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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 2440/95**of 17 October 1995****establishing unit values for the determination of the customs value of certain perishable goods**

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

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽¹⁾,

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽²⁾, as last amended by Regulation (EC) No 1762/95 ⁽³⁾, and in particular Article 173 (1) thereof,

Whereas Articles 173 to 177 of Regulation (EEC) No 2454/93 provide that the Commission shall periodically establish unit values for the products referred to in the classification in Annex 26 to that Regulation;

Whereas the result of applying the rules and criteria laid down in the abovementioned Articles to the elements

communicated to the Commission in accordance with Article 173 (2) of Regulation (EEC) No 2454/93 is that unit values set out in the Annex to this Regulation should be established in regard to the products in question,

HAS ADOPTED THIS REGULATION:

Article 1

The unit values provided for in Article 173 (1) of Regulation (EEC) No 2454/93 are hereby established as set out in the table in the Annex hereto.

Article 2

This Regulation shall enter into force on 20 October 1995.

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

Done at Brussels, 17 October 1995.

For the Commission

Mario MONTI

Member of the Commission

⁽¹⁾ OJ No L 302, 19. 10. 1992, p. 1.

⁽²⁾ OJ No L 253, 11. 10. 1993, p. 1.

⁽³⁾ OJ No L 171, 21. 7. 1995, p. 8.

ANNEX

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	ECU Fmk SKr	öS FF Bfrs/Lfrs	DM £ Irl £	Dkr Lit	Dr Fl	Pta Esc
1.10	New potatoes 0701 90 51 0701 90 59	a) b) c)	24,79 140,13 225,61	326,97 161,80 955,54	46,47 20,29 20,74	180,25 52 196,34	7 607,80 52,02	4 003,71 4 880,53
1.30	Onions (other than seed) 0703 10 19	a) b) c)	9,24 52,25 84,12	121,91 60,33 356,29	17,33 7,56 7,73	67,21 19 462,35	2 836,71 19,40	1 492,86 1 819,79
1.40	Garlic 0703 20 00	a) b) c)	74,90 423,41 681,70	987,95 488,90 2 887,23	140,40 61,30 62,65	544,65 157 714,63	22 987,47 157,17	12 097,47 14 746,84
1.50	Leeks ex 0703 90 00	a) b) c)	42,20 238,54 384,06	556,59 275,44 1 626,62	79,10 34,54 35,30	306,85 88 853,79	12 950,76 88,55	6 815,51 8 308,12
1.60	Cauliflowers ex 0704 10 10 ex 0704 10 90	a) b) c)	32,94 186,20 299,78	434,46 215,00 1 269,69	61,74 26,96 27,55	239,51 69 356,49	10 108,96 69,12	5 319,97 6 485,06
1.70	Brussels sprouts 0704 20 00	a) b) c)	53,71 303,60 488,81	708,40 350,57 2 070,27	100,67 43,95 44,92	390,54 113 088,55	16 483,06 112,70	8 674,43 10 574,16
1.80	White cabbages and red cabbages 0704 90 10	a) b) c)	33,87 191,45 308,25	446,72 221,07 1 305,53	63,48 27,72 28,33	246,28 71 314,64	10 394,36 71,07	5 470,17 6 668,16
1.90	Sprouting broccoli or calabrese (<i>Brassica oleracea</i> L. convar. <i>botrytis</i> (L.) Alef var. <i>italica</i> Plenck) ex 0704 90 90	a) b) c)	79,26 448,03 721,33	1 045,39 517,33 3 055,11	148,56 64,86 66,30	576,32 166 885,10	24 324,10 166,31	12 800,89 15 604,31
1.100	Chinese cabbage ex 0704 90 90	a) b) c)	81,30 459,56 739,90	1 072,30 530,65 3 133,74	152,38 66,53 68,00	591,15 171 180,40	24 950,16 170,59	13 130,36 16 005,94
1.110	Cabbage lettuce (head lettuce) 0705 11 10 0705 11 90	a) b) c)	156,73 885,94 1 426,38	2 067,17 1 022,98 6 041,22	293,77 128,26 131,09	1 139,62 330 001,28	48 098,87 328,86	25 312,68 30 856,22
1.120	Endives ex 0705 29 00	a) b) c)	21,82 123,34 198,58	287,79 142,42 841,06	40,90 17,86 18,25	158,66 45 942,88	6 696,34 45,78	3 524,04 4 295,81
1.130	Carrots ex 0706 10 00	a) b) c)	28,30 159,97 257,55	373,26 184,71 1 090,83	53,04 23,16 23,67	205,78 59 586,78	8 684,99 59,38	4 570,59 5 571,56
1.140	Radishes ex 0706 90 90	a) b) c)	39,42 222,83 358,76	519,93 257,29 1 519,46	73,89 32,26 32,97	286,63 83 000,39	12 097,60 82,71	6 366,53 7 760,81
1.160	Peas (<i>Pisum sativum</i>) 0708 10 10 0708 10 90	a) b) c)	202,17 1 142,78 1 839,91	2 666,48 1 319,56 7 792,67	378,93 165,45 169,10	1 470,01 425 673,86	62 043,49 424,20	32 651,22 39 801,92

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	ECU Fmk SKr	öS FF Bfrs/Lfrs	DM £ Irl £	Dkr Lit	Dr Fl	Pta Esc
1.170	Beans :							
1.170.1	Beans (<i>Vigna</i> spp., <i>Phaseolus</i> spp.) ex 0708 20 10 ex 0708 20 90	a) b) c)	212,66 1 202,06 1 935,35	2 804,81 1 388,01 8 196,91	398,59 174,03 177,87	1 546,27 447 755,92	65 262,03 446,21	34 345,02 41 866,67
1.170.2	Beans (<i>Phaseolus</i> spp., <i>vulgaris</i> var. <i>Compressus Savi</i>) ex 0708 20 10 ex 0708 20 90	a) b) c)	94,95 536,72 864,13	1 252,34 619,74 3 659,89	177,97 77,70 79,42	690,40 199 921,44	29 139,27 199,23	15 334,93 18 693,32
1.180	Broad beans ex 0708 90 00	a) b) c)	92,83 524,73 844,83	1 224,37 605,90 3 578,17	174,00 75,97 77,65	674,99 195 457,28	28 488,60 194,78	14 992,51 18 275,91
1.190	Globe artichokes 0709 10 10 0709 10 20 0709 10 30	a) b) c)	115,68 653,90 1 052,79	1 525,75 755,04 4 458,93	216,82 94,67 96,76	841,13 243 568,87	35 501,04 242,73	18 682,90 22 774,50
1.200	Asparagus :							
1.200.1	— green ex 0709 20 00	a) b) c)	374,96 2 119,51 3 412,46	4 945,50 2 447,37 14 452,99	702,81 306,85 313,63	2 726,42 789 493,70	115 071,54 786,77	60 557,95 73 820,29
1.200.2	— other ex 0709 20 00	a) b) c)	114,14 645,19 1 038,77	1 505,44 744,99 4 399,57	213,94 93,41 95,47	829,94 240 326,34	35 028,42 239,50	18 434,18 22 471,31
1.210	Aubergines (eggplants) 0709 30 00	a) b) c)	64,31 363,53 585,30	848,24 419,77 2 478,95	120,54 52,63 53,79	467,63 135 412,54	19 736,86 134,94	10 386,79 12 661,52
1.220	Ribbed celery (<i>Apium graveolens</i> L., var. <i>dulce</i> (Mill.) Pers.) ex 0709 40 00	a) b) c)	59,79 337,97 544,14	788,59 390,25 2 304,63	112,07 48,93 50,01	434,75 125 890,24	18 348,95 125,46	9 656,38 11 771,16
1.230	Chantarelles 0709 51 30	a) b) c)	1 046,89 5 917,65 9 527,56	13 807,79 6 833,03 40 352,62	1 962,23 856,74 875,65	7 612,14 2 204 259,51	321 278,72 2 196,65	169 077,26 206 105,60
1.240	Sweet peppers 0709 60 10	a) b) c)	78,79 445,38 717,08	1 039,23 514,28 3 037,09	147,68 64,48 65,90	572,92 165 900,97	24 180,66 165,33	12 725,40 15 512,29
1.250	Fennel 0709 90 50	a) b) c)	73,55 415,75 669,37	970,08 480,06 2 835,01	137,86 60,19 61,52	534,80 154 862,47	22 571,76 154,33	11 878,69 14 480,16
1.270	Sweet potatoes, whole, fresh (intended for human consumption) 0714 20 10	a) b) c)	59,44 335,98 540,93	783,95 387,95 2 291,05	111,41 48,64 49,72	432,18 125 148,24	18 240,81 124,72	9 599,47 11 701,78
2.10	Chestnuts (<i>Castanea</i> spp.), fresh ex 0802 40 00	a) b) c)	83,78 473,58 762,47	1 105,01 546,83 3 229,33	157,03 68,56 70,08	609,18 176 402,14	25 711,24 175,79	13 530,89 16 494,19
2.30	Pineapples, fresh ex 0804 30 00	a) b) c)	66,21 374,28 602,60	873,31 432,17 2 552,21	124,11 54,19 55,38	481,45 139 414,33	20 320,14 138,93	10 693,75 13 035,70

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	ECU Fmk SKr	öS FF Bfrs/Lfrs	DM £ Irl £	Dkr Lit	Dr Fl	Pta Esc
2.40	Avocados, fresh ex 0804 40 10 ex 0804 40 90	a) b) c)	99,09 560,13 901,83	1 306,97 646,78 3 819,56	185,73 81,09 82,88	720,52 208 643,22	30 410,50 207,92	16 003,93 19 508,84
2.50	Guavas and mangoes, fresh ex 0804 50 00	a) b) c)	84,83 479,54 772,07	1 118,92 553,72 3 270,00	159,01 69,43 70,96	616,85 178 623,49	26 035,01 178,01	13 701,28 16 701,89
2.60	Sweet oranges, fresh :							
2.60.1	— Sanguines and semi-sanguines 0805 10 01 0805 10 11 0805 10 21 0805 10 32 0805 10 42 0805 10 51	a) b) c)	26,95 152,34 245,27	355,45 175,90 1 038,80	50,51 22,05 22,54	195,96 56 744,30	8 270,69 56,55	4 352,56 5 305,78
2.60.2	— Navels, Navelines, Navelates, Salustianas, Vernas, Valencia lates, Maltese, Shamoutis, Ovalis, Trovita and Hamlins 0805 10 05 0805 10 15 0805 10 25 0805 10 34 0805 10 44 0805 10 55	a) b) c)	43,20 244,20 393,17	569,80 281,97 1 665,20	80,97 35,35 36,13	314,12 90 961,64	13 257,99 90,65	6 977,19 8 505,22
2.60.3	— Others 0805 10 09 0805 10 19 0805 10 29 0805 10 36 0805 10 46 0805 10 59	a) b) c)	47,97 271,15 436,55	632,67 313,09 1 848,95	89,91 39,26 40,12	348,79 100 998,75	14 720,93 100,65	7 747,09 9 443,72
2.70	Mandarins (including tangerines and satsumas), fresh; clementines, wilkings and similar citrus hybrids, fresh :							
2.70.1	— Clementines ex 0805 20 11 ex 0805 20 21	a) b) c)	53,21 300,78 484,26	701,81 347,30 2 051,00	99,73 43,55 44,51	386,90 112 035,78	16 329,62 111,65	8 593,68 10 475,72
2.70.2	— Monreales and Satsumas ex 0805 20 13 ex 0805 20 23	a) b) c)	49,38 279,13 449,40	651,29 322,30 1 903,37	92,56 40,41 41,30	359,05 103 971,57	15 154,23 103,61	7 975,12 9 721,69
2.70.3	— Mandarines and wilkings ex 0805 20 15 ex 0805 20 25	a) b) c)	40,18 227,12 365,67	529,95 262,26 1 548,75	75,31 32,88 33,61	292,16 84 600,60	12 330,84 84,31	6 489,27 7 910,44
2.70.4	— Tangerines and others ex 0805 20 17 ex 0805 20 19 ex 0805 20 27 ex 0805 20 29	a) b) c)	46,63 263,59 424,38	615,03 304,36 1 797,40	87,40 38,16 39,00	339,06 98 183,01	14 310,53 97,84	7 531,11 9 180,44
2.85	Limes (<i>Citrus aurantifolia</i>), fresh ex 0805 30 90	a) b) c)	110,48 624,47 1 005,42	1 457,10 721,07 4 258,31	207,07 90,41 92,40	803,29 232 609,74	33 903,70 231,81	17 842,28 21 749,79

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	ECU Fmk SKr	δS FF Bfrs/Lfrs	DM £ Irl £	Dkr Lit	Dr Fl	Pta Esc
2.90	Grapefruit, fresh :							
2.90.1	— white	a)	40,59	535,37	76,08	295,15	12 456,97	6 555,65
	ex 0805 40 10	b)	229,45	264,94	33,22	85 465,97	85,17	7 991,35
	ex 0805 40 90	c)	369,41	1 564,60	33,95			
2.90.2	— pink	a)	61,03	804,97	114,40	443,78	18 730,08	9 856,96
	ex 0805 40 10	b)	344,99	398,36	49,95	128 505,11	128,06	12 015,66
	ex 0805 40 90	c)	555,44	2 352,50	51,05			
2.100	Table grapes	a)	—	—	—	—	—	—
	0806 10 21	b)	—	—	—	—	—	—
	0806 10 29	c)	—	—	—	—	—	—
	0806 10 30							
	0806 10 61							
	0806 10 69							
2.110	Water melons	a)	130,55	1 721,84	244,69	949,24	40 063,72	21 084,07
	0807 10 10	b)	737,94	852,08	106,84	274 872,98	273,92	25 701,54
		c)	1 188,09	5 032,01	109,19			
2.120	Melons (other than water melons) :							
2.120.1	— Amarillo, Cuper, Honey Dew (including Cantalene), Onteniente, Piel de Sapo (including Verde Liso), Rochet, Tendral, Futuro	a)	38,16	503,34	71,53	277,49	11 711,60	6 163,39
	ex 0807 10 90	b)	215,72	249,09	31,23	80 352,04	80,07	7 513,18
		c)	347,31	1 470,98	31,92			
2.120.2	— other	a)	113,18	1 492,80	212,14	822,97	34 734,33	18 279,41
	ex 0807 10 90	b)	639,77	738,74	92,62	238 308,60	237,49	22 282,65
		c)	1 030,05	4 362,63	94,67			
2.140	Pears							
2.140.1	Pears — Nashi (<i>Pyrus pyrifolia</i>)	a)	—	—	—	—	—	—
	ex 0808 20 31	b)	—	—	—	—	—	—
	ex 0808 20 37	c)	—	—	—	—	—	—
	ex 0808 20 41							
2.140.2	Other	a)	—	—	—	—	—	—
	ex 0808 20 10	b)	—	—	—	—	—	—
	ex 0808 20 31	c)	—	—	—	—	—	—
	ex 0808 20 37							
	0808 20 41							
2.150	Apricots	a)	77,42	1 021,12	145,11	562,94	23 759,42	12 503,72
	0809 10 10	b)	437,63	505,32	63,36	163 010,91	162,45	15 242,06
	0809 10 50	c)	704,59	2 984,18	64,76			
2.160	Cherries	a)	87,78	1 157,77	164,53	638,27	26 938,80	14 176,91
	0809 20 11	b)	496,19	572,94	71,84	184 824,30	184,19	17 281,69
	0809 20 19	c)	798,87	3 383,52	73,42			
	0809 20 21							
	0809 20 29							
	0809 20 71							
	0809 20 79							
2.170	Peaches	a)	56,79	749,03	106,44	412,93	17 428,28	9 171,87
	0809 30 19	b)	321,01	370,67	46,48	119 573,62	119,16	11 180,53
	0809 30 59	c)	516,84	2 188,99	47,50			
2.180	Nectarines	a)	194,87	2 570,22	365,25	1 416,94	59 803,65	31 472,48
	ex 0809 30 11	b)	1 101,53	1 271,92	159,47	410 306,58	408,89	38 365,03
	ex 0809 30 51	c)	1 773,48	7 511,34	163,00			

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	ECU Fmk SKr	6S FF Bfrs/Ltrs	DM £ lrl £	Dkr Lit	Dr Fl	Pta Esc
2.190	Plums 0809 40 10 0809 40 40	a)	102,42	1 350,91	191,98	744,75	31 432,93	16 542,00
		b)	578,96	668,52	83,82	215 658,04	214,91	20 164,74
		c)	932,15	3 947,98	85,67			
2.200	Strawberries 0810 10 10 0810 10 90	a)	362,04	4 775,09	678,59	2 632,47	111 106,46	58 471,27
		b)	2 046,47	2 363,04	296,28	762 289,70	759,66	71 276,63
		c)	3 294,88	13 954,98	302,82			
2.205	Raspberries 0810 20 10	a)	762,88	10 061,93	1 429,90	5 547,07	234 120,24	123 208,93
		b)	4 312,27	4 979,33	624,32	1 606 274,36	1 600,73	150 192,00
		c)	6 942,86	29 405,51	638,10			
2.210	Fruit of the species <i>Vaccinium myrtillus</i> 0810 40 30	a)	145,17	1 914,71	272,10	1 055,56	44 551,22	23 445,68
		b)	820,59	947,53	118,80	305 661,24	304,61	28 580,34
		c)	1 321,17	5 595,64	121,42			
2.220	Kiwi fruit (<i>Actinidia chinensis</i> Planch.) 0810 90 10	a)	117,83	1 554,17	220,86	856,80	36 162,38	19 030,94
		b)	666,08	769,11	96,43	248 106,31	247,25	23 198,77
		c)	1 072,40	4 542,00	98,56			
2.230	Pomegranates ex 0810 90 85	a)	76,99	1 015,41	144,30	559,79	23 626,45	12 433,74
		b)	435,18	502,49	63,00	162 098,58	161,54	15 156,76
		c)	700,65	2 967,48	64,39			
2.240	Khakis (including Sharon fruit) ex 0810 90 85	a)	222,59	2 935,83	417,21	1 618,50	68 310,65	35 949,40
		b)	1 258,22	1 452,85	182,16	468 672,15	467,05	43 822,41
		c)	2 025,76	8 579,82	186,18			
2.250	Lychees ex 0810 90 30	a)	420,10	5 540,87	787,41	3 054,64	128 924,49	67 848,25
		b)	2 374,67	2 742,00	343,80	884 537,35	881,48	82 707,19
		c)	3 823,27	16 192,92	351,38			

COMMISSION REGULATION (EC) No 2441/95
of 18 October 1995

**suspending Regulations (EC) No 986/95, (EC) No 987/95 and (EC) No 1178/95,
opening standing invitations to tender for the export of cereals held by the
intervention agencies**

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 1863/95⁽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 procedures and conditions for the disposal of cereals held by the intervention agencies;

Whereas for economical reasons, it is appropriate to suspend until 9 November 1995 the period during which the invitations to tender under Commission Regulations (EC) No 986/95⁽⁵⁾, (EC) No 987/95⁽⁶⁾ and (EC) No 1178/95⁽⁷⁾ remain open;

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 tenders under Regulations (EC) No 986/95, (EC) No 987/95 and (EC) No 1178/95 are hereby suspended until 9 November 1995.

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, 18 October 1995.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ No L 179, 29. 7. 1995, 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 100, 3. 5. 1995, p. 4.

⁽⁶⁾ OJ No L 100, 3. 5. 1995, p. 9.

⁽⁷⁾ OJ No L 118, 25. 5. 1995, p. 25.

COMMISSION REGULATION (EC) No 2442/95

of 18 October 1995

suspending Regulation (EC) No 1088/95 on the opening of an invitation to tender
for the refund for the export of cereals to all third countries

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 1863/95⁽²⁾, and in particular Article 5 thereof,

Having regard to Commission Regulation (EC) No
1501/95 of 29 June 1995 laying down certain detailed
rules for the application of Council Regulation (EEC) No
1766/92 on the granting of exports on cereals and the
measures to be taken in the event of disturbance on the
market for cereals⁽³⁾, and in particular Article 4 (2)
thereof,

Whereas Commission Regulation (EC) No 1088/95⁽⁴⁾
provides for the issuing of an invitation to tender for
export refunds;

Whereas for economical reasons, it is appropriate to
suspend until 9 November 1995 this invitation to tender;

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 tender under Regulation (EC) No 1088/95 is hereby
suspended until 9 November 1995.

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, 18 October 1995.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ No L 179, 29. 7. 1995, p. 1.

⁽³⁾ OJ No L 147, 30. 6. 1995, p. 7.

⁽⁴⁾ OJ No L 109, 16. 5. 1995, p. 13.

COMMISSION REGULATION (EC) No 2443/95

of 18 October 1995

fixing the export refunds on white sugar and raw sugar exported in its unaltered 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 1101/95⁽²⁾, and in particular point (a) of the first subparagraph of Article 19 (4) thereof,

Whereas Article 19 of Regulation (EEC) No 1785/81 provides that the difference between quotations or prices on the world market for the products listed in Article 1 (1) (a) of that Regulation and prices for those products within the Community may be covered by an export refund;

Whereas Regulation (EEC) No 1785/81, provides that when refunds on white and raw sugar, undenatured and exported in its unaltered state are being fixed account must be taken of the situation on the Community and world markets in sugar and in particular of the price and cost factors set out in Article 17a of that Regulation; whereas the same Article provides that the economic aspect of the proposed exports should also be taken into account;

Whereas the refund on raw sugar must be fixed in respect of the standard quality; whereas the latter is defined in Article 1 of Council Regulation (EEC) No 431/68 of 9 April 1968 determining the standard quality for raw sugar and fixing the Community frontier crossing point for calculating cif prices for sugar⁽³⁾, as amended by Regulation (EC) No 3290/94⁽⁴⁾; whereas, furthermore, this refund should be fixed in accordance with Article 17a (4) of Regulation (EEC) No 1785/81; whereas candy sugar is defined in Commission Regulation (EC) No 2135/95 of 7 September 1995 laying down detailed rules of application for the grant of export refunds in the sugar sector⁽⁵⁾; whereas the refund thus calculated for sugar containing added flavouring or colouring matter must apply to their sucrose content and, accordingly, be fixed per 1 % of the said content;

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

Whereas, in special cases, the amount of the refund may be fixed by other legal instruments;

Whereas Council Regulation (EEC) No 990/93⁽⁶⁾, as amended by Regulation (EC) No 1380/95⁽⁷⁾, 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 representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92⁽⁸⁾, as last amended by Regulation (EC) No 150/95⁽⁹⁾, 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⁽¹⁰⁾, as last amended by Regulation (EC) No 1053/95⁽¹¹⁾;

Whereas the refund must be fixed every two weeks; whereas it may be altered in the intervening period;

Whereas it follows from applying the rules set out above to the present situation on the market in sugar and in particular to quotations or prices for sugar within the Community and on the world market that the refund should be as set out in the Annex hereto;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for 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, are hereby fixed to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 19 October 1995.

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 110, 17. 5. 1995, p. 1.

⁽³⁾ OJ No L 89, 10. 4. 1968, p. 3.

⁽⁴⁾ OJ No L 349, 31. 12. 1994, p. 105.

⁽⁵⁾ OJ No L 214, 8. 9. 1995, p. 16.

⁽⁶⁾ OJ No L 102, 28. 4. 1993, p. 14.

⁽⁷⁾ OJ No L 138, 21. 6. 1995, p. 1.

⁽⁸⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁹⁾ OJ No L 22, 31. 1. 1995, p. 1.

⁽¹⁰⁾ OJ No L 108, 1. 5. 1993, p. 106.

⁽¹¹⁾ OJ No L 107, 12. 5. 1995, p. 4.

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

Done at Brussels, 18 October 1995.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

to the Commission Regulation of 18 October 1995 fixing the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Amount of refund ⁽¹⁾
	— ECU/100 kg —
1701 11 90 100	38,29 ⁽¹⁾
1701 11 90 910	38,89 ⁽¹⁾
1701 11 90 950	⁽²⁾
1701 12 90 100	38,29 ⁽¹⁾
1701 12 90 910	38,89 ⁽¹⁾
1701 12 90 950	⁽²⁾
	— ECU/1 % of sucrose × 100 kg —
1701 91 00 000	0,4162
	— ECU/100 kg —
1701 99 10 100	41,62
1701 99 10 910	42,28
1701 99 10 950	42,28
	— ECU/1 % of sucrose × 100 kg —
1701 99 90 100	0,4162

⁽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 17a (4) of Regulation (EEC) No 1785/81.

⁽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 amended Regulation (EEC) No 990/93 are observed.

COMMISSION REGULATION (EC) No 2444/95**of 18 October 1995****fixing the representative prices and the additional import duties for molasses in the sugar sector**

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 market in sugar⁽¹⁾, as last amended by Regulation (EC) No 1101/95⁽²⁾,

Having regard to Commission Regulation (EC) No 1422/95 of 23 June 1995 laying down detailed rules of application for imports of molasses in the sugar sector and amending Regulation (EEC) No 785/68⁽³⁾, and in particular Articles 1 (2) and 3 (1) thereof,

Whereas Regulation (EC) No 1422/95 stipulates that the cif import price for molasses, hereinafter referred to as the 'representative price', should be set in accordance with Commission Regulation (EEC) No 785/68⁽⁴⁾; whereas that price should be fixed for the standard quality defined in Article 1 of the above Regulation;

Whereas the representative price for molasses is calculated at the frontier crossing point into the Community, in this case Amsterdam; whereas that price must be based on the most favourable purchasing opportunities on the world market established on the basis of the quotations or prices on that market adjusted for any deviations from the standard quality; whereas the standard quality for molasses is defined in Regulation (EEC) No 785/68;

Whereas, when the most favourable purchasing opportunities on the world market are being established, account must be taken of all available information on offers on the world market, on the prices recorded on important third-country markets and on sales concluded in international trade of which the Commission is aware, either directly or through the Member States; whereas, under Article 7 of Regulation (EEC) No 785/68, the Commission may for this purpose take an average of several prices as a basis, provided that this average is representative of actual market trends;

Whereas the information must be disregarded if the goods concerned are not of sound and fair marketable quality or

if the price quoted in the offer relates only to a small quantity that is not representative of the market; whereas offer prices which can be regarded as not representative of actual market trends must also be disregarded;

Whereas, if information on molasses of the standard quality is to be comparable, prices must, depending on the quality of the molasses offered, be increased or reduced in the light of the results achieved by applying Article 6 of Regulation (EEC) No 785/68;

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

Whereas where there is a difference between the trigger price for the product in question and the representative price, additional import duties should be fixed under the conditions set out in Article 3 of Regulation (EC) No 1422/95; whereas should the import duties be suspended pursuant to Article 5 of Regulation (EC) No 1422/95, specific amounts for these duties should be fixed;

Whereas application of these provisions will have the effect of fixing the representative prices and the additional import duties for the products in question as set out in the Annex to this Regulation;

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 representative prices and the additional duties applying to imports of the products referred to in Article 1 of Regulation (EC) No 1422/95 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 19 October 1995.

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 110, 17. 5. 1995, p. 1.

⁽³⁾ OJ No L 141, 24. 6. 1995, p. 12.

⁽⁴⁾ OJ No L 145, 27. 6. 1968, p. 12.

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

Done at Brussels, 18 October 1995.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

fixing the representative prices and additional import duties applying to imports of molasses in the sugar sector

CN code	Amount of the representative price in ECU per 100 kg net of the product in question	Amount of the additional duty in ECU per 100 kg net of the product in question	Amount of the duty to be applied to imports in ECU per 100 kg net of the product in question in the event of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 ⁽²⁾
1703 10 00 ⁽¹⁾	8,62	—	0,00
1703 90 00 ⁽¹⁾	9,27	—	0,00

⁽¹⁾ For the standard quality as defined in Article 1 of Regulation (EEC) No 785/68.

⁽²⁾ This amount replaces, in accordance with Article 5 of Regulation (EC) No 1422/95, the rate of the Common Customs Tariff duty fixed for these products.

COMMISSION REGULATION (EC) No 2445/95

of 18 October 1995

fixing the maximum export refund for white sugar for the 12th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1813/95

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 1101/95⁽²⁾, and in particular the second subparagraph of Article 17 (5) (b) thereof,

Whereas Commission Regulation (EC) No 1813/95 of 26 July 1995 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 1813/95 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 12th partial invitation to tender, the provisions set out in Article 1 should be adopted;

Whereas Council Regulation (EEC) No 990/93⁽⁴⁾, as amended by Regulation (EC) No 1380/95⁽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 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 12th partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1813/95 the maximum amount of the export refund is fixed at ECU 46,200 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 amended Regulation (EEC) No 990/93 are observed.

Article 2

This Regulation shall enter into force on 19 October 1995.

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

Done at Brussels, 18 October 1995.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 110, 17. 5. 1995, p. 1.

⁽³⁾ OJ No L 175, 27. 7. 1995, p. 12.

⁽⁴⁾ OJ No L 102, 28. 4. 1993, p. 14.

⁽⁵⁾ OJ No L 138, 21. 6. 1995, p. 1.

COMMISSION REGULATION (EC) No 2446/95
of 18 October 1995

determining the extent to which applications lodged in October 1995 for certain milk and milk products covered by the arrangements provided for in the free-trade Agreements concluded by the Community with the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania can be accepted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1713/95 of 13 July 1995 laying down detailed rules for the application to milk and milk products of the arrangements provided for in the Association Agreements between the Community and the Baltic States⁽¹⁾, and in particular Article 4 (4) thereof,

Whereas the applications for import licences lodged for the products referred to in Regulation (EC) No 1713/95 concern quantities greater than those available for certain products; whereas, therefore, reduction percentages should be fixed for certain of the quantities applied for the period 1 October to 31 December 1995,

HAS ADOPTED THIS REGULATION :

Article 1

Applications for import licences for products falling within the CN codes listed in the Annex hereto, lodged under Regulation (EC) No 1713/95 for the period 1 October to 31 December 1995 shall be accepted, per country of origin, up to the percentages indicated.

Article 2

This Regulation shall enter into force on 23 October 1995.

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

Done at Brussels, 18 October 1995.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 163, 14. 7. 1995, p. 5.

ANNEX

Country	Republic of Estonia			Republic of Latvia				Republic of Lithuania			
	0402 10 19 0402 21 19	0405 00 11 0405 00 19 Butter	0406 90 Cheeses	0402 10 19 0402 21 19	0405 00 11 0405 00 19 Butter	0406 10	0406 90 21 0406 90 23	0402 10 19 0402 21 19	0405 00 11 0405 00 19 Butter	0406 10 80	0406 30 31 0406 30 39 0406 90 01
CN codes											
in %	4,4	4,6	100,—	13,8	10,5	100,—	80,—	4,3	3,—	100,—	52,8

COMMISSION REGULATION (EC) No 2447/95

of 18 October 1995

establishing the standard import values for determining the entry price of
certain fruit and vegetables

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

Having regard to Commission Regulation (EC) No
3223/94 of 21 December 1994 on detailed rules for the
application of the import arrangements for fruit and
vegetables ⁽¹⁾, as last amended by Regulation (EC) No
1740/95 ⁽²⁾, and in particular Article 4 (1) thereof,

Having regard to Council Regulation (EEC) No 3813/92
of 28 December 1992 on the unit of account and the
conversion rates to be applied for the purposes of the
common agricultural policy ⁽³⁾, as last amended by Regu-
lation (EC) No 150/95 ⁽⁴⁾, and in particular Article 3 (3)
thereof,

Whereas Regulation (EC) No 3223/94 lays down,
pursuant to the outcome of the Uruguay Round multi-
lateral trade negotiations, the criteria whereby the
Commission fixes the standard values for imports from

third countries, in respect of the products and periods
stipulated in the Annex thereto;

Whereas, in compliance with the above criteria, the stan-
dard import values must be fixed at the levels set out in
the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of
Regulation (EC) No 3223/94 shall be fixed as indicated in
the Annex hereto.

Article 2

This Regulation shall enter into force on 19 October
1995.

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

Done at Brussels, 18 October 1995.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ No L 167, 18. 7. 1995, p. 10.

⁽³⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 18 October 1995 establishing the standard import values
for determining the entry price of certain fruit and vegetables

(ECU/100 kg)			(ECU/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value	CN code	Third country code ⁽¹⁾	Standard import value
0702 00 40	052	54,3	0806 10 40	052	109,2
	060	80,2		064	75,6
	064	59,6		066	49,4
	066	41,7		220	110,8
	068	62,3		400	154,7
	204	50,9		412	132,4
	212	117,9		512	186,0
	624	75,0		600	64,5
	999	67,7		624	123,2
ex 0707 00 30	052	70,1	0808 10 92, 0808 10 94, 0808 10 98	999	111,8
	053	166,9		039	53,5
	060	61,0		064	76,4
	066	53,8		388	65,5
	068	60,4		400	79,9
	204	49,1		404	56,3
	624	207,3		508	68,4
	999	95,5		512	29,3
				524	57,4
0709 90 79	052	55,6	0808 20 57	528	48,0
	204	77,5		800	56,0
	624	196,3		804	40,6
	999	109,8		999	57,4
0805 30 30	052	72,4		052	95,4
	388	57,5		064	78,6
	400	151,4		388	79,6
	512	54,8		512	89,7
	520	66,5		528	84,1
	524	95,3		800	55,8
	528	60,5		804	112,9
	600	54,7		999	85,2
	624	78,0			
	999	76,8			

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 3079/94 (OJ No L 325, 17. 12. 1994, p. 17). Code '999' stands for 'of other origin.'

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 21 December 1994

declaring a concentration to be compatible with the common market

(Case No IV/M.484 — Krupp/Thyssen/Riva/Falck/Tadfin/AST)

(Only the German text is authentic)

(Text with EEA relevance)

(95/421/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, and in particular Article 8 (2) thereof ⁽¹⁾,

Having regard to the Commission's decision of 21 October 1994 to initiate proceedings in this case,

After consultation of the Advisory Committee on Concentrations ⁽²⁾,

Whereas :

- (1) On 22 July 1994 the proposed acquisition of the Italian steel producer Acciai Speciali Terni SpA (AST) by a German/Italian consortium, involving Fried. Krupp AG Hoesch-Krupp (Krupp) and Thyssen Stahl AG (Thyssen) on the German side and AFL Falck (Falck), Tadfin SpA (Tadfin) and FIRE. Finanziaria SpA (Riva) on the Italian side, was notified under Regulation (EEC) No 4064/89

(hereinafter referred to as 'the Merger Regulation'). Since the notification was at first incomplete, the periods referred to in Article 10 of the Merger Regulation began to run from 21 September 1994, the day following the day of receipt of the complete information.

I. THE PARTIES

- (2) Krupp comprises a group of companies, the principal activities of which include steelmaking, mechanical engineering, process plant engineering, automotive parts and components manufacture, and trading and services.

The main activities of Thyssen are the manufacture and distribution of steel products, including crude steel production and flat and long products.

Riva is the holding company of the Riva Group, the companies within which are engaged in the manufacture and distribution of steel products.

Falck is the holding company of the Falck Group, the companies within which are engaged in the manufacture and distribution of steel products, the generation and sale of electricity, real estate administration and environmental technology.

⁽¹⁾ OJ No L 395, 30. 12. 1989, p. 1 ; corrected version OJ No L 257, 21. 9. 1990, p. 13.

⁽²⁾ OJ No C 274, 19. 10. 1995, p. 3.

Tadfin is a holding company which holds shares in companies which are active in the distribution of steel products and in real estate.

AST was created on 1 January 1994 when the steel-making activities of Ilva were separated into three companies in preparation for their subsequent sale. The main activity of AST is the production of special steel.

II. THE OPERATION

- (3) The sale of AST forms part of the programme for the privatization of the Ilva Group, endorsed by IRI in September 1993, in the context of which the Commission approved State subsidies to Ilva by a decision adopted on 12 April 1994, subject to the condition that the privatization be completed by the end of 1994. Following this decision, the stainless steel flat products business was transferred from Ilva to AST and sold by competitive tender. The successful tender was submitted by the above-mentioned German-Italian consortium. Thyssen was not a direct party to the consortium, but cooperated closely in the negotiations.
- (4) For the purpose of acquiring AST and in order to take over the industrial management of that company, Krupp on the one hand and the Italian partners on the other (Riva, Tadfin and Falck) have founded a joint venture, KAI Acciai srl (KAI). The shares in KAI are divided equally between Krupp (50 %) and the Italian partners (50 %).
- (5) The interests of the Italian partners in KAI will be exercised through a vehicle company, F.A.R. Acciai srl (FAR), created expressly for that purpose. In FAR, Riva and Tadfin will each hold an interest of 42 % and Falck an interest of 16 %. FAR is to exercise the voting rights resulting from the 50 % interest in KAI. Within FAR, all major decisions are taken by the board of directors comprising five members, of whom Riva and Tadfin will each nominate two and Falck one. The decisions need the approval of the majority of the members.
- (6) Krupp and Thyssen have agreed the transfer from Krupp of its 50 % share in KAI to Krupp Thyssen Rostfrei GmbH (KTR, also called RSH), a joint venture between Krupp and Thyssen, in which both partners have concentrated their flat stainless steel production. According to the provisions of the

shareholders' agreement, Thyssen will have a veto right on fundamental decisions (such as product and market strategy, principles of financing, appointment of managers and large-scale investments) and will therefore have joint control with Krupp over KTR. The creation of KTR was authorized by the Commission under Article 66 of the ECSC Treaty on 26 July 1994.

- (7) AST's production consists primarily of stainless steel flat products, both cold rolled and hot rolled, cold-rolled electrical sheet and welded tubes manufactured by a subsidiary of AST. More than (...) ⁽¹⁾ of the total turnover of the AST group is achieved with stainless steel flat products and electrical sheet. Of these products, cold-rolled stainless steel flat products, electrical sheet (both less than 500 mm wide) and welded tubes fall within the EC Treaty, and hence are covered by the Merger Regulation and this Decision. In addition, titanium products, hammer forgings and drop forgings manufactured by subsidiaries of AST fall within the EC Treaty.

By contrast, cold-rolled stainless steel flat products, electrical sheet (500 mm or more) and hot-rolled stainless steel flat products are covered by the ECSC Treaty and will be the subject of a separate Commission decision.

III. CONCENTRATION

JOINT CONTROL OF AST

- (8) The notified operation comprises several steps to acquire control of AST by the members of the German/Italian consortium :
 - foundation of FAR by the Italian partners in the consortium in order to hold a 50 % stake in KAI,
 - creation of KAI for the purpose of acquiring all shares in AST and in order to take over the industrial management of AST,
 - assignment of Krupp's 50 % interest in KAI to KTR.

⁽¹⁾ In the published version of the Decision, some information has hereinafter been omitted, pursuant to the provisions of Article 17 (2) of Regulation (EEC) No 4064/89. Therefore, all (...) replace figures or information deleted for business secret reasons.

- (9) The three Italian partners in the consortium — Riva, Falck and Tadfin — have founded FAR exclusively as a vehicle to act with one voice in KAI's decision-making. Although none of the Italian companies is able to block any decision in FAR, this fact is immaterial owing to the instrument character of FAR. In the basic agreement between the Italian partners to the consortium and Krupp of 29 April 1994, the Italians committed themselves to set up FAR solely for the purposes of the operation in question. This reflects the intention of both contracting partners, the Italian partners and Krupp, to enable the Italian side to act within KAI — the management company of AST — with one voice. The Italian partners thereby ensure that, together, they can exercise a decisive influence over KAI and hence over AST. They will therefore exercise a decisive influence with the German side and there can never be a situation where KTR exercises sole control through the inability of the Italian partners to reach a common position in any decision. Thus it can be concluded that the three Italian partners exercise joint control over KAI and thereby over AST.

- (10) KTR and FAR will each hold 50 % of the shares in KAI, whose exclusive purpose is to acquire the shares of AST and to take over the industrial management of AST. Within KAI, decisions are taken by the board of directors comprising six members, of which KTR and FAR will each appoint three. Decisions need the approval of five members. This means that in KAI each shareholder is able to block a decision. Since KAI, just like FAR, is only of instrument character as regards control of AST, it may be seen that KTR, Riva, Tadfin and Falck will have joint control of AST.

- (11) KTR is a joint venture between Krupp and Thyssen in which both partners have combined their stainless steel flat products (but no other products such as electrical sheet) with effect from 1 October 1994. Since KTR is jointly controlled by Krupp and Thyssen, Krupp's holding in KAI comes under the joint control of Krupp and Thyssen once it is assigned to KTR. Consequently, Thyssen will also have a decisive influence over the decisions taken by KAI with regard to AST, with the result that Krupp, Thyssen, Riva, Tadfin and Falck will jointly control AST.

FULL-FUNCTION JOINT VENTURE

- (12) AST has all the assets and resources necessary to enable it to perform all the functions of an autonomous economic entity. It will continue to perform activities in the area of stainless steel and other steel production markets. It supplies (...) of its stainless steel flat products and (...) of its electrical sheet products direct to customers. The remainder is sold by distributors, including own-group trading companies, and by external agencies.
- (13) AST supplies, partially on the basis of existing contracts, stainless steel flat products to two distribution companies belonging to some of the parties. The deliveries are not of significance when set against all AST's deliveries. Its deliveries to the parties account for (...) in the case of cold-rolled stainless steel flat products and (...) in the case of electrical sheet. Consequently, the fact that AST will supply a relatively small part of its production to its parent companies does not disqualify AST as a full-function joint venture.

ABSENCE OF COORDINATION OF COMPETITIVE BEHAVIOUR

- (14) AST is mainly active as a producer of stainless steel flat products. The Italian side of the consortium (Riva, Falck and Tadfin) does not produce such products, whereas Krupp and Thyssen have transferred their entire flat stainless steel production to KTR. Consequently, of the parent companies of AST only one is active in that market, together with AST. There is therefore no relevant coordination.
- (15) AST also produces electrical sheet. Subsidiaries of Krupp (Hoesch Hohenlimburg GmbH) and of Thyssen (EBG) likewise manufacture electrical sheet. The parties have informed the Commission that Krupp will withdraw from electric sheet production. Workers in that area will be transferred to the Thyssen subsidiary (EBG). At the same time Krupp will acquire a minority shareholding of less than 25 % in EBG. In addition, on the Italian side of the consortium only Falck produces relatively small quantities of electrical sheet. Therefore, in the market of for electrical sheet Thyssen and Falck will remain active. However, since, according to the parties, the market share of Falck in the west European market (EC and EFTA) is very low (...) the risk of coordination between Thyssen and Falck is negligible in the context of considering the operation as cooperative.

(16) According to the parties a substantial part of their own production of stainless steel flat products is sold direct by mills to final consumers (more than (...) for each party), whereas the remainder is distributed by trading companies (stockholders) and service centres. Steel stockholders perform the wholesale function of buying material in bulk from manufacturers, stocking it and reselling it in smaller quantities. Stockholders have developed in house-processing facilities such as machines to slit steel strips in order to improve their service to customers. Service centres mainly perform materials processing and transformation activities (slitting, flattening, surface finishing and cutting to a shape) on their own account and for third parties, and subsequently they either return the processed products to the commissioning company or resell the materials in smaller quantities to customers who need only such quantities. For stockholding and most of the related service activities, a quick delivery and a short distance from the place to be supplied or serviced is essential. Thus the effect of the operation with regard to the distribution markets for stainless steel products has to be assessed at a regional level. As regards distribution, AST is active mainly in Italy. Of the parent companies, only Tadin is also active in the Italian stockholder market for stainless steel. Consequently, there is no risk of relevant coordination.

(17) A subsidiary of AST, Tubificio di Terni, produces small quantities of welded tubes both made from stainless steel (chrome content of more than 13 %) and from alloyed steel (chrome content of less than 13 %). None of the parent companies is a manufacturer of welded tubes, whether made from stainless steel or from alloyed steel. MHP, a joint venture between Krupp and Mannesmann Röhren, is active as a producer in the market for precision tubes made from carbon steel with a market share of about (...) and Falck is a producer of non-precision tubes made from carbon steel (market share of about (...)). However, welded tubes made from stainless or alloyed steel on the one hand and tubes made from carbon steel on the other hand belong to separate markets. The first group of products is used mainly in exhaust systems for passenger cars owing to their heat resistance and durability. By contrast, tubes made from carbon steel are used mainly in the furniture industry and in mechanical engineering. Moreover, there are substantial price differences between the different kinds of tube: non-precision tubes cost about ECU 480/tonne and stainless steel tubes ECU 2 120/tonne. It may be added that the Tadin group as a trading company distributes small quantities of welded stainless steel tubes (value: ECU (...) million). But these activities belong to the separate distribution market for stainless steel products and are negligible. Conse-

quently, as regard tubes, AST is active in tube markets other than those where parent companies are active, so there is no relevant coordination.

(18) AST produces through a subsidiary (Titania SpA) titanium semi-finished products. These are also manufactured by Deutsche Titan GmbH, a company within the Vereinigte Schmiedegesellschaft (VSG) group jointly controlled by Krupp, Thyssen and Klöckner, who each hold an interest of 33 1/3 %. The other parent companies of AST are not active in the field of titanium semi-finish products. The risk of coordination can therefore be ruled out for this market.

(19) Another subsidiary of AST, Soc. delle Fucine srl, produces hammer forgings (large, individually manufactured steel parts weighing anything from 0,5 tonnes to several hundred tonnes). VSG is also active in this market. Since there are no other parent companies of AST in this market, there is no relevant coordination.

(20) Fils SpA, yet another subsidiary of AST, makes drop forgings, a product which unlike hammer forgings is not manufactured individually but is produced by shaping in a die. Drop forgings are also produced by a subsidiary of Krupp, Gerlach Werke GmbH, by a subsidiary of Thyssen, Thyssen Umformtechnik, and by Falck.

Nevertheless, the risk of coordination is negligible because Falck and AST have insignificant market shares and Krupp and Thyssen have market shares of less than (...).

IV. COMMUNITY DIMENSION

(21) The operation has a Community dimension. The aggregate worldwide turnover of all the undertakings concerned amounts to more than ECU 5 000 million. Turnover for 1993 was as follows: Krupp ECU 10 600 million, Thyssen ECU 17 305 million, Riva ECU 1 247 million, Falck ECU 369 million, Tadin ECU 58 million and AST ECU 758 million.

(22) The Community-wide turnover of Krupp, Thyssen, Riva, Falck and AST is more than ECU 250 million each. The five companies do not achieve more than two thirds of their aggregate Community-wide turnover within any one Member State.

V. RELEVANT MARKETS

('white goods') field, the food and drinks industry, the chemical industry, the automotive industry (exhaust systems) and the capital goods industry.

RELEVANT PRODUCT MARKETS

(23) AST will continue producing stainless steel flat products, both cold rolled and hot rolled, and cold-rolled electrical sheet. The two types of product account for about (...) of AST's total production. Cold-rolled stainless steel flat products and electrical sheet (both less than 500 mm wide) fall within the EC treaty and are thus covered by the merger Regulation. Welded tubes, titanium products hammer forgings and drop forgings also fall within the EC Treaty.

(24) Stainless steel production differs from ordinary steel production in that chromium, nickel and other elements are added during the melting process in order to achieve metallurgically different properties in the end product. Chromium and nickel are quoted on the international metal exchanges and their price fluctuations closely follow one another. The price of nickel has a strong influence on stainless steel prices as it accounts for between 30 and 35 % of the cost price. The next stages in production are hot and cold rolling. Hot-rolled material is produced on hot-rolling mills but does not have surface qualities comparable to those of cold-rolled products. Hot-rolled flat stainless steel is also sold to end users. The subsequent cold-rolling process is aimed at improving the quality of the material and at further reducing its thickness to the required dimensions.

PRODUCTION OF COLD-ROLLED STAINLESS STEEL FLAT PRODUCTS

(25) Cold-rolled stainless steel flat products are used in a wide range of industries with the following requirements:

- resistance to heat, rust and acids,
- a high-quality surface finish combining smoothness and a pleasing appearance.

The individual requirements depend on the use to which the end product is to be put. The main applications of cold-rolled stainless steel flat products for which there are internationally recognized standards are in the household equipment

(26) According to the parties, there is a high degree of substitutability between cold-rolled stainless steel and other materials such as carbon steel, coated steels (enamelled steel and zinc-coated steel), aluminium, plastics and glass. Some competitors contacted by the Commission confirmed that it is technically feasible to replace cold-rolled stainless steel with such materials. Other competitors said that, owing to its corrosion resistance, its hygienic, mechanical and physical properties and its advantageous life-cycle cost, cold-rolled stainless steel will generally hardly be replaceable. On the contrary, owing to its relative price advantage over other materials, cold-rolled stainless steel has replaced them, its cheapness apparently being the main factor in the substitution process. Other factors which have played a part in the growth of cold-rolled stainless steel are the increasing importance of life-cycle costs, tighter environmental regulations governing industrial processes and stricter hygienic standards. For many applications customers' investment in specific processing equipment will preclude any changeover in the short term from cold-rolled stainless steel to other materials.

(27) Consequently, cold-rolled stainless steel flat products are to be regarded as a relevant product market.

(28) All cold-rolled stainless steel flat products together can be seen as one product market because of the high degree of supply-side substitution. A splitting of the market between material under 500 mm and material over 500 mm in order to classify it either as an EC or as an ECSC product is not practicable, primarily because this is an artificial division based on the production technology at the time of the ECSC Treaty (1951) which has since been largely replaced by rolling wide and slitting to narrower widths, but also because a significant amount of slitting of wide coil to narrow is carried out at service centres as well as at the producing mill⁽¹⁾. All big manufacturers of stainless steel flat products themselves today slit wide strip to widths of less than 500 mm. In addition, service centres slit wide coil to make narrower sizes.

⁽¹⁾ See the Decision of 4 September 1992 in Case No IV/M.239 — Avesta/British Steel/NCC/AGA/Axel Johnson.

- (29) The market for cold-rolled stainless steel flat products is not to be divided into two separate markets for austenitic steel and ferritic steel. These two kinds of stainless steel differ in their chemical composition, which gives them different properties. Austenitic steel is more expensive than ferritic steel, owing mainly to the addition of nickel. However, since both types of steel can be produced by the same plant, which in the space of one or two weeks can switch from one type to the other, it can be concluded that there is supply-side substitutability; hence both types are to be considered included in the same relevant product market.

PRODUCTION OF ELECTRICAL SHEET

- (30) Electrical sheet is characterized by specific electromagnetic properties (conductivity and electrical resistance). It is used mainly for the construction of large transformers, electric motors, power supply and switching units, and power plant generators. It can be regarded as a separate product market.

Electrical sheet being a type of cold-rolled sheet, the ECSC Treaty differentiates between strips less than 500 mm wide and strips over 500 mm wide. However, there is a high degree of supply-side substitution between both kinds. As already stated for stainless steel flat products, mills can roll widths of below 500 mm (EC product) and above (ECSC product), and material of less than 500 mm can be slit from wider coils.

- (31) Electrical sheet must be further differentiated as between oriented material and non-oriented material. On the demand side, there are differences between the application areas of both types of product. Oriented material has good conductivity, low core loss and lesser heat development, whereas non-oriented material is characterized by higher resistance and higher heat development.

Oriented and non-oriented material must also be distinguished according to the method of production. Both kinds of material are pickled and cold rolled, but they undergo a different annealing process, this being the process by which material acquires the required electromagnetic properties. Since the necessary production facilities differ considerably, there is no supply-side substitutability. There are therefore two separate markets for oriented and non-oriented electrical sheet.

TRADE IN STAINLESS STEEL

- (32) As already indicated, distribution has to be considered a separate market as far as stainless steel is

concerned. Of West European stainless steel production, an estimated 30–40 % (the figures vary slightly between the various competitors) is sold through stockholders or service centres. Electrical sheet is mainly sold direct to the customer and virtually none is dealt in by stockholders or service centres. Electrical sheet is mainly sold direct to the customer and virtually none is dealt in by stockholders or service centres.

- (33) To sum up, the following relevant product markets can be singled out for the purposes of the present analysis:

1. cold rolled stainless steel flat products;
2. oriented electrical sheet;
3. non-oriented electrical sheet;
4. distribution of stainless steel products.

With regard to the other products covered by the merger which fall under the EC Treaty and the Merger Regulation and for which the relevant geographic market is Western Europe, there are no competition problems since:

- only AST is present in the welded tube market, of which it has a negligible share;
- for hammer forgings and drop forgings, the new entity will have a market share of only about (...) and for titanium products a share of only about (...) (see point 78).

THE RELEVANT GEOGRAPHIC MARKET

Production of cold-rolled stainless steel

- (34) The relevant geographic market for cold-rolled stainless steel is Western Europe (EC and EFTA countries). There are no tariffs in trade between the EC and EFTA. Although all major producers have large market shares in their respective countries, there is intensive trade among Community Member States and between the Community and EFTA. Transport costs are low compared with the value of the product in question (2–3 %). There are no legislative or technical barriers to market entry between EC Member States and the EFTA countries.
- (35) The relevant geographic market does not extend beyond Western Europe. According to estimates provided by the parties and by other producers, Western Europe is, compared with other parts of the world, the biggest market (consumption of 1,9 million tonnes), followed by America (1,3 million tonnes), the Far East including China (1,2 million tonnes), and Japan (0,9 million tonnes). The main production areas are Western Europe, Japan and

America. Both in Western Europe and in Japan, capacity is larger than consumption. A substantial proportion of West European and Japanese production is exported to other parts of the world. In 1993 Western Europe exported almost 30 % of its production in this way. West European exports to the Far East (including China) and to America each accounted for about 9 % of total West European production. Exports from Western Europe to Japan are negligible (700 tonnes in 1993).

- (36) The volume of imports into Western Europe from the rest of the world is very low. Imports account for only 3 % of total West European consumption and come mainly from Japan, South Korea and South Africa.
- (37) The transport costs faced by producers located outside Western Europe represent about 4–6 % of the sales price. Imports from countries outside the EEA are subject to a 6 % import duty. However, within the framework of GATT a lowering of import duties on steel products is currently being negotiated with a view to a linear reduction over a 10-year period starting from 1995.
- (38) The investigation showed that price levels for cold-rolled stainless steel flat products differ substantially in the different parts of the world. Prices in America have been described for the first quarter of 1994 as being 20–29 % higher, in Japan 30–48 % higher and in the Far East (including China) about 10 % lower.
- (39) Even if the price level in the West European market were to increase by a significant amount, say 5 %, this is not likely to result in a substantial increase in imports from Japan, America or the Far East, bearing in mind the higher price level in Japan and America and import duties and transport costs. Nor are there likely to be substantial imports from the Far East, despite the lower price level, because producers there have to take into account not only transport costs and import duties but also demands from customers for discounts to compensate for a lack of supply reliability — compared with West European producers — and after-sales service. Similarly, there will not be any substantial imports from East European countries.
- (40) The parties have argued that overcapacity in South Africa will result in increased imports from that region into Western Europe. Although the South African producer Columbus, which was contacted by the Commission, will increase its production capacity until 1998, the resulting overcapacity in South Africa will be relatively low (about 100 000 tonnes). Exports from South Africa will focus not only on Western Europe but also on America and the Far East. Moreover, South African suppliers will

have the same problems as Far East manufacturers with regard to supply reliability and service in Western Europe. Consequently, it is extremely unlikely that imports from South Africa into Western Europe will increase the import rate in Western Europe substantially.

- (41) Under these circumstances, the relevant geographic market for cold-rolled stainless steel flat products in Western Europe.

Electrical sheet production

- (42) The Commission has already stated in a previous decision adopted under the ECSC Treaty that the relevant geographic market for oriented electrical sheet is the world market⁽¹⁾. The main reasons for this were the importance of the American and Japanese producers, which control the technology through patent rights, and worldwide import and export activity. Imports into the Community from third countries accounted for 21 % of EEA consumption. These reasons still hold good today. The market for oriented electrical sheet is therefore the world market.
- (43) As for as non-oriented electrical sheet is concerned, the parties argue that the relevant geographic market is at least the West European market, as the sector is becoming more and more internationalized and is developing into a world market. In the light of the facts, however, it cannot be contended that the market is wider than Western Europe. Conditions of competition vary between the three main markets, i.e. Western Europe, North America and Japan. The transport costs faced by producers outside Europe represent 8–12 % of the sales price. Most imports into Western Europe are subject to a 6 % duty, and the remainder to a 10 % duty. A reduction of import duties is currently being negotiated within the framework of GATT. There is a low rate of interpretation between Western Europe and the rest of the world. The volume of exports from Western Europe to other parts of the world is not high (5 % of West European consumption). Imports from third countries account for only 4 % of West European consumption. Consequently, the relevant geographic market for non-oriented electrical sheet is Western Europe.

Trade in stainless steel products

- (44) Steel stockholders perform the wholesale function of buying material in bulk from the manufacturer, stocking it and then reselling it in smaller quantities to customers who need only such quantities.

⁽¹⁾ Decision of 19 December 1988, Ugine/Cockerill Sambre.

Since steel distribution by stockholders and service centres takes place at a regional level, the relevant geographic market is a regional market. Since AST is active in the distribution market for stainless steel mainly in Italy, the impact of the merger would be felt mostly in that Member State.

VI. COMPATIBILITY WITH THE COMMON MARKET

COLD-ROLLED STAINLESS STEEL FLAT PRODUCTS

(a) Features of the market

Overview

- (45) Unlike ordinary carbon steel, which is considered a mature product, stainless steel, including cold-rolled stainless steel, is still in the expansion phase of its product life cycle. Owing to its intrinsic qualities and a favourable price/performance ratio, stainless steel is a natural choice for a large number of applications. Increased environmental pressure, often backed by legislation, has resulted in new applications by the energy industry (waste treatment plants) and by the car industry (exhaust systems). The expansion of the fast food industry has stimulated stainless demand as stainless steel products satisfy the industry's requirement for a hygienic, maintenance-free surface. While production of steel in general has increased by 2,4 % per year since 1950, stainless steel production has increased at an average annual rate of 5,8 % during the same period. The pace of growth has slowed down with the passage of time, reflecting the process of maturation: between 1970 and 1993, the annual growth rate for stainless steel was about 3,8 %. At the same time, the leading consuming and producing regions have changed over time: until the mid-1960s, North America was the main region, then Western Europe and Japan took over. Today's growth areas are the newly industrializing countries (NICs), where the annual aggregate growth rate is approximately 16 %. Following this trend, apart from exporting from Europe some European producers are investing in the net importing areas (America and East Asia).
- (46) As for the next four years, it can be assumed in line with some current long-term forecasts that cold-rolled stainless steel consumption growth rates in the Western world will be about 5–6 %, although according to the parties West European consumption of cold-rolled stainless steel products will increase only by approximately 3,8 % over that period. However, due to the higher growth rates in the NICs, total Western-world consumption of cold-rolled stainless steel will increase at the above-mentioned rate.

- (47) Like the steel market in general, the market for cold-rolled stainless steel is also characterized by severe instability in the supply/demand relationship. Changing demand tends to lead from time to time to a degree of idle capacity and lower capacity utilization. The slowdown in world economic growth during the last three to four years resulted in Western Europe in a slower increase in consumption of stainless steel (with a substantial slowdown in 1993) and left the industry in general with more production capacity than is needed.

European apparent consumption of cold-rolled stainless steel flat products suffered a severe decline of 6,7 % in 1993 compared with the previous year. The steepest falls took place in Germany (13,4 %) and Spain (11,7 %). This overall situation, as well as the drop in prices for raw materials (in particular nickel), has led to falling prices in recent years. Prospects in the last months of 1994 have obviously changed and an increase in demand has taken place. There are signs that prices are starting to rise once more.

Overcapacity

- (48) According to official Commission figures, in 1993 total cold-rolled stainless steel capacity⁽¹⁾ in Western Europe amounted to about 3 million tonnes⁽²⁾, whereas consumption was about 1,6 million tonnes and production about 2,3 million tonnes. The consumption figures for 1990 (about 1,7 million tonnes), 1991 (about 1,8 million tonnes) and 1992 (about 1,9 million tonnes) show that in 1993 consumption slowed down substantially. Nearly all consumption in Western Europe is covered by deliveries by West European producers. A substantial part of their production — approximately 700 000 tonnes (about 30 %) — in 1993 was exported to other parts of the world. Given the gap between capacity and production, there is currently substantial surplus capacity in Western Europe.
- (49) According to estimates by cold-rolled stainless steel producers, overcapacity in the West European market will continue until 1998, owing both to existing overcapacity and to the construction by West European producers of new cold-rolled stainless steel mills in Western Europe with an additional capacity of about 200 000 tonnes. According to estimates by the competitors contacted, the gap between West European capacity and consumption in 1998 will amount to at least 700 000 tonnes.

⁽¹⁾ Capacity means the maximum possible annual production that can be attained during the year in question under ordinary working conditions.

⁽²⁾ The competitors in the market who were contacted estimate that there is current capacity of 2,8 million tonnes.

Suppliers and customers in the relevant geographic market

- (50) Besides KTR and AST, Ugine, Outokumpu, Avesta Sheffield, Acerinox and ALZ are currently active in the relevant geographic market. After the merger, besides KTR and AST, five competitors with integrated steelworks would remain, as well as some undertakings engaged in cold-rolling only. Imports account only for 3 % of West European cold-rolled stainless steel consumption and derive mainly from some Japanese producers (Nippon Steel, Daiclo Steel, Hitachi Metals), the South Korean producer Posco and the South African producer Columbus.
- (51) There are two categories of customer: end users who belong to a variety of economic sectors (see point 25) on the one hand, and stockholders and service centres on the other. The end users purchase either large quantities ex-mill, that is, direct from the producer, or smaller quantities from stockholders. Stockholders perform the traditional wholesale function of buying in bulk from the manufacturer and reselling in mostly smaller quantities. In addition, steel stockholders have developed their in-house processing facilities in order to add value and improve their services to customers. Such processing includes cutting to length, slitting, shearing and polishing. Those activities are also traditionally carried out by service centres.

Market shares

- (52) Consumption of cold-rolled stainless steel flat products in Western Europe (EC and EFTA) in 1993 amounted to about 1,6 million tonnes. KTR, in which Krupp and Thyssen have merged their stainless steel businesses, accounted for (20–30 %) and AST for (10–20 %) ⁽¹⁾. Following the merger the combined market share of the parties would amount to (35–45 %). The deliveries of the next largest competitor, Ugine, accounted for (15–25 %) of West European consumption. The other five competitors have market shares of (10–20 %) (under 10 %) (two of them) and (more than 5 %). Imports represent 3 % of the market.
- (53) Of total West European capacity for cold-rolled stainless steel flat products in 1993, Krupp and Thyssen together accounted for (20–30 %) and AST for (10–20 %). Following the merger the combined capacity of the parties would amount to (35–45 %) of total capacity in Western Europe. As far as production is concerned, Krupp and Thyssen

together accounted for (20–30 %) of total West European production while AST accounted for (10–20 %). The production of the parties to the merger would represent (35–45 %) of total West European production (and (below 20 %) at world level).

(b) Assessment of dominance

(aa) Sole dominance

- (54) Following the merger, the parties would together hold a market share of (35–45 %). The total turnover of all the undertakings involved in the merger would amount to about ECU 30 billion and their global steel production to 17,6 million tonnes. In addition, Thyssen holds a 33,3 % stake in the Mexican stainless steel producer Mexinox. Nevertheless, it cannot be considered that the proposed operation would lead to a sole dominant position as a result of which effective competition would be significantly impeded in the common market. Although the market share of the new entity AST would be more than double that of its next largest competitor, Ugine, the new entity would be faced with powerful, financially strong competitors such as Usinor, British Steel and Acerinox with substantial market shares, large production capacities and R&D activities.

Effective competition

- (55) Ugine, the next largest competitor (market share (15–25 %)), belongs to the Usinor Sacilor group, which in turn is the leading European steel producer and the second largest in the world (total steel production 21 million tonnes). Its worldwide turnover amounts to ECU 12,7 billion, earned almost entirely from steel. Ugine accounts for about (15–25 %) of total West European cold-rolled stainless steel production capacity and it has significant spare capacity which would deter any attempt by the new group to restrict output in order to increase prices. Because of its total size and the fact that its stainless steel production is not confined to Europe, Ugine holds a very strong position as far as financing of investments, research and development (which in the stainless steel sector is of particular importance ⁽²⁾) and sales organization are concerned. Finally, the internationalization of Usinor reinforces its position: Usinor controls J&L Special Steels, the largest cold-rolled stainless steel

⁽¹⁾ Market shares according to ECSC survey.

⁽²⁾ Ugine's annual R&D expenditure as a percentage of total sales revenue is by far the highest among all the players contacted by the Commission.

sheet producer in the United States, and has a 21 % shareholding in the leading cold-rolled stainless steel producer in Thailand, Thainox.

- (56) Avesta Sheffield, the third largest competitor in Western Europe with a market share of (10–20 %), is controlled by British Steel plc, the second-largest steel producer in Europe (total steel production 12 million tonnes). The worldwide turnover of British Steel Group amounts to ECU 6,4 billion, of which steel accounts for ECU 5,5 billion. Avesta Sheffield is the result of a merger between British and Swedish stainless steel producers. It plans to increase its production capacity in Western Europe.
- (57) The next largest competitor, Acerinox (market share (below 10 %)), is a relative newcomer to the steel business. Created in 1974 and equipped with modern plant, it is known for its low costs and excellent profitability. Acerinox achieved a worldwide turnover of ECU 600 million, mainly in stainless steel. It recently gained sole control over the US stainless steel producer, North American Stainless, which had originally been a joint venture with the American producer Armco. Acerinox's two main individual shareholders, Nisshin Steel with 9,66 % and Nissho Iwai with 7,7 %, are Japanese, and one of them, Nisshin Steel, is the second largest Japanese stainless steel producer. Four out of nine members of Acerinox's board of directors are Japanese. Acerinox recently decided to increase its capacity in Europe (and another increase in capacity is under way in the United States). It holds a 33 % shareholding in Mexinox, the Mexican producer of cold-rolled sheet in which Thyssen has a similar stake. Acerinox exports an above-average amount of its production of cold-rolled stainless steel outside Europe and also has considerable spare capacity.
- (58) The Finnish competitor Outokumpu Polarit (having a market share (below 10 %)) has, like Acerinox, very modern production plant which is devoted exclusively to making cold-rolled stainless steel flat products. It is the only West European producer that can produce raw materials (ferro-chromium and nickel) in-house, and is therefore not affected by fluctuating world market prices for these raw materials (see point 24). Its worldwide turnover amounts to ECU 2,6 billion. Outokumpu plans to increase its cold-rolled stainless steel production capacity in Western Europe.
- (59) ALZ (market share (more than 5 %)) has invested heavily in recent years and is a competitive producer. ALZ belongs to the Arbed group, which is one of the leading European steel producers with a turnover of about ECU 5 billion. After the acquisition by Arbed of Kloeckner (the total steel production of the new group being 10 million tonnes), ALZ will benefit from Kloeckner's modern hot-rolling capacity.
- (60) Acerinox, Outokumpu and ALZ have expanded their share of the West European market in recent years from about 15 % in 1980 to about 25 % in 1993 at the expense of established European producers.
- (61) Prices for cold-rolled stainless steel products declined substantially between 1990 and the first two quarters of 1994. According to the answers received from cold-rolled stainless steel producers, their prices for the most-sold product, cold-rolled sheet AISI 304 (DIN 4301), declined during the abovementioned period on average by approximately 19 %. Between 1990 and 1992 West European consumption increased from 1 758 000 tonnes to 1 907 000 tonnes but in 1993 it fell back to 1 600 000 tonnes. However, even when consumption was increasing, prices for the abovementioned key product declined on average by 9 %. This is a clear indication of existing price competition in the market.
- (62) It can be expected that even after the merger price competition will continue to work. As indicated above, in the medium term the West European market will be characterized by overcapacity. According to the capacity and production figures, in 1993 the five competitors of the new entity together had spare capacity of more than 270 000 tonnes, of which the three largest competitors had more than 200 000 tonnes. If the new entity were to raise its prices, the competitors could easily react by increasing their production in order to obtain higher market shares. Moreover, West European cold-rolled stainless steel manufacturers export a substantial part of their production to other parts of the world. The five competitors together export nearly 100 000 tonnes to South-East Asia, an area where prices are 10 % lower than the current West European price level. If the new entity were to raise prices in particular at times of growing demand, the competitors would take the opportunity to switch supplies from South-East Asia to Western Europe with a view to improving earnings.

- (63) In the medium term the competitors of the new entity will continue to have spare capacity at their disposal. As mentioned above, it is very likely that in Western Europe overcapacity will continue to exist during the next four years. There are grounds for believing that the West European competitors of the new entity will not close down capacity in the medium term. As in the past, European manufacturers will try to export to third countries the part of their production that is not sold in Western Europe. The fact that in the next four years at least three West European competitors will increase their capacity by approximately 200 000 tonnes indicates that there is a policy to increase capacity rather than to close it down.

Potential competition

- (64) The parties have also argued that West European manufacturers will have to face substantial competition in Western Europe in the next few years from Far Eastern and East European producers. In particular, low-cost manufacturers in Taiwan, South Korea, the People's Republic of China and Thailand will increase their production capacity substantially and — although consumption in that region will also grow — there will in 1997 be excess capacity of 500 000 tonnes. As Far Eastern manufacturers produce steel more cheaply than West European mills, the parties take the view that there is a threat of potential entry into the West European market of 500 000 tonnes of cold-rolled stainless steel.
- (65) The Commission's investigations have not confirmed the likelihood of such a development. In line with the long-term forecasts of independent experts, competitors contacted by the Commission stated that in the next four years there will be no overcapacity in the Far East. Thus there is an incentive for Far Eastern producers to export cold-rolled stainless steel to Western Europe only if they can achieve better earnings there than in their home market. That is not the case. Although the price level in the Far East is lower than in Western Europe, Far Eastern producers have to take transport costs and import duties into account and have in practice to grant substantial discounts to offset the lack of supply reliability and service.
- (66) Customers and competitors questioned by the Commission hold the view that there are currently no East European producers of cold-rolled stainless steel which would meet West European customers' requirements in terms of quality, reliability of supply and service. Although some increases in imports from these countries have been noted, the volume is still very limited. It is estimated by those customers and competitors that the time frame

within which they might become able to match West European standards is five to 10 years. Whether these estimates are correct depends mainly on the time in which the necessary investment in the East European plants is carried out. In any case, it is not necessary to decide when and to what extent competition from East European producers of cold-rolled stainless steel will become effective, given what has been said at points 55 to 63 above.

General conclusion

- (67) The proposed merger will increase the degree of concentration in an already concentrated market. The new entity will hold a sizeable market share in Western Europe (35–45 %) as well as in the Member State with the highest consumption of stainless steel (Germany).

Although the proposed merger will increase substantially the degree of concentration, it will not create or strengthen a dominant position on the West European market for cold-rolled stainless steel flat products as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it. Despite its market share, the new entity will be confronted with powerful competitors, mostly active in all sectors of the steel business, such as Usinor, British Steel, Acerinox, Outokumpu and Arbed with considerable market shares and substantial financial resources which should enable them to carry out the necessary investment in the market in order to compete with the new entity. More importantly, the competitors will have a substantial amount of spare production capacity for cold-rolled stainless steel flat products. In view of the strong price competition in recent years, it can be assumed that even after the merger the remaining competitors will be in a position to restrict any unjustified price increases by the new entity. In that event, the competitors have the power to use their spare capacity to increase production and offer lower prices with a view to gaining market share at the expense of the new entity.

(bb) *Oligopolistic dominance*

- (68) Although the new entity together with the next largest competitor, Ugine, will have a market share of (55–70 %) in Western Europe (and the market share of the five leading competitors — including the new entity — will be about 90 %), the Commission does not consider that these two — or five — companies would be able to exercise joint dominance. In the case of collective dominance by the small group composed of the new entity and Ugine, this group would be subject to effective competition from Avesta, Acerinox, Outokumpu

and ALZ, which are financially strong and possess significant excess capacity for the production of cold-rolled stainless steel flat products. In the case of collective dominance by the wider group composed of the new entity, Ugine, Acerinox and Outokumpu, market shares at European level are quite different, and this renders anti-competitive parallel behaviour difficult. Moreover, the cold-rolled stainless steel market is a growing market with a growth rate of approximately 4 % a year. In such a market, it is more likely that competitors will use their existing spare capacity if the new entity raises prices. In this context it should be noted that, according to official ECSC figures for 1993, the new entity's competitors have more than twice as much spare capacity as it would have. The proportion will remain the same in the near future. In addition, there is insufficient market transparency to allow such behaviour because of the large number of customers and their diversity in terms of size and requirements (see point 51). Finally, it must be borne in mind that the leading firms pursue different corporate strategies at international level, as can be seen from the fact that their presence outside Europe differs considerably from one company to another. Consequently, there is no reliable basis for any anti-competitive parallel behaviour.

PRODUCTION OF ORIENTED ELECTRICAL SHEET

- (69) The proposed merger will reduce the number of European competitors from four to three. Nevertheless, the market being worldwide, the new group will not hold a dominant position at world level, where Nippon Steel from Japan is the leader. Even at European level the new group, with a market share of (25–35 %), will be confronted with Ugine (with a slightly higher market share).

PRODUCTION OF NON-ORIENTED ELECTRICAL SHEET

Effective competition

- (70) Although the new entity would have a significant market share (30–40 %), there are other major competitors in the West European market. The two next largest competitors, EES and Ugine, have market shares of (15–25 %) and (10–20 %) while

the other six competitors have market shares below 10 %.

- (71) EES is controlled by British Steel, the second biggest European steel producer. It is the result of the merger in 1991 of the Swedish and British electric steel producers. The post-merger rationalization process has been completed and has made possible focused, rationalized low-cost production, a comprehensive product range and a strong product development division.
- (72) The second largest competitor, Ugine, belongs to the Usinor Sacilor group. In the electrical sheet sector in particular, the strength of Ugine consists in the fact that it offers the full range of electrical sheet and is able to cover all the different production stages of the product.
- (73) Among the smaller competitors, Voest Alpine (Austria) is a particularly active competitor which has steadily increased its market share in recent years.
- (74) Since most sales of electrical steel to the European market are made direct from the producer to the end user, competitors are not dependent on wholesalers and any distribution network dominated by the parties. Actual and potential competitors can with relative ease enter the market by selling their product direct to end users. Transport costs in Western Europe amount, according to estimates of the parties and their competitors, only to 2–5 % of the overall cost of the product and do not constitute a significant barrier to competition on the European market.
- (75) Purchasers of non-oriented electrical sheet have considerable bargaining power. According to competitors, between 40 and 80 % of their sales are accounted for by only five big customers. Customers are mostly big international producers of motors, generators, transformers and household appliances. A large part of the demand side is made up of a number of slitting companies which slit the steel into smaller widths in order to sell it to the end user. These companies also have considerable bargaining power because of the large quantities they buy from the producers.
- (76) Under these circumstances, the proposed merger will not create or strengthen a dominant position in the market for non-oriented electrical sheet.

DISTRIBUTION OF STAINLESS STEEL PRODUCTS

- (77) Since AST is mainly active in the distribution market for stainless steel through its subsidiaries in Italy, the main impact in the area of stainless steel distribution will be in Italy. The Commission's investigations have shown that there is a sufficient number of competing and independent stockholders and service centres in the different Italian regional areas which can efficiently supply stainless steel coming from production facilities belonging to different competitors. In addition, the vast majority of Italian stockholders and service centres questioned by the Commission stated that they did not believe they would be affected by the operation in question. Moreover, most of the parties' competitors have their own stockholding and service centres in Italy, and in any case could easily increase their number, as the capital investment required is not significant. Not only the competitors but also other independent operators could enter the market as it does not present high barriers to entry. Therefore, the merger will not lead to a dominant position in the Italian regional markets for distribution of stainless steel products in Italy.

TITANIUM PRODUCTS

- (78) Within the West European market for titanium products AST's deliveries account for about (below 10 %) and the deliveries of Krupp for about (below 10 %). Thus the combined market share would be about (10–20 %). The largest competitor (IMI) has about (15–25 %) and Krupp and AST together would be in second place. Under these circumstances the merger will not lead to a dominant position in the market for titanium products.

VII. OVERALL ASSESSMENT

- (79) The Commission has therefore come to the conclusion that the proposed merger does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it,

HAS ADOPTED THIS DECISION:

Article 1

The proposed joint acquisition of Acciai Speciali Terni SpA by Fried. Krupp AG Hoesch-Krupp, Thyssen Stahl AG, AFL Falck, Tadfin SpA and F.I.R.E. Finanziaria SpA is

declared compatible with the common market and the functioning of the EEA Agreement.

Article 2

This Decision is addressed to:

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Done at Brussels, 21 December 1994.

For the Commission

Karel VAN MIERT

Member of the Commission

EUROPEAN ECONOMIC AREA

THE EEA JOINT COMMITTEE

DECISION OF THE EEA JOINT COMMITTEE

No 25/95

of 19 May 1995

amending Annexes XI (Telecommunication services) and XIV (Competition) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as adjusted by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as the Agreement, and in particular Article 98 thereof,

Whereas Annex XI to the Agreement was amended by Decision of the EEA Joint Committee No 28/94 of 2 December 1994 ⁽¹⁾;

Whereas Annex XIV to the Agreement was amended by Decision of the EEA Joint Committee No 7/94 of 21 March 1994 amending Protocol 47 and certain Annexes to the EEA Agreement ⁽²⁾;

Whereas Commission Directive 94/46/EC of 13 October 1994 amending Directive 88/301/EEC and Directive 90/388/EEC in particular with regard to satellite communications ⁽³⁾ is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

1. The following shall be added to point 3 (Commission Directive 90/388/EEC) of Annex XI to the Agreement:

‘, as amended by:

— 394 L 0046 : Commission Directive 94/46/EC of 13 October 1994 (OJ No L 268, 19. 10. 1994, p. 15).’

2. The following footnote shall be added in relation to Commission Directive 90/388/EEC:

‘(1) Listed here for purposes of information only. For application, see Annex XIV.’

Article 2

1. The following shall be added to point 12 (Commission Directive 88/301/EEC) of Annex XIV to the Agreement before the adaptation:

‘, as amended by:

— 394 L 0046 : Commission Directive 94/46/EC of 13 October 1994 (OJ No L 268, 19. 10. 1994, p. 15).’

2. The following shall be added in point 13 (Commission Directive 90/388/EEC) of Annex XIV to the Agreement before the adaptation:

‘, as amended by:

— 394 L 0046 : Commission Directive 94/46/EC of 13 October 1994 (OJ No L 268, 19. 10. 1994, p. 15).’

Article 3

The texts of Directive 94/46/EC in the Icelandic and Norwegian languages, which are annexed to the respective language versions of this Decision, are authentic.

Article 4

This Decision shall enter into force on 1 June 1995, provided that all the notifications under Article 103 (1) of the Agreement have been made to the EEA Joint Committee.

Article 5

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Communities*.

Done at Brussels, 19 May 1995.

For the EEA Joint Committee

The President

P. BENAVIDES

⁽¹⁾ OJ No L 339, 29. 12. 1994, p. 89.

⁽²⁾ OJ No L 160, 28. 6. 1994, p. 1.

⁽³⁾ OJ No L 268, 19. 10. 1994, p. 15.