual property rights, sales, marketing and support staff — the corresponding R&D staff and facilities relating to both process and catalyst technology, as well as a PP pilot plant for PP technology development and testing.

- Montedison/Himont would withdraw from Montefina and would sell its shareholding therein to Petrofina or a third party.
- Montedison would contribute to Sophia its remaining world-wide polyolefins interests, including its world-wide assets relating to the production and sale of PP, and its world-wide activities in other polyolefins sectors, including all upstream and downstream assets. Shell's contribution to Sophia would be as originally planned.
- Technipol would have all the financial or other resources necessary to enable it to conduct its business on an on-going, viable and competitive basis, independent of Sophia and Shell. Any relationship between Sophia or Shell on the one hand and Technipol on the other hand would be on arm's length basis and on normal commercial terms.

II. COMMUNITY DIMENSION

- (7) The proposed concentration has a Community dimension. In 1992, the combined aggregate world-wide turnover of Shell and Montedison was more than ECU 5 000 million and each of the undertakings achieved more than ECU 250 million of their turnover in the Community. The parties did not achieve more than two-thirds of their Community-wide turnover in one and the same Member State.

III. CONCENTRATION

- (8) The notified operation, as amended on the basis of the undertakings given by the parties, is a concentration within the meaning of Article 3 of the Merger Regulation, because, as explained below, Sophia will perform, on a lasting basis, all the functions of an autonomous economic entity and there will be no appreciable scope for coordination of the competitive behaviour of the parents between themselves or with the joint venture within the meaning of that Article.

Joint control

- (9) Sophia will be owned 50 % by Shell and 50 % by Montedison. The joint-venture agreement provides that major decisions must be approved by both parties. These include: the overall annual capital budget, fundamental changes to the joint venture's policy or strategy, borrowings in excess of US \$ [...] ⁽¹⁾ per annum, investments or investments in excess of US \$ [...] million and entering into or extending feedstock arrangements. Therefore Shell and Montedison have joint control over Sophia.
- (10) Shell is expected to assume a leading role in the management of the enterprise, because *inter alia* it will have the final say on the appointment of the Chief Executive Officer of the joint venture and the Shell-nominated directors will be able to decide all general matters except for those of fundamental or strategic importance.

Joint venture performing on a lasting basis all the functions of an autonomous economic entity

- (11) Sophia will have all the assets and resources necessary to enable in to perform all the functions of an autonomous economic entity in the polyolefins sector. With regard in particular to the PP production sector, although Montedison's PP technology business will remain outside the joint venture, this does not negate the character of the joint venture as an autonomous economic entity on the PP technology but operate under licence by a pp technology provider. Moreover, Sophia will continue to employ its existing PP technology and the extent that it may need to purchase technological improvements or other technical services from Technipol, it is provided in the commitments given by the parties that this will be undertaken on an arm's length basis and on normal commercial conditions.

Absence of coordination of competitive behaviour

- (12) Sophia will be active in the following sectors: production and sale of PP; production and sale of PE and PE technology; production and sale of

ethylene and propylene; and downstream activities in the areas of film and fibres. According to the amendments introduced to the original concentration plan, Sophia will not remain active on the market for PP technology as defined in this Decision, because Montedison's world-wide technology business will be transferred to Technipol and Shell's existing activities on the PP technology market, which are based on its cooperation with UCC, will not be contributed to Sophia.

- (13) As stated above, Montedison will contribute to Sophia all of its world-wide polyolefin interests, with the exception of its PP technology business, and will thus withdraw from the markets of the joint venture. Sophia's other parent, Shell will remain active in some of the joint venture's markets, since it will retain certain of its polyolefin interests outside Sophia. However, since Shell will assume the overall industrial responsibility for the joint venture, there is, in this respect, no appreciable scope for coordination between Shell and Sophia within the meaning of Article 3 (2) of the Merger Regulation.

- (14) Following the concentration, Sophia's parents will remain active on the market for PP technology, Montedison through Technipol and Shell as a contributor to the Unipol PP technology that combines UCC's process and Shell's catalysts. Although this market is situated upstream from the joint venture's market for the production and sale of PP, the Commission considers that the parents would coordinate their behaviour with regard to PP technology licensing within the meaning of Article 3 (2) of the Merger Regulation.

- (15) In the specific circumstances of this particular case, there are a number of factors indicating that the parents' ownership of Sophia would not be likely to lead to the coordination of their competitive behaviour on the PP technology market. The turnover of the business to be transferred to Technipol represents only a small percentage of Montedison's total annual PP turnover approximately [...], and it is even smaller in terms of Sophia's total turnover. Moreover, according to the parties' commitment, Technipol will be operated completely independently of Sophia and Shell and will have sufficient own financial resources. Shell will have no share-

⁽¹⁾ Blanks between square brackets indicate professional secrets deleted pursuant to Article 17 (2) of the Merger Regulation.

holding in Technipol, so that 100 % of Technipol's profits will accrue to Montedison [...]. Consequently, Montedison, which will alone control Technipol's commercial strategy would seem to have a genuine interest in continuing an active licensing policy in order to maximize the return on its investment in Technipol.

- (16) At the same time it must be acknowledged that the other parent of Sophia, Shell also conducts a PP technology licensing business. However, the relationship between the two technologies, Spheripol and Unipol, will be a distant one. Whereas Montedison's licensing business will be directly conducted through a fully-owned and controlled subsidiary, Shell's activities on that market will be based on a cooperation agreement with a third party, UCC, which shares control of these activities with Shell and which, subsequent to the concentration, would continue to have an interest in active licensing. Shell Oil would also seem to have an interest in active licensing, since it has made substantial investments in a new catalyst plant for the Unipol technology [...]. With respect to Shell, it is currently using Unipol in some of its own PP plants and would this seem to have an incentive to maintain the viability of that technology.
- (17) Furthermore, from the financial perspective, Shell has no interest in Montedison's PP technology business and Montedison has none in Shell's PP technology business with UCC. In the PP technology market there is a relatively limited number of contracts each with high value (of the order of ECU 10 million). The incentive to win an individual licensing contract is, as a result, strong. In a bidding situation for new PP licensing contracts, each of Unipol and Spheripol would therefore have an interest to bid and thus compete against the other, since it is only in the event of a contract award that the successful licensor will receive any licensing income and thus realize a return on its investment.

In the specific circumstances of this case, it appears therefore that coordination between the parents within the meaning of Article 3 (2) of the Merger Regulation is not likely to occur.

IV. COMPETITIVE ASSESSMENT OF CONCENTRATION AS NOTIFIED

- (18) The present analysis relates to the competitive effects of the concentration as notified to the Commission. According to the original concentration plan, the businesses contributed to the joint

venture would relate to the following economic sectors: production and sale of PP and PP technology; production and sale of PE and PE technology; production and sale of ethylene and propylene; production and sale of flexible films for consumer goods packaging, flexible films for good packaging, melt spun fibres, non-woven fibres, and tapes/fibrillated tapes.

- (19) There is no overlap between the activities of the parties with regard to: (i) ethylene and propylene (upstream markets in relation to polyethylene and polypropylene), because Montedison does not produce ethylene and has no free market sales of propylene; (ii) downstream activities (flexible films for consumer goods packaging; flexible films for good packaging; melt spun fibres; non-woven fibres; and tapes/fibrillated tapes).
- (20) PE is one of the businesses contributed to Sophia. PE is derived from ethylene through polymerization. There are three different types of PE, high density polyethylene (hereinafter referred to as 'HDPE'), low density polyethylene (hereinafter referred to as 'LDPE') and linear low density polyethylene (hereinafter referred to as 'LLDPE'). According to the notifying parties, the market, while LDPE and LLDPE should be considered to form another relevant product market. As to the geographic market definition, it appears that the production and sale of PE takes place throughout western Europe, with both customers and suppliers being located throughout the region. It is not, however, necessary to decide on the exact product and geographic market definition in this case, because, as explained below, even on the basis of a narrow market definition in this case, because, as explained below, even on the basis of a narrow market definition the proposed concentration will not create or reinforce a dominant position in the common market or substantial part thereof.
- (21) Shell produces LDPE and LLDPE. Its market share in western Europe in terms of capacity is below 10 %. Montedison has not yet started producing PE, [...] and its strength in this area lies in PE process technology (Spherilene), which it will contribute to the joint venture. However, it does not appear that dominance will be created for the following reasons: (i) with regard to the production and sale of PE, there are number of other players more important than Shell, including companies such as Enichem, BP, Borealis and Dow Chemical; and (ii) with regard to PE technology, alternative technologies are available, such as that offered by UCC, which can be regarded as adequate alternatives.

- (22) In the light of the above, the following analysis will focus on the effects of the concentration on the market for the production and sale of PP and the market for PP technology.

A. Product market definition

(i) *Production and sale of PP*

- (23) PP belongs to the category of polyolefins, that is a family of thermoplastics derived from a particular group of base chemicals known as olefins, which also includes PE and polybutylene (PB). Olefins are typically derived from oil or natural gas. The production of polyolefins involves the following main stages. In the first stage, hydrocarbon feedstocks for base chemicals (naphtha, ethane, etc.) are obtained from oil or natural gas. The base chemicals such as olefins (e.g. ethylene and propylene) are then produced by means of steam cracking or dehydrogenation. Polyolefins are derived from olefins through polymerization, a process during which monomers (olefins) are reacted with each other to produce long chains of a repeated series of monomers (polymers). Polyolefins are further processed by the plastics industry to manufacture a wide range of consumer goods, including films, fibres, moulded and extruded products.

- (24) PP is used by the plastics processing industry for a large number of applications, the most important of which are film, fibres, automotive components such as bumpers and dashboard systems, domestic appliances, garden furniture, crates, cases and pails, caps, closures and thin-walled packaging containers, waste and chemical pipe applications, tapes and sheets used in packaging and construction, food packaging. The special characteristics of PP include the lowest density of all thermoplastics, easier colouring, high temperature resistance, high frictional resistance, more flexible design.

- (25) According to the notifying parties, although there is some degree of fringe substitutability between PP and PE, especially HDPE, or other materials, PP is not fully substitutable by other materials for all applications. The Commission's investigations also confirm that PP is not sufficiently substitutable by other thermoplastics or other materials for most applications because of its special properties and its advantageous cost/performance ratio. Therefore, the relevant product market is the market for the production and sale of PP.

- (26) There are three main types or families of PP, namely homopolymers, which account for approximately 70 to 75 % of PP consumption, random copolymers which account for approximately 5 % of PP consumption and impact or block copolymers which account for approximately 25 % of PP consumption. The properties and end uses of the three types of PP are not the same. Homopolymers are made in commodity and speciality grades. They are more rigid and have better resistance than copolymers but their impact strength is inferior. Block copolymers are particularly suitable for applications where very high impact strength is required (such as in the automotive sector). PP random copolymers are mainly used in films (document folders, packaging and laminating, heat sealable layers) due to their transparency, good resistance to heat distortion and ease of processing. On the supply side, all three types of PP are made by polymerizing propylene, although ethylene is also added during the polymerization of impact and random copolymers. Homopolymers and random copolymers are produced in the same reactor (homopolymer reactor), but a second reactor (copolymer reactor) is needed for the production of block copolymers. Since not all PP plants are equipped with a copolymerization reactor, there appears to be limited supply-side substitutability between block copolymers and other types of PP, with the result that block copolymers may be considered as a separate product market. This question can, however, be left open, because regardless of a broader or narrower market definition, as explained below, the assessment of the effects of the merger does not change.

- (27) Within these three different families of PP there are a variety of different grades. There are a number of distinguishing factors between PP grades, including viscosity as measured by the melt flow ratio, the presence of different chemicals and additives, molecular weight distribution, crystallinity and morphology. Speciality grades are often developed at the request of or in cooperation with customers. Since PP grades differ in terms of their characteristics, price and intended use, they are not interchangeable from a demand-side point of view. On the other hand, it appears, that within each family of PP (i.e. homopolymers, block copolymers and random copolymers), PP manufacturers can relatively easily switch production from one grade of PP to another by varying the conditions of polymerization (reactor pressure, temperature), or by using different additives. Economic considerations play a role in this respect, but it appears that PP plants can be operated in a way which avoids unnecessary switches between different grades and thus

minimizes the production of off-grade material. Due to the very high degree of supply-side substitutability, it therefore appears that, within each PP family, different grades cannot be regarded as constituting separate relevant product markets.

(ii) *PP technology*

- (28) PP is made by polymerizing liquid propylene (bulk polymerization) or propylene gas (gas-phase polymerization). For the production of certain types of PP, ethylene (or another monomer) is added either at the onset of polymerization (random copolymers) or at a later stage (block or impact copolymers). Additives or modifiers may also be added to further enhance or change certain characteristics of the polymer desirable for specific applications. In all cases, the polymerization of propylene in order to produce PP involves at least the following elements: (i) the raw material, propylene; (ii) a suitable catalyst, that is a chemical substance used in polymerization to promote the chemical reaction without being itself affected by it; (iii) the technology and know-how necessary for the use of the catalyst in polymerization; and (iv) the process technology and know-how necessary to design and use equipment in which polymerization takes place.
- (29) Following the development of the basic catalysts for PP production in the 1950s, PP catalyst, process and product technology has advanced in the last 30 years largely due to catalyst improvements. The transition from the old slurry processes to the more advanced bulk and gas-phase processes was a consequence of important innovations in the area of catalysts. In particular, this resulted in substantially higher catalyst yield. In the early 1960s a kilogram of catalyst yielded about 1 000 kgs of polymer, while catalyst developments have improved that yield to between 20 000 and 50 000 kgs of polymer. Similar improvements have been the development of superior properties of the PP and the simplification of the process by reduction of the polymerization steps (e.g. the increase in catalyst yield reduced the catalyst quantity left in the reactor to such an extent that removal of catalyst residue became unnecessary).
- (30) Substantial research is currently carried out mainly in the area of 'advanced materials', i.e. materials extending or combining the characteristics of different polyolefins and thus suitable for certain specific applications. However, it is not expected that a fundamentally new PP resin production

process will be developed and commercialized within the next 10 years. A number of companies are also currently working on a new generation of catalysts, namely metallocenes. It cannot be precisely predicted at the moment how widely this new generation of catalysts will be used. Current research in this area is aimed at enhancing the properties of PP for certain specific applications (e.g. syndiotactic PP) within the context of existing PP processes. According to industry sources, several years' more research and development will be required before the innovative potential of these catalysts can be fully exploited. In any case, it appears that metallocene catalysts will not be fully commercialized for at least another five to seven years. As regards Himont's own research and development efforts, they are mainly concentrated on advanced materials combining properties belonging to different polymers on the basis of its newly developed Catalloy and Hivalloy technology.

Intellectual property rights

- (31) The development of new or improved PP technologies is patented or otherwise protected by intellectual property rights. A PP manufacturer who has not developed his own technology will operate under a licence from a PP technology provider on the basis of which technical information (know-how) relating to both the process and the catalyst will be disclosed and immunity under the relevant patents will be granted. In return, the licensee is obliged to treat all technical information as confidential and proprietary information unless it is or becomes public knowledge.
- (32) In the area of intellectual property rights, ownership of patents for the basic invention as well as subsequent improvements may prove to be a barrier to entry into the technology market. Improvements can themselves represent a significant technological breakthrough (e.g. the introduction of electron donors that resulted in a substantial increase in the catalyst yield). These patents can delay or even indefinitely postpone new entry by operators who seek to develop new technology that does not infringe them. In this respect, the risk of lengthy and expensive patent litigation would seriously undermine future licensing activities, because both the licensor and the licensee could be sued by the owner of the intellectual property right for patent infringement. A non-assertion agreement with the initial patent holder would remove this uncertainty but this in fact makes potential entry and its conditions dependent on the patent holder's consent.

Market structure

- (33) There is a significant amount of licensing activity in the PP industry, PP manufacturers being either licensors or licensees of PP technology. This licensing activity takes place in a market separate from that for the production of PP. Customers in this market are PP producers who need the technology required to manufacture PP and suppliers are as a rule PP manufacturers (although UCC is not an active PP supplier) who have developed and are willing to license PP technology.

Suppliers

- (34) On the supply side, the provider of technology discloses to the customer the technical knowledge necessary to design, construct and operate a plant for the production of PP and allows him to sell the PP produced by giving him and his customers immunities under the relevant patents. Refinements or optimizations of the technology but not revolutionary improvements are normally communicated to the licensee from time to time. This basic service is accompanied by associated services such as technical support, customer assistance or engineering services — in some cases the plant itself is constructed by the licensor. The catalyst included in the package is either provided directly by the licensor or manufactured by the licensee under licence from and on the basis of technical knowledge communicated by the licensor.

Customers

- (35) On the demand side, customers are normally PP manufacturers who do not have their own PP technology. In view of the substantial costs represented by original research and development, the prior expertise needed and the uncertain results of development work, a number of PP producers prefer not to develop their own R&D and therefore need a licence from companies who have the required technology.
- (36) Companies with in-house R&D may also be potential customers. For instance, companies who have developed their own catalysts may need to obtain a patent settlement agreement or a bare patent licence before they are allowed freely to operate these catalysts and, in any event, they lack a process for the manufacture of PP which they need to license from a third party. Moreover, since for tech-

nical reasons, the harmonization of separate catalyst and process technologies to achieve efficient production is complicated and expensive, the practice of such companies is to purchase initially an overall technology package and to seek subsequently to replace the licensor's catalyst. As a result, these companies are, in the Commission's view, on the market for PP technology. Even companies who have developed their own PP process and catalyst combination may select another technology package if it is more efficient or better suited to their product requirements.

- (37) Customers for licences may be new entrants to the PP industry or existing licensees who want to expand their current PP capacity. Provisions of existing licensing agreements regarding future capacity expansion vary. In some cases the licensee has the option, in return for additional royalties, to use licensed technology for a capacity increase at the same plant, while in other cases this option also covers a capacity increase realized by the construction of new plants within the territory of the agreement (usually one or several countries). In any event, the Commission considers that the option holder is impervious to the relative merits of other market alternatives. On the contrary, the value of the option is precisely determined by these alternatives. If effective competition on the market for PP technology licensing means that a different licensing contract is more attractive, the option holder will not exercise the option and will purchase another licence. Alternatively the option holder may renegotiate the terms of the option with the original licensor on terms that are more favourable and reflect the competitive pressure from the other licensing contract. In conclusion, an option holder is, in the Commission's view on the market for technology licensing and benefits from the presence of effective competition therein.

- (38) PP manufacturers naturally benefit from the availability of high-performance and cost-effective technologies. Access to technology is of itself vital, because otherwise new entry or capacity expansion by existing players dependent on technology licensing cannot be realized. The selection of a technology for a plant has long-term implications given the substantial costs involved and the 20 to 30 year life time of a plant once built. Competition on the technology market ensures that the best outcome in terms of price, quality and other competitive parameters is reached with regard to an indispensable element of PP production.

Demand for licences

- (39) An increase in actual or expected demand for PP leads to plant expansion and to a demand for licences. In practice demand has tended to concentrate within certain periods ('licensing rounds') due to the simultaneous decision of a number of producers to expand their capacity on the basis of demand forecasts. However, a more limited amount of licensing activity also takes place between those periods. A 'licensing round' took place from 1985 to 1989. Licensing activity was subsequently reduced due to excess PP capacity in the industry.
- (40) According to industry sources, over the next 10 years the world PP market is projected to grow at an average rate of 6 to 7 % per annum. The western European and the North American markets are projected to grow at a rate of 5 to 6 % per annum, while in the rest of the world growth is projected at 10 to 15 % per annum. As a result, it is expected that additional PP capacity will be needed in the industry. Expansion of current PP capacity can take different forms, including de-bottlenecking of existing plants or construction of new plants, depending *inter alia* on the size of the planned increase (e.g. expansion through de-bottlenecking may have capacity limitations) and the strategy of the companies concerned (e.g. a company planning to act as a player in several countries may choose to build a plant in a different location to its existing one). In any case it is expected that the need for capacity expansion will lead to a substantial increase in the demand for technology licences world-wide. A number of companies already have concrete plans for expansion and they have started considering the available technologies with a view to obtaining a licence. The question of demand for licences in western Europe in particular will be dealt with below.

'Process-plus-catalyst' package

- (41) As a rule PP technology is developed and licensed as a package made up of a polymerization process and a catalyst. The role of the catalyst in polymerization is important, because it determines the properties of the PP. The design of the process is influenced by the catalyst to be used and the introduction of a different catalyst will normally affect the resulting product range.

- (42) In practice some licencees of a PP package have developed their own catalyst in order to change the properties of the final product for certain specific applications. However, this does not imply that, for the purposes of product market definition, a distinction should be made between process and catalyst. It has been the practice of licencees to purchase an overall technology package and to seek to develop catalysts that can complement or replace the catalyst originally licensed only subsequent to the purchase of the initial package. According to the Commission's investigations, if PP manufacturers wished to build a new plant today, they would also normally seek a single licence comprising the whole package as opposed to separate licences for the process and the catalyst. This is the case because catalyst development normally takes at least several years (typically a minimum of three to five years), requires considerable R&D expenditure and substantial prior technological expertise and is risky. Moreover, the licensor's performance guarantee will only cover the 'process-and-catalyst' package as originally licensed. On the basis of the above, and notwithstanding the possibility that some PP licences may wish to purchase process and catalyst technology separately, the Commission considers that, for the purposes of this decision, the definition of the relevant product market for PP technology can be based on the package represented by 'process-and-catalyst' technology.

Slurry processes distinguished from advanced gas-phase or bulk processes

- (43) Gas-phase and bulk processes are a more simplified and efficient PP production route compared with the older slurry processes which were widely used in the industry until the 1980s. Bulk and gas-phase processes involve fewer processing steps, because the use of a high-efficiency catalyst makes it unnecessary to remove catalyst residue or the atactic component of the final polymer. Other advantages of the bulk and gas-phase processes include lower energy consumption, lower capital investment per tonne of capacity and better environmental protection. Some producers still continue to operate the older, existing slurry plants (about 25 % of total western European PP capacity), usually in combination with a performance-enhancing high-yield/high-stereospecificity catalyst since these plants are fully depreciated. However, no new slurry plants are being built. According to the Commission's investigations, if PP producers wished to expand their PP production capacity by building a new plant today,

they would seek to obtain a licence for a new generation process — bulk or gas-phase — as opposed to an old slurry process. It appears, therefore, that the relevant product market for PP technology should be defined on the basis of advanced technology only (bulk and gas-phase) and that slurry technology should be excluded from this definition.

Conclusion

- (44) On the basis of the above, it appears that the licensing of advanced PP technology and other associated services as defined above constitute a distinct product market upon which the effects of the proposed joint venture should be assessed. This is an upstream market in relation to the market for the production and sale of PP. Dominance in the PP technology market would enable a PP technology provider to exercise market power with regard to an essential element of PP production.

B. Geographic market definition

(i) *Manufacture and sale of PP*

- (45) According to the Commission's enquiries, many customers purchase PP from several sources located in different Member States, rather than purchasing solely from one supplier. On the other hand, customers for PP in western Europe rely on producers with plants located within that area for the vast majority of their supplies.
- (46) In their replies to the Commission's questionnaires, customers stated that PP transport costs have an important influence on the choice of supplier. Transport costs depend *inter alia* on the mode of transportation and the location of the customer *vis-à-vis* the location of the supplier. The main mode of transportation of PP is by truck and, to a lesser extent, by rail, sea or the combined use of sea/truck and truck/rail modes, with the destination of the shipment influencing the choice of transportation mode to reduce costs based on the most efficient means of transportation.
- (47) PP is usually supplied either in bulk truckloads by road tankers or the same tonnage is packaged in 25 kg polyethylene sacks stacked on pallets and shrink-wrapped. Transport costs are also substantially affected by the availability of return loading of the vehicle (i.e. the possibility of back-hauling), as

well as local country regulations and the competitive hauling situation.

- (48) According to the replies to the Commission's questionnaires, transport costs are sufficiently high that customers do not consider producers from outside western Europe, e.g. the United States of America or Japan, to be alternative sources of supply. In addition, it appears that current import duties — amounting to 12,5 % on imports from developed countries, to be gradually reduced to 6,5 % within a period of five years starting from 1995 insulate the western European market to some extent and that the need for after-sales technical support also limits the geographical choice of suppliers. It appears, therefore, that the relevant geographic market for the production and sale of PP is western Europe.

(ii) *PP technology*

- (49) Competition in the licensing of PP technology takes place on a wider geographic market than competition in the manufacture and sales of PP itself, specifically, on a world-wide basis. Licensors of PP technology can compete for business wherever a potential customer seeks to license technology and these licensors can offer their technology to customers located anywhere in the world.
- (50) The licensing of the package of PP technology generally includes certain input from R&D and technical personnel of the licensor who will be on-site at the new plant of the licensee and such technical staff will always be required to travel to new plant sites. The costs of providing technical personnel at the new plant during start-up and subsequent technical support are generally borne by the licensee and they do not appear to be sufficiently substantial to deter a potential licensee from choosing a licensor not located within his geographical area.
- (51) Licensors are generally active world-wide, and although as explained above the intensity of their activity depends on their position in the downstream PP market, this does not affect the conclusion that the market for licensing of PP technology is a world market.

C. The effects of the concentration as notified

- (52) Dominance on the technology market have a restraining effect on the PP industry's future plans and opportunities for expansion and would thus have negative repercussions on the downstream

market for the production and sale of PP. Therefore, the Commission will assess first the competitive effects of the joint venture on the market for PP technology.

(i) *PP technology*

- (53) As indicated above, PP technology is, as a rule, developed and licensed as a package involving a production process and a catalyst. The two leading package technologies in the PP industry, accounting for about [...] ⁽¹⁾ of plant capacity under licence, are the Spheripol technology licensed by Himont and the Unipol technology which combines a process developed by UCC and a catalyst developed by Shell.
- (54) Himont, Montedison's subsidiary, has been at the forefront of PP technology (both process and catalyst) since the early years of PP production. Himont research goes back to the development and commercial exploitation of the first industrial process for the production of PP based on the modification of Ziegler's catalyst in 1954 by Nobel Prize Winner Giulio Natta, a consultant to Himont's research team at Ferrara. Himont's Spheripol process is currently the most widely licensed PP technology. It is a hybrid process consisting of a first-stage loop reactor (bulk polymerization) for the production of homopolymers and random copolymers and a second-stage gas-phase reactor for the production of impact copolymers operating in series with the first reactor. On the basis of a 1975 agreement, Himont and the Japanese company Mitsui Petrochemical Industries (hereinafter referred to as 'Mitsui') jointly developed catalysts that resulted in high product yield and high stereospecificity (HY/HS catalysts). Subsequently, both parties have continued their collaboration on HY/HS catalysts. Today each party has its own process technology, Spheripol (Himont) and Hypol-stirred bed reactor (Mitsui), but both use jointly developed catalysts. The licensing activities of the parties with regard to both the Hypol and Spheripol process as well as related catalysts are the object of a Research and Development Cooperation Agreement between Himont and Mitsui which is further analysed below.

The Shell Oil/UCC relationship

- (55) Shell has developed its own PP process, Lippshac, but has not licensed it to third parties, other than joint ventures in which Shell has an interest. On the other hand, Shell contributes its high-yield SHAC catalysts to a joint venture with UCC, which includes a PP plant in Seadrift, Texas. The basis of the cooperation between Shell and UCC is a Cooperative Undertaking Agreement (hereinafter referred to as 'the CUA') signed in 1983 between UCC and Shell Chemical, a division of Shell Oil Company. Shell Oil is a US company controlled by Shell Petroleum Incorporation, a 100 % subsidiary of the Royal Dutch/Shell group of companies.
- (56) According to the CUA, which expires in [...], the purpose of the agreement is to combine UCC's fluidized-bed process and Shell's SHAC catalyst with a view to developing a PP technology package and licensing it to third parties. The abovementioned Seadrift demonstration plant [...] is used as a [...] manufacturing facility [...]. UCC is not otherwise active in PP production and relies on Shell Oil for PP market know-how. The initial laboratory experiments relating to the original SHAC catalyst took place [...]. The resulting technology package, Unipol, has been to date the main competitor of Himont's Spheripol technology.
- (57) Shell Oil's contribution to the current Unipol technology package is important. Shell Oil supplies the catalysts used in the Unipol package and is responsible for their improvement. It is involved in the marketing of the Unipol technology, including technical presentation of the catalyst to potential customers. Finally, it provides customer support/technical assistance with regard to the catalyst, prices the catalyst, invoices catalyst sales and shares licensing revenues with UCC.
- (58) As a result of joint venture between Shell and Montedison as originally notified, two fully-owned subsidiaries of the Royal Dutch/Shell group of companies would be linked with the two leading PP package technologies in the industry. In particular, Shell would be the industrial leader of Sophia which, under the original concentration plan, would develop and market the Spheripol technology whilst at the same time Shell Oil would provide the catalyst used in the Unipol technology package.

⁽¹⁾ Between 50 and 75 %.

- (59) According to Shell, Shell Oil is managed as an autonomous entity within the Royal Dutch/Shell group and competes with the other subsidiaries of that group. Whilst it could appear that Shell Oil may have conducted its business with a certain degree of autonomy in relation to the Royal Dutch/Shell group, from the point of view of the application of the Merger Regulation, the parties' argument cannot be accepted on structural grounds. Under the provisions of that Regulation, a fully-owned subsidiary must be considered to fall under the ultimate control of the parent company of the group.

- (60) In the particular case, Royal Dutch/Shell's control over the competitive behaviour of its two subsidiaries would have an important effect on the PP technology market. Prior to the concentration the rivalry between Spheripol and Unipol was the main competitive relationship on the market. Subsequent to the original concentration, these two technologies would no longer be sufficiently independent of each other, since Himont's PP technology business would have been included in Sophia.

Market shares

- (61) Spheripol and Unipol are two leading technologies in the PP industry. Out of the total number of non-slurry PP technology (bulk and gas-phase) licences granted to date, Himont licensees account for about [...] ⁽¹⁾ of world-wide PP plant capacity operating under licence (excluding licences to licensor's own plants and to joint ventures in which the licensor has a 50 % or more interest), Unipol licensees for about [...] ⁽¹⁾, BASF licensees for about [...] ⁽²⁾, Mitsui licensees for about [...] ⁽²⁾ and others (Sumitomo, Acomo) for about [...] ⁽³⁾.
- (62) The notifying parties have argued that these high market shares reflect the relative success of Spheripol and Unipol in the 1980s and are not a reliable indicator of future market power. However, the high market shares of the two technologies are confirmed by recent licensing decisions. Out of the total number of licences granted in the last five years world-wide, Himont licensees account for

about [...] ⁽¹⁾ of world-wide PP plant capacity, Unipol licensees for about [...] ⁽¹⁾, BASF licensees for about [...] ⁽²⁾, Mitsui licensees for about [...] ⁽²⁾ and others (Sumitomo, Amoco) for about [...] ⁽³⁾. It is the view of the Commission that these high market shares reflect the importance of Spheripol and Unipol as a competitive force on the technology market due to a variety of factors that are analysed below.

Arguments put forward by the parties

- (63) According to the parties, the concentration will not create or strengthen dominance because :
1. as to the supply side : (i) the supply of PP technology is competitive today and will remain so ; (ii) the technology market is inherently volatile and fast changing. New entry is possible and likely ;
 2. as to the demand side : (i) there is likely to be no or only minimal demand for new licences in western Europe until the end of the century ; (ii) in western Europe most current and potential licenses are increasingly technologically sophisticated.
- (64) For the reasons explained below, however, the Commission considers that :
1. as to the supply side : (i) other advanced technologies currently offered for licence do not appear to be able significantly to constrain the parties' competitive behaviour ; (ii) although the technology market is to some extent dynamic, new entry is not likely to occur in a manner capable of constraining quickly and significantly the exercise of market power ;
 2. as the demand side : (i) it is expected that demand for licences in western Europe until the end of the century will be significant ; (ii) the technological sophistication of western European producers cannot significantly constrain the exercise of market power by a dominant technology provider.

Criteria for selection of technology

- (65) In their replies to the Commission's questionnaires, PP manufacturers identified a number of factors which are considered to be important when selecting a PP technology :

⁽¹⁾ Between 25 and 50 %.

⁽²⁾ Between 10 and 25 %.

⁽³⁾ Below 10 %.

- (i) Product range/product characteristics : a technology must be suited to the product needs of the prospective licensee based on his strategy to gain access to or reinforce his presence in different PP market segments. In well-developed markets, such as Western Europe, all product types and a number of identified grades within each product type will normally be required by manufacturers building new plants. In this context, it is important that plants operating on the basis of the technology under consideration do exist and have already produced a number of commercial grades approved on the marketplace. In this respect, a distinction is sometimes made between, on the one hand, the capability of a technology to produce a number of grades because of its ability to manufacture PP with properties that these grades have and, on the other hand, the fact that a technology has already developed a number of commercially qualified grades sold in the marketplace. It appears that for a potential licensee the second criterion is important when assessing the comparative merits of alternative technologies. To a prospective licensee the existence of commercially qualified grades produced on the basis of a technology is a reassurance that he will have the possibility to enter a new market on an equal footing with established players or to continue serving its existing customers without having to go through the risky and time-consuming process of re-qualifying grades.
- (ii) Simplicity of operation including flexibility in switching between different grades.
- (iii) Cost/performance ratio evaluated on the basis of the expenditure needed for the construction of the plant and operating costs including royalties.
- (iv) Track record of licensor, proven value of his technology : the existence of a large number of plants operating on the basis of a technology and serving various PP market segments or geographic markets is a guarantee that that technology is capable of producing commercially qualified and accepted grades. Moreover, a prospective licensee would be able further to assess the value of the technology by visiting a number of operating plants of various capacities designed by the licensor and by using prior licensees as reference contacts. As a result, the risk factor in the selection process would be minimized. This is important, since licensing decisions involve substantial investment costs and are made for the lifetime of the plant (20 to 30 years). Even sophisticated licensees such as Western European PP producers regard the track record of the licensor as a significant factor in the selection process.
- (v) Proven ability to construct larger plants. The size of a plant is important for the realization of economies of scale. In Western Europe for instance, new plants would today normally have a capacity of at least 120 000 to 160 000 tonnes and in a number of cases even larger plants would be required.
- (vi) A large licensing pool in the context of which improvements to the licensed technology can be exchanged. Although sophisticated licensees with in-house technology may decide not to participate in a licensing pool so that they will not be obliged to communicate their own improvements in return, a large licensing pool appears to be important for less sophisticated licensees who rely on the licensor for technology updates. Communication of improvements appears to be particularly important with regard to the application of the catalyst used.
- ### Advantages of Spheripol and Unipol
- (66) The final choice in each case will result from a global judgment balancing the respective advantages of the various technologies. It appears, in this context, that Spheripol and Unipol are the two technologies that best combine the above elements and are generally considered to be broadly equivalent alternatives. Spheripol and Unipol have the most extensive grade coverage, they enjoy the best commercial track record, they have constructed a number of plants of various sizes operating on the market and they are truly global licensors with presence in and knowledge of the specificities of different geographic markets and of the product needs of licensees. Active competition between Spheripol and Unipol has been in the past the main driving force on PP technology market.

- (67) The large number of licences that Spheripol and Unipol granted to date is important in terms of licensing revenue which can support their licensors' future research and development efforts in the area of PP technology. In addition, it appears that there are advantages in choosing the technology already used in existing plants for an expansion of capacity. These advantages are technological — e.g. knowledge of the capabilities and operation of the technology — or other — e.g. avoidance of delays due to the need to retrain staff and re-qualify grades for established customers — and they translate into cost saving and optimal production results for the potential licensee. Provided that the technology used in existing plants is up-to-date and suited to the licensee's future product range, it appears that 'installed capacity' has an influence on future licensing decisions and tends to reinforce the current market position of established players. On that basis, existing Spheripol and Unipol licensees may have a disincentive to switch to alternative technology providers.

Patent rights

- (68) Himont is the owner or co-owner of all important patents for the basic intervention as well as subsequent improvements of the current generation of PP catalysts, namely supported catalysts. The exercise of patent rights may act as a barrier to entry into the PP technology market. In practice, there has been a series of patent disputes between Himont and new or potential catalyst producers regarding the validity of the latter's catalysts under Himont's patents. In all cases, these catalyst producers, including [...], have found it necessary to conclude non-assertion agreements with Himont in return for the payment of a lump sum or a percentage of the royalties obtained from the future sale of the catalyst, in order to avoid the risk of patent litigation. The duration of Himont's improvement patents in the area of supported catalysts which extend into the next century will continue to enable Himont to influence the possibility and conditions of new entry and thus entrench its current position on the technology market.

Views of PP manufacturers

- (69) According to the Commission's investigations, Spheripol and Unipol are perceived as the two

leading technologies in the industry and a number of PP manufacturers would be concerned if competition were eliminated between them. Spheripol and Unipol are considered to be commercially proven technologies, well known in the market and fully available for licence. They are relatively straightforward processes with a full product range and proven ability to construct plants with adequate economies of scale. Although alternatives were available, continued competition between Spheripol and Unipol was important and should be safeguarded. Other technologies were either more appropriate for speciality end uses, more complex processes with a less advantageous cost/performance ratio, not fully proven on the market place, or not fully available for licence.

- (70) The concern was expressed that, as a result of the concentration, two different companies of Shell would be involved in two major packages and that the risk of restriction of the available technologies could not therefore be discarded. This restriction would be all the more significant, because Himont already controlled to a very large extent catalyst developments on the basis of its patents. Licensees would depend to a large extent on a single company for their technology and catalyst supply. Moreover, the joint venture would gain an additional competitive advantage through access to technology information and feedback from the much larger licensing pool of both leading technologies.

- (71) The combination of the technological strength of Shell and Himont and the established position of their technologies on the market would place other licensors at a significant competitive disadvantage. *Inter alia* a newcomer would have to overcome the following obstacles: (i) lack of history in the market related to established reputations; (ii) development of adequate infrastructure (R&D, engineering support); (iii) development of catalyst production points with back-up supply capability. Moreover, the licensees' familiarity with Spheripol and Unipol combined with the provisions of existing agreements that give licensees the option to increase capacity in the same or new plants may also act as a disincentive for them to switch to alternative technology providers.

Competition from other advanced technology providers

- (72) Apart from Spheripol and Unipol, the notifying parties identified the following providers of advanced PP technology packages today: Mitsui, BASF, Amoco/Chisso and Sumitomo. The Commission considers that the mere existence of alternative technologies does not constitute adequate grounds for concluding that no dominance will be created on the technology market as a result of the concentration. Dominance is the ability to behave to a significant extent independently of one's competitors and customers. It is the view of the Commission based on its investigations in this case that for the reasons explained below, these alternative technology providers are not likely to form a significant constraint on the exercise of market power created by the concentration in the short to medium term.
- (73) One of these technology providers accounting for about [...] ⁽¹⁾ of licensed capacity, namely Mitsui, cannot, in the Commission's opinion, be regarded as a fully independent competitor likely significantly to constrain Himont's behaviour. Mitsui offers its Hypol process for licence together with catalysts jointly developed with Himont. Since 1975 Mitsui is involved in a Research and Development Cooperation Agreement with Himont concerning Hypol and Spheripol as well as related catalysts. Under the current version of this agreement [...], the parties cooperate on virtually all aspects of technology development and licensing [...].
- (74) The agreement provides [...].
- (75) This agreement is an expression of the long-standing cooperation arrangements between Himont and Mitsui and of the common economic interests and incentives that they share in the area of PP technology. This seems to be borne out by the fact that Mitsui has not secured a single licence in western Europe to date. On the basis of the above, it does not appear that Mitsui can be considered as an effective competitor likely significantly to constrain Himont's competitive behaviour.
- (76) Other existing licensors include BASF, Amoco and Sumitomo. BASF currently offers a gas-phase process (vertical stirred bed reactor) for license. The older version of the BASF technology became commercially available in 1974. The product range has since been broadened, especially since the incorporation of a proprietary supported catalyst in the BASF technology package in 1991, [...]. BASF has not granted any licences in western Europe since 1978. Its only licensee in Europe is ICI, whose PP business BASF has recently acquired.
- (77) Sumitomo has developed a bulk process as well as a more recent gas-phase process (fluid bed reactor). Its bulk process became available for licence in the early 1980s and its gas process in the mid-1980s. Sumitomo has a very limited number of licensees world-wide for both processes.
- (78) Amoco began development work on a gas-phase process in the 1970s in collaboration with Chisso Corporation of Japan. The first Amoco plants using the earlier version of this technology was built in the late 1970s. The Amoco/Chisso technology which is currently offered for license is an improved version of the earlier technology based on the development of a proprietary high activity catalyst in the 1980s [...].
- (79) Although the Commission would not question the credibility of the abovementioned alternative technology suppliers from a purely technological perspective, and leaving aside contractual and other relationships with the notifying parties, it appears that these technology suppliers are not likely to significantly constrain the market power of Spheripol and Unipol for the following reasons. First, alternative technologies have a more limited number of qualified grades than Spheripol or Unipol both on the whole and within each specific PP family. In addition, some of these technologies are better suited for the manufacture of certain PP products and their grade coverage is correspondingly much weaker in other areas. This can be explained by the licensor's prior expertise and the product requirements of the geographical areas where he is mainly active. These technologies are as a result perceived to be less flexible by prospective licensees. By comparison Spheripol and Unipol have a more balanced grade coverage.

(¹) Between 10 and 25 %.

- (80) Second, it was mentioned above that today prospective licensees may require larger plants in the interest of substantial economies of scale. According to the Commission's enquiries, the capital cost of a 200 kt plant is only approximately one and a half that of a 100 kt plant. In this respect, it is important to note that some of these alternative technologies have design capacity limitations compared with Spheripol or Unipol which prevent them from satisfying the requirements of some potential licensees.
- (81) Third, in view of the limited number of their licensees to date these alternative technologies lack references and a proven commercial record in the market place. In some cases presence in the market but limited success in licensing can even be seen an indication of a market preference for unipol and Spheripol. In other cases where an improved version of a technology has only recently become available, lack of market knowledge of the technology works to the advantage of established players.
- (82) Fourth, it appears that at least some of these alternative technology providers do not consider PP technology licensing as a core business in the context of their total operations. As a result, these companies have not pursued in the past an aggressive licensing policy. There is no indication that the current strategy of these companies in the PP licensing sector will change in the future.
- (83) Finally, the ability of alternative technology providers to compete against Spheripol and Unipol could be limited by the following factors : (i) lack of catalyst production points sufficient to satisfy future demand for licences ; (ii) relatively small size of licensing infrastructure that could limit a licensor's ability to offer services required by prospective customers, including e.g. engineering services, training, start-up and technical assistance, customer support in product development.
- (84) On the basis of the above it appears that other existing technology providers are not likely significantly to constrain the parties' power to behave to a significant degree independently of their competitors.

Potential entry

- (85) A number of companies are currently engaged in R&D in the PP sector. The focus of this research depends on the expertise and financial or other resources of the company. In most cases, research will tend to focus on market-driven product differentiation, while a company with a substantial fundamental research effort, such as Himont, may also develop new products or processes which can supersede existing technologies and create new market opportunities. A number of companies are currently working on a new generation of catalysts, metallocenes. However, this does not affect the Commission's competition assessment in this case, since the potential of metallocenes cannot be precisely determined and in any case it is not expected to be fully exploited in the short to medium term.
- (86) The parties argue that there are a number of potential entrants who could, within a very short period of time enter the PP technology market. According to the parties, potential entrants can be : (i) PP producers with in-house technology who could decide to develop and license a technology package ; or (ii) PE technology suppliers who could, within a short period of time, adapt their PE process and catalysts, in order to license their technology for PP resin production.
- (87) The parties argue that a number of PP producers are technologically sophisticated and have substantial financial resources. According to the parties, technological sophistication facilitates new entry. It is true that a number of PP producers have their own in-house R&D. However, according to the Commission's investigations, it does not appear likely that a new PP technology package will become available on the market in the short to medium term for the following reasons.
- (88) Some of the PP producers who are mentioned as potential entrants have only developed or are in the process of developing their own catalysts for use in conjunction with a technology package that they have licensed. These producers have not developed nor are in the process of developing a process with the result that their entry into the market with a new technology package is not likely in the short to medium term. A small number of PP producers are currently developing both a process and a cata-

lyst, but research and development work has not yet been completed with the result that entry is uncertain or will at least be delayed for a considerable period of time. Patent issues will also have to be considered and until the vital question of the validity of patent claims has been resolved, entry will be further delayed or even indefinitely postponed.

(89) In the very few cases where proprietary technologies already exist but are not currently licensed, these technologies are subject to one or more of the handicaps mentioned in recitals 72 *et seq.* For instance, were new entry to occur, the lack of track record of the new entrant would pose the same difficulties as for existing alternative providers in competing against Spheripol and Unipol.

(90) As far as PE technology providers are concerned, although it is technically possible to adapt certain PE technology to manufacture PP, according to the Commission's investigations, entry by PE manufacturers into the PP technology market is not likely in the short to medium term for the following reasons: (i) the length of time required for development, commercialization, including grade qualification, and commercial acceptance; (ii) obstacles likely to deter potential entry, including catalyst selection, the need to develop a technology capable of competing with established licensors, the costs involved in develop a technology capable of competing with established licensors, the costs involved in development and commercialization, the difficulty of entering an established market as a new entrant and gaining market acceptance, and not least the uncertain return in relation to one's investment.

(91) It appears therefore that potential entry into the technology market that could significantly constrain market power would not be likely in the short to medium term.

Demand for new licences in western Europe

(92) In the light of the continuing growth of PP demand — which is in fact the fastest growing sector in the pastics business — and the results of the Commission's market enquiries, the Commission has concluded that there will be demand for PP technology licences in western Europe in the period running up to the year 2000. This view was contested by the parties. In particular, the parties submitted a report prepared by independent business consultants in order to demonstrate there

would be negligible, if any, demand for PP technology licences up to the year 2000.

(93) The essential parameters governing the forecast contained in the report were that: (i) current (i.e. 1993) PP capacity in western Europe is [...] million tonnes per annum; (ii) current capacity utilization is [...]; (iii) demand for PP is expected to grow at [...] per annum, which the report indicated lay in the range of other industry commentators; (iv) de-bottlenecking (net of plant closure) could increase the existing pool of capacity to 6,5 million tonnes per annum. Using these parameters the report calculated that 'to bring the supply/demand balance to [...] operating levels about six new plants will be required by 2000'.

(94) Although the Commission does not think it would be necessary, having regard to the following assessment, to challenge the forecast parameters and methodology it is, however, inclined to the view that the report has a greater tendency to underestimate than overestimate the likely future demand for PP technology licences. This view is based on three considerations.

(95) First, in the light of other technical information made available to the Commission and the allowance made in the report itself, the size of future plant closures would seem to be underestimated so that the net capacity increase due to de-bottlenecking may be overstated. Secondly, it would appear that the report assumes that the current net PP exports amounting to 300 000 tonnes will completely disappear. If net exports were to remain at their current level, this would correspond to demand for an additional two PP plants. Thirdly, and more importantly, the report fails to take into consideration the very long lead time required for negotiation of a technology licence before the corresponding new PP plant comes on stream. The parties themselves have pointed out that 'based on industry practice, ... PP technology licences are granted some four years before a new PP plant is commissioned' (point 6.9 of the parties' Response to the Commission's Statement of 28 March 1994). As a result, a forecast for demand for PP technology licences in the period up to the year 2000 would logically have to consider what would be the likely demand for PP up to the year 2004 and not 2000.

(96) Nevertheless, these points can be left aside since it is sufficient to assess the nature of the PP technology licensing demand arising from the report conclusions in more detail. The conclusion of the report is that six new plants each having a capacity of about 160 kilotonnes per annum will be

required. However, the report and parties go on to consider that this will not give rise to demand for PP technology licensing, because two of the six plants will be constructed by producers already having their own technology, a further three plants will be built by producers enjoying an option under existing PP technology licensing contracts to increase capacity on broadly pre-ordained terms, and the sixth producer would be interested in a PP technology licence but the terms and conditions of his licence are likely already to have been determined.

- (97) The Commission disagrees with this line of reasoning. First, even on the basis of the information submitted by the parties there is doubt as to which producers will undertake the required expansion. A second report by different industry consultants submitted by the parties and assessing which companies were most likely to build new plants considered expansion likely by two companies not mentioned in the first report. In any event, it is a matter for each market player to decide individually whether or not it will increase capacity in the expectation of acquiring a share of the expected growth in PP demand in western Europe. In this regard the continued availability of effective competition in the PP technology licensing market is a crucial factor since the large majority of western European PP producers are potential customers for technology licences.

- (98) Secondly, as regards contractual options to increase production, the Commission notes that not all of the PP producers with claimed licensing technology options do in fact enjoy such an option. In any case, as explained above, the Commission considers that the mere existence of an option does not imply that the option holder is not on the market for technology licensing. An option holder is likely to compare offers from other technology providers before making his choice and thus benefits from the presence of effective competition on the technology market,

- (99) In conclusion, the Commission considers that, the analysis carried out above using the material submitted by the parties, demonstrates that significant demand for PP technology licensing can be expected in the near future. In fact, according to the Commission's market enquiries, some PP producers in western Europe are already interested in new PP technology licensing.

Sophisticated buyers as countervailing power to a dominant firm

- (100) The parties argue that potential customers for PP technology in western Europe are predominantly technologically sophisticated with substantial financial resources. As a result, in the event that a dominant technology provider tried to exercise market power, PP producers would have a powerful incentive to take action in order to avoid the costs of dominance. However, in the Commission's view, the ability of these producers to exercise countervailing power to a dominant technology provider should not be overestimated.
- (101) The Commission considers that the development of proprietary technologies as an alternative to buying licences is at most a long-term solution for a very small number of players in view, *inter alia*, of the length of time and substantial investments required for successful completion of development work. In most cases research and development efforts of PP producers are normally related to catalyst improvement. These producers would still require a matched process which they are unlikely to develop in the short to medium term. More importantly, the validity of catalyst improvements under pre-existing patent rights may have to be settled and past experience demonstrates the importance of such rights. In conclusion, the Commission considers that technological sophistication could not act as a significant constraint on the exercise of market power by a dominant technology provider in the short to medium term.

Conclusion

- (102) In the light of the above, the Commission concluded that the original concentration would lead to the creation of a dominant position as a result of which effective competition would be significantly impeded on the market for PP technology. Dominance on the technology market might have a restraining effect on the PP industry's future plans and opportunities for expansion. It would deprive PP manufacturers of the benefits of competition with regard to price, quality and other parameters with negative repercussions on the PP production market. However, in view of the commitments offered by the parties regarding the establishment of Montedison's separate Technipol subsidiary (see recital 116) the Commission's concerns regarding Sophia's acquisition of a dominant position on the PP technology market have been resolved.

(ii) *Production and sale of PP*

- (103) The joint venture will be the world leader in the PP market with a global capacity of [...] million tonnes, representing approximately [...] ⁽¹⁾ of PP world-wide capacity. It will also be the leading supplier of PP in western Europe accounting for about [...] ⁽²⁾ of capacity and about [...] ⁽²⁾ of free sales (i.e. sales excluding captive use).

- (104) Subsequent to the concentration there will be more than 10 producers of PP in western Europe apart from the merged entity. However, Sophia's market share will be more than double the market share of its next competitor, Borealis (about [...] ⁽¹⁾ of capacity and about [...] ⁽¹⁾ of free sales). In terms of capacity, Hoechst will account for about [...] ⁽³⁾, PCD/OMV and Appryl for about [...] ⁽³⁾ each, BASF and ICI together for about [...] ⁽¹⁾. Other suppliers of the western European market, each with a share [...] ⁽³⁾, will include Amoco, Petrofina, Exxon, Repsol, DSM, Vestolen and Solvay.

- (105) As to the impact of the merged entity on the production of different types of PP, the PP businesses of Montedison and Shell are largely complementary: [...] of Shell's free market sales are in commodity homopolymers, while [...] of Montedison's sales are in speciality homopolymers and copolymers. In block copolymers, which as indicated above, could be considered to form part of a distinct product market within PP, there is some overlap between the activities of the parties. However, their combined market share in this area does not exceed their abovementioned share of the entire PP market. Therefore, the following analysis will focus on the effects of the concentration on the market for the production and sale of PP taken as a whole.

Joint venture links between PP producers

- (106) In view of the increasing degree of concentration on the market for the production and sale of PP, it is appropriate to take into consideration the joint-venture links between Montedison and Shell on the one hand and other producers on the other hand. Montedison and Shell have a number of joint ventures with other polyolefin producers, three of

them which relate to PP: Montefina, a joint-venture between Montedison's subsidiary, Himont and Petrofina with a capacity of about 380 kts/y, NSP (Himont/Statoil) with a capacity of about 200 kts/y and ROW (Shell/BASF) with a PP capacity of about 200 kts/y. Each of these joint ventures is based on a 50 % participation by the respective parent companies.

- (107) Through their joint-venture links the parties may be able to influence the competitive behaviour of their joint-venture partners, who are important competitors on the PP production market and thus strengthen their position on that market — the total capacity of the PP producers involved in Montefina, NSP and ROW will account for [...] ⁽⁴⁾ of western European capacity ([...] ⁽⁴⁾ including BASF/ICI). [...]

- (108) In any event, it appears that in the case of Montefina in particular, subsequent to the concentration Sophia would be able to exert a considerable restraining influence on Petrofina's competitive behaviour. Montefina is a 50/50 production joint venture created in 1976 to produce PP using technology licensed by Montedison. It currently has two production lines in Feluy, Belgium, whose output is shared by the parents and independently marketed by each of them. Petrofina's total PP production in western Europe comes from Montefina so that Petrofina's competitive position could be critically influenced by the behaviour of its new joint-venture partner.

- (109) According to Petrofina, the Shell/Montedison transaction would be likely to cause a potential conflict of interest among the three Montefina parents. [...]. Petrofina believes that only a separation of Montefina from Sophia would remedy this non-competitive situation.

- (110) [...]. Under the Montefina shareholding agreement, all important decisions must be agreed to between Himont and Montedison (or its successor in the joint venture). In the Commission's view, this enables Montedison to influence production and other important decisions in the context of the joint venture. With regard to the exchange of technological information, [...] it is the Commission's view that access by Montedison or Shell personnel

⁽¹⁾ Between 10 and 25 %.

⁽²⁾ Between 25 and 50 %.

⁽³⁾ Below 10 %.

⁽⁴⁾ Between 50 and 75 %.

at Montefina to Petrofina's technological information in the context of the joint venture remains and could act as a disincentive to the use of Fina's technology by Petrofina.

Other factors reinforcing Sophia's position on the PP production market

- (111) The merged entity will combine on the one hand Himont's technological leadership and success in the development of new products and advanced polyolefin materials and on the other hand Shell's strong world wide presence as one of the largest petrochemical companies, feedstock availability and considerable financial resources. These to a large extent complementary strengths of the two partners will create a particularly powerful combination. Sophia will be able to offer the broadest product line in the industry, including all families of PP products and a very large variety of PP grades used in a wide range of applications. It will have the financial resources, strengthened by its technology position and licensing income, to focus on the development of specialized products and advanced materials. It could also use general profits to subsidize niche markets. The geographic spread and size of its existing plants are such that Sophia would enjoy particularly competitive production costs and efficient distribution in many geographic locations. In addition, it will have considerable advantages *vis-à-vis* its competitors because of the size of its sales and marketing organization and in particular its position with regard to technology.

- (112) The merged entity will combine the substantial assets and expertise of its parent companies and will have a leading position on the PP technology market, as explained above. The ability to spread R&D costs over a large production base would place the parties at a considerable advantage in relation to other PP producers. The parties' advantageous position will be further strengthened as older PP products are replaced by new products with superior properties.

- (113) Even more importantly, by controlling the two world-wide leading technologies, Sophia would be able to determine the pace of future development on the PP production market, because its licensing policy would be insufficiently controlled by other competitors. Sophia could thus for instance charge supra-competitive royalties or otherwise exercise market power. All innovation and product develop-

ment could be retained for use by Sophia, since there would be no competitive pressure to license other PP producers. Sophia could thus negatively affect the conditions of competition on the PP production market.

Conclusion

- (114) Although the combined market share of the parties is not itself very high, its considerable gap with the market share of the next largest competitor, combined with a number of other factors, that is the network of joint ventures, Sophia's high level of product coverage and especially Sophia's leading position in technology, will substantially reinforce the parties' position on that market. All these factors led the Commission to entertain serious doubts as to the possible creation of a dominant position on the PP production market. However, the Commission's concerns regarding Sophia's acquisition of a dominant position on the technology market have been resolved by the commitments offered by the parties regarding the establishment of Montedison's separate Technipol subsidiary (see recital 116). Moreover, the parties have also offered a commitment specifically relating to the PP production market, namely the dissolution of the Montefina joint venture. Accordingly, in view of those commitments the Commission considers that there is no longer any room for serious concerns as to the creation of a dominant position on this market.

V. MODIFICATIONS TO THE ORIGINAL CONCENTRATION PLAN

(i) The undertakings entered into by the parties

- (115) Following the Commission's communication pursuant to Article 18 of the Merger Regulation, and in order to remove the competition concerns expressed into the following commitments *vis-à-vis* the Commission :

- (116) *PP technology undertaking*

"The notifying parties undertake the following :

Himont's existing PP technology business will remain outside Sophia by its transfer to a company, either new or existing, under the sole control of Montedison (The "Technipol Company"). Shell will have no financial investment in the Technipol Company. The Technipol Company will be

established at the latest within [...] of the Commission's compatibility decision. In the intervening period, the PP technology business will be conducted and kept separate from both Shell and Sophia. This company will be a separate, full-functioning company capable of conducting PP technology business on an ongoing, viable and competitive basis enjoying its own financial resources and capable of continued independent PP technology development. It will be endowed with the following assets and characteristics:

- (i) the existing world-wide PP technology licensing business (including the irrevocable and exclusive right to licence the corresponding intellectual property rights, and the existing sales/marketing/support staff). The existing PP licensing contracts and related PP catalyst supply contracts will be transferred to the Technipol Company. To the extent that the transfer of such contract requires the consent of licensees, Montedison will use all reasonable endeavours in good faith to obtain such consent. The revenue from any transferred contracts will accrue to the Technipol Company [...]. The Technipol Company will be given sufficient resources to finance its R&D efforts. To the extent that such contracts are not transferred, Sophia will subcontract (subject to contractual constraints) in arm's length terms the performance of its obligations under those contracts to the Technipol Company;
- (ii) the corresponding R&D staff and R&D facilities regarding all aspects of the PP technology business including licensing support, technological updating and further development of the PP technology (R&D relates to both PP process and catalyst technology);
- (iii) the Technipol Company will own the intellectual property rights that are the fruits of its own research in PP technology, including in PP catalysts. However, this will not prevent the Technipol Company from entering into sponsored research contracts on usual industry terms. The Technipol Company will also have the exclusive right to enforce the intellectual property rights licensed to it by Sophia, and in particular to decide whether to pursue infringement proceedings against third parties (subject to legal constraints and requirements).
- (iv) Sophia will dedicate exclusively to the Technipol Company such proportion of its catalyst manufacturing capacity as is required by the Technipol Company to supply the needs of its PP technology licensees. Sophia will accordingly manufacture PP catalysts on a toll manufacturing basis on terms and conditions that are customary in the industry. Sophia will not offer for sale such catalysts to any other third party. The Technipol Company and its licensees may obtain PP catalysts from third parties;
- (v) the existing PP pilot plant for PP technology development and testing as well as access to a full scale PP production plant;
- (vi) Sophia may purchase technological improvements to existing PP technology employed by Sophia, other technical services, catalysts or technology from the Technipol Company but only on an arm's length basis and on commercial terms equivalent to those offered to licensees; and
- (vii) neither Sophia nor Shell shall have access to Technipol Company's privileged information of the type that would not be made available to a competitor, in particular regarding business and commercial secrets such as pricing, customer lists and negotiations, sales data.

References to PP technology in these undertakings shall mean Himont's PP process and catalyst technology as currently licensed and any developments in PP technology.

(117) *PP production undertaking*

'Montedison undertakes the following concerning the Montefina joint venture:

- (i) Withdrawal of Himont from Montefina within [...] of the Commission's compatibility decision. This period may be extended by the Commission if the Commission is satisfied that despite *bona fide* efforts by Montedison, Montedison has not been able to sell its investment in Montefina. Each request for an extension shall be duly motivated.

- (ii) Montedison, on behalf of the Technipol Company, shall reaffirm Montefina's right to the benefit of the most favoured licensee clause as regards the catalyst supply and the licence agreements. [...]

No provision of any new licence and no other intellectual property right of Himont or of Sophia shall be construed so as to prevent or hinder Montefina or Petrofina from entering into merger or alliance discussions with a third party, provided that Montefina or Petrofina shall protect the Technipol Company's, Himont's and Sophia's legitimate intellectual property rights and business and commercial secrets.

- (iii) The operations of Montefina will be kept separate from those of Sophia. During the period prior to formal withdrawal, Himont's rights in Montefina will be exercised by Montedison. No person on the Sophia payroll or agent of Sophia shall be present on the Feluy site except with Montefina's prior consent.

During the withdrawal period as well as thereafter, knowledge of the business and commercial secrets of Petrofina and Montedison acquired through the common operation of Montefina shall remain secret and in no circumstances be communicated to Sophia or any other party except any *bona fide* potential purchaser of Montedison's interest in Montefina and its advisers. In particular, no data files, business records or other confidential documents relating to Montefina shall be transferred to Sophia.

- (iv) During the transitional period, Montedison shall undertake every effort consistent with the past functioning of the plant to ensure the smooth, efficient and commercial operation of Montefina, compatible with the reasonable interest of both parties and provided *bona fide* efforts are made by Petrofina to such effect.
- (v) A detailed report shall be provided by Montedison at three monthly intervals on the state of progress of sale negotiations and the withdrawal implementation.'

(118) *Review of PP technology remedy*

'The parties reserve their rights under Community law to request the Commission to review the whole

or any specific undertakings relating to PP technology set out above, [...].'

(119) *Implementation of undertakings*

'These undertakings will take effect from the date of the Commission's decision under Article 8 (2) of Regulation (EEC) No 4064/89.'

(ii) *Assessment of the undertakings*

- (120) These undertakings have been taken into account by the Commission in its assessment of the effects of the proposed concentration. As explained above, were the operation to be implemented as notified, both leading PP technologies, Unipol and Spheeripol would fall within the decisive influence of a single decision centre, namely Shell. However, the implementation of the parties' commitment relating to PP technology will change this anti-competitive situation. Montedison's world-wide PP technology business will be transferred to a separate company, Technipol, which will be structurally and financially independent of Sophia and Shell. Technipol will be endowed with all the necessary assets and characteristics enabling it to operate as an on-going, viable and competitive business. Montedison's PP process and catalyst technology, whether already developed or in the process of development, will be transferred to Technipol. Technipol will be responsible for the licensing, updating and further development of such technology. Any relationship between Technipol and Sophia will be on an arm's length basis and on terms equivalent to those offered to third parties. In particular, Technipol will be expected to undertake its own research efforts in the area of PP process and catalyst technology thus securing its future as an active licensor.

- (121) As described above, the Commission considers that the PP technology commitment offered by the parties will have the result that the business of one of the two leading PP technologies will fall outside the field of influence of Shell and will be able to remain an independent and viable competitor on the market. In order to ensure effective implementation of this commitment, the Commission considers it essential to be kept informed by the parties of progress made in this respect on the basis of quarterly reports prior to the establishment of Technipol and annual reports for the succeeding three years. The nature of these reports is described below.

The first quarterly report on the implementation of the PP technology commitment shall be submitted within four months of the date of this Decision. The report shall describe *inter alia* the detailed steps taken to establish the Technipol company, the expected financial resources of the company, its envisaged tangible and intangible assets and the likely staff resources divided into R&D, scientific and other staff. Letters or documentation sent to existing licensees describing the establishment of Technipol and correspondence relating to the endeavours taken to encourage licensees to transfer existing licence contracts to Technipol shall be appended to the report.

The second quarterly report shall be submitted after the establishment of Technipol and within seven months of the date of this Decision. This report shall take the same form as the first quarterly report except it shall relate to definitive financial resources, assets and staff, etc. In particular, details shall be provided of licence contracts transferred, not transferred (stating the reason therefor) and those pending. The expected financial income accruing to these contracts shall be identified. The financial remuneration provided to Sophia for transferred contracts shall be specified. A copy of the company's opening balance sheet and business plan shall be appended.

For the next three years, an annual report on Technipol shall be submitted within three months of the end of each financial year. These reports shall include :

- a copy of the annual accounts including balance sheets and profit and loss account for the year in question,
- separate identification of licensing revenue for contracts transferred and new contracts gained since establishment,
- details of other income including research sponsored by third parties,
- R&D expenditure and facilities,
- intellectual property rights,
- employee numbers subdivided into R&D, scientific and other staff,

- catalyst sales in volume and value terms,
- a summary of the company's commercial and scientific activities during the year.

Finally, the Commission has taken note of the parties' statement regarding the review of the technology remedy (point 3 of the parties' commitment) and confirms its willingness to undertake such review in accordance with Community competition law.

- (122) The parties' PP technology commitment also has considerable relevance for the assessment of Sophia's position on the PP production market, where the Commission identified potential competition problems arising from Sophia's size, joint-venture links and especially its dominance on the PP technology market. The PP technology remedy along with the parties' commitment regarding Montefina, which will enable Montefina effectively to compete with Sophia, will have the result that the Commission's concerns in relation to the PP production market will also be resolved.

VI. FINAL CONCLUSION

- (123) For the reasons outlined above, the Commission considers that the proposed concentration, as subsequently amended by the inclusion of the commitments offered by the parties, would not lead to the creation or reinforcement of a dominant position on the markets for PP technology and PP production and sale, as a result of which effective competition would be significantly impeded in the common market within the meaning of Article 2 (3) of the Merger Regulation. The concentration can therefore be declared compatible with the common market subject to full compliance with conditions and obligations within the meaning of Article 8 (2) of the Merger Regulation.
- (124) This Decision is without prejudice to the application of the general Community competition rules to pre-existing joint ventures and pre-existing contractual arrangements between the parties to the proposed concentration and third parties, in particular with respect to the implementation of the parties' commitments relating to the future of the Montefina joint venture,

HAS ADOPTED THIS DECISION:

Article 1

Subject to the conditions and obligations contained in the parties' commitments *vis-à-vis* the Commission set out in recital 116 of this Decision, the notified concentration between Shell and Montedison is declared compatible with the common market.

Article 2

The parties are required to keep the Commission informed of the implementation of the commitments set out in recital 116 of this Decision on the basis of the quarterly and annual reports described in recital 121 of this Decision.

Article 3

This Decision is addressed to:

Shell Petroleum NV,
30 Carel van Bylandtlaan,
NL — The Hague,
and
Montedison Nederland NV,
c/o Montecatini SpA,
Foro Buonaparte 31,
I-20121 Milano.

Done at Brussels, 8 June 1994.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION

of 15 December 1994

amending Decision 93/467/EEC authorizing Member States to provide for derogations from certain provisions of Council Directive 77/93/EEC, in respect of oak (*Quercus* L.) logs with bark attached, originating in Canada or the United States of America

(94/812/EC)

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

Having regard to Council Directive 77/93/EC of 21 December 1976 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community⁽¹⁾, as last amended by Directive 94/13/EC⁽²⁾, and in particular Article 14 (1) thereof,

Having regard to the requests made by Belgium, Denmark, Germany, Spain, France, Italy, Luxembourg, Portugal and the Netherlands,

Whereas, pursuant to the provisions of Directive 77/93/EEC, oak (*Quercus* L.) logs with bark attached, originating in North American countries, may, in principle, not be introduced into the Community because of the risk of introducing *Ceratocystis fagacearum* (Bretz) Hunt., the cause of oak wilt;

Whereas Commission Decision 93/467/EEC⁽³⁾ permits derogations for oak (*Quercus* L.) logs with bark attached originating in Canada and the United States of America provided that special conditions are satisfied;

Whereas Decision 93/467/EEC stipulated that the authorization shall expire on 31 December 1994;

Whereas, on the basis of the information available at present, the conditions for the derogation in the aforementioned Decision should be maintained;

Whereas the circumstances justifying the authorization still obtain;

Whereas the authorization should therefore be extended for a further limited period;

Whereas the Commission will ensure that Canada and the United States of America make all technical information available which is necessary to continue to monitor the functioning of the protective measures required under the aforementioned technical conditions;

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

HAS ADOPTED THIS DECISION:

Article 1

Decision 93/467/EEC is hereby amended as follows:

1. In Article 3, '31 December 1994' is replaced by '31 December 1996'
2. In Annex I, part 7, '93/467/EEC' is replaced by '94/812/EC'.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 15 December 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 26, 31. 1. 1977, p. 20.

⁽²⁾ OJ No L 92, 9. 4. 1994, p. 27.

⁽³⁾ OJ No L 217, 27. 8. 1993, p. 49.

CORRIGENDA

Corrigendum to Commission Regulation (EC) No 2954/94 of 5 December 1994 setting detailed rules for application of Council Regulation (EC) No 1503/94 establishing a system of compensation for the additional costs incurred in the marketing of certain fishery products from the Azores, Madeira, the Canary Islands and the French department of Guyana as a result of their very remote location

(Official Journal of the European Communities No L 312 of 6 December 1994)

On page 3, in the third and fifth lines of Article 2 (3):

for: '... per tonne on a maximum...',

read: '... per tonne marketed on a maximum...';

on page 4, the first sentence of Article 4 (1) should read as follows:

'Payments shall be charged to the 1994 financial year'.
