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I

(Acts whose publication is obligatory)

**COMMISSION REGULATION (EC) No 2458/95
of 19 October 1995
concerning the classification of certain goods in the combined nomenclature**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2658/87⁽¹⁾ of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as last amended by Commission Regulation (EC) No 1739/93⁽²⁾, and in particular Article 9 thereof,

Whereas in order to ensure uniform application of the combined nomenclature annexed to the said Regulation, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation;

Whereas Regulation (EEC) No 2658/87 has set down the general rules for the interpretation of the combined nomenclature and those rules also apply to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific Community provisions, with a view to the application of tariff and other measures relating to trade in goods;

Whereas, pursuant to the said general rules, the goods described in column 1 of the table annexed to the present Regulation must be classified under the appropriate CN codes indicated in column 2, by virtue of the reasons set out in column 3;

Whereas it is accepted that binding tariff information issued by the customs authorities of Member States in respect of the classification of goods in the combined

nomenclature and which do not conform to the rights established by this Regulation, can continue to be invoked, under the provisions in Article 12 (6) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁽³⁾, for a period of three months by the holder;

Whereas the tariff and statistical nomenclature section of the Customs Code Committee has not delivered an opinion with the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The goods described in column 1 of the annexed table are now classified within the combined nomenclature under the appropriate CN codes indicated in column 2 of the said table.

Article 2

Binding tariff information issued by the customs authorities of Member States which do not conform to the rights established by this Regulation can continue to be invoked under the provisions of Article 12 (6) of Regulation (EEC) No 2913/92 for a period of three months.

Article 3

This Regulation shall enter into force on the 21st day following its publication in the *Official Journal of the European Communities*.

⁽¹⁾ OJ No L 256, 7. 9. 1987, p. 1.

⁽²⁾ OJ No L 167, 21. 7. 1995, p. 7.

⁽³⁾ OJ No L 302, 19. 10. 1992, p. 1.

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

Done at Brussels, 19 October 1995.

For the Commission

Mario MONTI

Member of the Commission

ANNEX

Description of goods	Classification CN code	Reason
(1)	(2)	(3)
Coverings designed to be permanently fixed to the front and rear seat-stuffing and -frames of motor vehicles, and made up as follows : — a seat-bottom with an external surface mainly of synthetic fabric (polyester) and plastics (PVC). Inside, there is a flexible metal rod ; — a seat-back with an external surface mainly of synthetic fabric (polyester) and plastics (PVC). Inside, there are : — tapes with plastic fastenings, — a rubber strap and — flexible metal rods. — a headrest-covering with an external surface mainly of synthetic fabric (polyester), and plastics (PVC). The fabric is backed with a thin layer of cellular plastic covered with polyamide net and the plastics are backed with acrylic fabric.	9401 90 80	Classification is determined by the provisions of General Rules 1 and 6 for the interpretation of the combined nomenclature and by the wording of CN codes 9401, 9401 90 and 9401 90 80. These coverings should be considered as parts of seats of CN code 9401.

COMMISSION REGULATION (EC) No 2459/95

of 20 October 1995

allocating the direct landing requirements for freezer tuna seiners under the
EC/Senegal Fisheries Agreement

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION :

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1982/95 of 29 June 1995 on the conclusion of the Protocol defining, for the period 2 October 1994 to 1 October 1996, the fishing rights and financial compensation provided for in the Agreement between the European Economic Community and Republic of Senegal on fishing off the coast of Senegal⁽¹⁾, and in particular Article 2 thereof,

Whereas Point C (c) of the Annex to the Protocol to the Agreement between the European Community and the Republic of Senegal on fishing off the coast of Senegal in the period 2 October 1994 to 1 October 1996 requires Community shipowners to land tuna in Senegal ; whereas it is necessary to clarify this requirement by laying down for freezer tuna seiners the allocations relating to direct landings ;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee on Fisheries and Aquaculture,

Article 1

1. The requirement on freezer tuna seiners to effect direct landings as laid down in point C (c) of the Annex to the Protocol defining, for the period 2 October 1994 to 1 October 1996, the fishing rights and financial compensation provided for in the Agreement between the European Community and Republic of Senegal on fishing off the coast of Senegal, shall be allocated between Community shipowners as follows :

Tuna seiners flying the flag of France : 35 %,

Tuna seiners flying the flag of Spain : 65 %.

The Commission may revise this allocation in consultation with the Member States concerned.

2. The French and Spanish authorities shall take the necessary measures to ensure that their shipowners comply with the direct landing requirement.

Article 2

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

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

Done at Brussels, 20 October 1995.

For the Commission

Emma BONINO

Member of the Commission

⁽¹⁾ OJ No L 193, 16. 8. 1995, p. 1.

COMMISSION REGULATION (EC) No 2460/95
of 20 October 1995
on the supply of flour intended for the people of Tajikistan

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1975/95 of 4 August 1995 on actions for the free supply of agricultural products to the people of Georgia, Armenia, Azerbaijan, Kyrgyzstan and Tajikistan⁽¹⁾, and in particular Article 4 (2) thereof,

Whereas, Commission Regulation (EC) No 2009/95⁽²⁾, laying down the rules for the application of Council Regulation (EC) No 1975/95 and in particular Article 2 (2) thereof, provides that the tenders for the free supply of processed products may relate to the quantity of basic product to be taken from intervention stocks as payment for the supply, and where applicable, in accordance with Article 5 (2), as payment for the costs of processing, packaging and marking;

Whereas, it is appropriate to open without delay a tendering procedure for the supply of 12 000 tonnes of common wheat flour;

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

A tendering procedure is hereby initiated for the supply costs of 12 000 tonnes (net) of common wheat flour as indicated in Annex I, in accordance with the provisions of Regulation (EC) No 2009/95, and in particular Article 2 (2) thereof.

Article 2

The supply shall include:

- (a) delivery of the product specified in Annex I, free on board, stowed on the boat.

The loading rate of the port proposed must be at least 1 000 tonnes per day.

- (b) the packaging and marking of the product in accordance with the instructions set out in Annex I.

The goods must be made available for loading on board ship, for a maximum period of 10 days with effect from the dates laid down in Annex I.

Article 3

1. In accordance with Article 4 of Regulation (EC) No 2009/95 the offers shall be presented to the following address:

Commission of the European Communities,
EAGGF-Guarantee,
Division VI/G.2 (Office 10/05 or 10/08),
Rue de la Loi/Wetstraat 130,
B-1049 Bruxelles/Brussel.

The closing date for the lodgement of tenders shall be 30 October 1995 at 5 p.m. (Brussels time).

In the case of non-acceptance of offers on 30 October, a second closing date for the lodgement of offers shall be 9 November 1995 at 12 noon (Brussels time).

In this case all of the dates referred to in Annex I shall be carried forward by 10 days.

2. The offer of the tenderer shall indicate the quantity of common wheat, to be taken over from the intervention stocks referred to in Annex II as payment for the supply, necessary to cover all costs of the supply as specified in Article 2 to the delivery stage laid down.

The quantities awarded must leave the stocks within a period of one month from the date of notification of the award.

An additional offer may be made for a product delivered free on wagon. The loading rate of the railway station proposed must be at least 1 000 tonnes per day.

The offer shall be expressed in tonnes of common wheat (net weight) to be exchanged for a tonne of finished product (net weight).

3. The tendering security referred to at Article 6 (1) (f) of Regulation (EC) No 2009/95 is fixed at ECU 25 per tonne of flour.

4. The security referred to at Article 8 (1) of Regulation (EC) No 2009/95 is fixed at ECU 380 per tonne of flour.

Article 4

1. The certificate of removal referred to in the third indent of Article 12 (3) of Regulation (EC) No 2009/95 shall be established on the basis of the model in Annex III.

2. The take-over certificate shall be established on the basis of the model in Annex IV.

Article 5

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

⁽¹⁾ OJ No L 191, 12. 8. 1995, p. 2.

⁽²⁾ OJ No L 196, 19. 8. 1995, p. 4.

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

Done at Brussels, 20 October 1995.

For the Commission

Franz FISCHLER

Member of the Commission

*ANNEX I***1. Product to be supplied :**

Common wheat flour.

2. Characteristics and quality of the goods⁽¹⁾ :

OJ No C 114, 29. 4. 1991 (point II.B.1.a, with the exception of ash content which may be 0,90 % maximum, as a percentage of the dry matter).

3. Total quantity :

12 000 tonnes (net weight).

4. Description of the lots :

Three lots. Each lot to be delivered to one port only (or one station only) :

— *Lot No 1* — 6 000 tonnes of which :

— 3 000 made available with effect from 27. 11. 1995,

— 3 000 made available with effect from 4. 12. 1995 ;

— *Lot No 2* — 3 000 tonnes made available with effect from 27. 11. 1995 ;

— *Lot No 3* — 3 000 tonnes made available with effect from 4. 12. 1995.

5. Packaging⁽²⁾ :

The three lots will be packaged in new mixed jute/polypropylene sacks each containing 50 kilograms net. OJ No C 114, 29. 4. 1991 (under II.B.2.c). The sacks will be packed in new polypropylene 'Slinged bags/ Big Bags', closed on top, at the rate of 21 sacks, preferably interlocked (1 + 2 and 2 + 1), sacks of 50 kilograms per 'Big Bag'. The 'Big Bags' will be sealed under the responsibility of the contractor.

6. Marking :

The marking of the sacks (information in the Russian language plus European flag) must conform to the requirements laid down in OJ No C 114, 29. 4. 1991 (point II.B.3).

7. Stage of supply :

fob stowed or free on wagon (fow).

⁽¹⁾ The successful tenderer shall deliver to the transporter a certificate from an official entity, certifying that for the product to be delivered, the standards applicable, relative to nuclear radiation, in the Member State concerned have not been exceeded.

The radioactivity certificate must indicate the caesium -134 and -137 and Iodine -131 levels.

⁽²⁾ Since the goods may be rebagged, the successful tenderer must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.

ANNEX II

Places of storage	(tonnes) Quantity
GERMANY	
Lot No 1	
Madeburger Getreide-Gesellschaft mbh D-38820 Halberstadt	6 004
Lagerei Gbr H.-U. Jäger und Sohn D-39240 Sachsenhof	875
Gothaer Getreidelagerhaus und Mischfutter GmbH D-99947 Bad Langensalza	3 827
Iruso GmbH Agrarhandel D-99631 Weibensee	1 516
Lot No 2	
Volksbank eG Dransfeld-Grob Schleen D-37124 Rosdorf	6 322
Lot No 3	
Stöfen & Sohn Inh. Jens Stöfen D-25794 Pahlen	4 475
Körber Inh. Jürgen Boock D-23701 Eutin	2 131

The characteristics of the lots shall be supplied to the tenderers by the intervention agencies.

Address of the intervention agency :

GERMANY

BLE

Adickesallee 40,
D-60322 Frankfurt am Main ;
Postfach 18 02 03,
D-60083 Frankfurt am Main,
Tel. : (49-69) 1564 0 ;
Fax : (49-69) 1564 793/794.

Date, stamp and signature
of the intervention agency

ANNEX IV

Take-over certificate

I, the undersigned,
 (name/first name/position)

acting on behalf of

certify that the following goods have been taken over :

Product :		
Packaging :		
Number	of sacks :	
	of 'Big Bags' :	
Total quantity in tonnes net : gross :		
Place and date of take-over :		
Name of boat :		

Name/address of monitoring agency :

.....

Name and signature of its on-the-spot representative :

.....

Observations or remarks :

.....

Signature and stamp
 of transporter

.....

COMMISSION REGULATION (EC) No 2461/95
of 20 October 1995
on the free supply to Georgia, Armenia and Azerbaijan of intervention wheat

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1975/95 of 4 August 1995 on actions for the free supply of agricultural products to the people of Georgia, Armenia, Azerbaijan, Kyrgyzstan, Tajikistan⁽¹⁾, and in particular Article 4 thereof,

Whereas, Commission Regulation (EC) No 2009/95⁽²⁾, established the detailed rules applicable to the free supply of agricultural products held in intervention stocks to Georgia, Armenia, Azerbaijan, Kyrgyzstan and Tajikistan foreseen by Regulation (EC) No 1975/95; whereas, taking account of budgetary resources and the proper management of intervention stocks, a tendering procedure should be organized for the supply of 60 000 tonnes of wheat held by the Danish intervention agency to Georgia, Armenia and Azerbaijan;

Whereas, in view of the present difficulties in these republics and the specific problems of forwarding aid to these regions, it is appropriate to organize the supply of the abovementioned products in one lot;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A tendering procedure is hereby initiated for the supply costs of 60 000 tonnes (net) of wheat as indicated in Annex I, in accordance with the provisions of Regulation (EC) No 2009/95, and in particular Article 2 (1) (a) thereof.

The invitation to tender relates to one lot.

2. The supply costs shall include the take-over at the stores indicated in Annex II and transport by the appropriate means to the places of destination and within the time limits indicated in Annex I (one ship per delivery date).

⁽¹⁾ OJ No L 191, 12. 8. 1995, p. 2.

⁽²⁾ OJ No L 196, 19. 8. 1995, p. 4.

Article 2

1. In accordance with Article 4 of Regulation (EC) No 2009/95 the offers shall be presented to the following address:

Commission of the European Communities,
EAGGF-Guarantee,
Division VI/G.2 (Office 10/05 or 10/08),
Rue de la Loi/Wetstraat 130,
B-1049 Bruxelles/Brussel.

The closing date for the lodgement of tenders shall be 30 October 1995 at 5 p.m. (Brussels time).

In the case of non-acceptance of offers on 30 October, a second closing date for the lodgement of offers shall be 9 November 1995 at 12 noon (Brussels time).

In this case all of the dates referred to in Annex I shall be carried forward by 10 days.

2. The offer shall relate to the total of the quantities of the lot referred to in Annex I.

Tenderers, where appropriate, shall take account of the unloading and transit prices referred to in Annex VI.

3. The tendering security referred to in Article 6 (1) (f) of Regulation (EC) No 2009/95 is fixed at ECU 25 per tonne.

4. The security referred to in Article 8 (2) of Regulation (EC) No 2009/95 is fixed at ECU 200 per tonne.

Article 3

The take-over certificate referred to in the second indent of Article 10 (1) (a) of Regulation (EC) No 2009/95 shall be established at the places and by the authorities referred to in Annex III, on the basis of the model in Annex V, and where applicable, Annex V (a).

Article 4

For the payment provided for at Article 13 of Regulation (EC) No 2009/95, the intervention agency shall, upon completion of that operation, deliver a certificate, certifying the total removal of the quantities for each destination, on the basis of the model in Annex IV.

Article 5

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

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

Done at Brussels, 20 October 1995.

For the Commission

Franz FISCHLER

Member of the Commission

*ANNEX I***Lot**

- 15 000 tonnes of intervention wheat destined for Azerbaijan.

Delivery stage :

Beiuk-Kesik via the ports of Poti or Batumi (Goods not unloaded).

Final delivery date at the port : 5 December 1995.

- 15 000 tonnes of intervention wheat destined for Armenia.

Delivery stage :

Airum via the ports of Poti or Batumi (Goods not unloaded).

Final delivery date at the port : 5 December 1995.

- 30 000 tonnes of intervention wheat destined for Georgia.

Delivery stage :

Poti or Batumi (Goods unloaded).

Final delivery dates at the port :

- 5 000 tonnes by 5 December 1995 (to be loaded on the same ship as Armenia),
- 5 000 tonnes by 5 December 1995 (to be loaded on the same ship as Azerbaijan),
- 20 000 tonnes by 11 December 1995.

No quantities may be stored in the ports of Poti or Batumi ; the wheat must be unloaded immediately on to the means of transport.

The arrival dates of the ships should be as close as possible to the abovementioned final arrival dates.

The choice of the port of Poti or Batumi shall be managed by the Commission in accordance with the availability of quays.

ANNEX II

Places of storage	Quantity (tonnes)
Pakhus Juelsmindevej 18 DK-5463 Harndrup	1 000,340
FAF, Uruphallen Brabæk 7 DK-5550 Langeskov	3 883,700
Ørsted Mølle, Planlager 2 Bogensevej 149 DK-5620 Glamsbjerg	1 013,020
Carlsen Byggemarked Hjelmagervej 6 DK-8541 Skødstrup	6 807,740
Tørresiloer Overgårdsvej 28 DK-8970 Havndal	505,140
DLG, N.C. Just, Hal 2 Klarupgård, Egensevej 155 DK-9270 Klarup	1 310,300
DLG, Kielstrup, Hus 1 Ørtoftevej 13-15 DK-9300 Sæby	1 976,860
GL. Wiffertsholm Gods Mal 1, Wiffertsholmvej 19 DK-9560 Hadsund	82,280
GL. Wiffertsholm Gods Mal 2, Wiffertsholmvej 19 DK-9560 Hadsund	3 420,620
Vasebækgård Vasebækvej 30 DK-4600 Køge	2 699,360
DLG, Sydsjælland/Møn Gammelsøvej 14 DK-4760 Vordingborg	4 419,400
DLG, Lageret Storegade 4 DK-4780 Stege	1 004,210
DLG, Sydsjælland/Møn Hårbollevej 3 DK-4792 Askeby	2 502,680
Orupgård Gods Egeparken DK-4800 Nykøbing F	3 869,850
Lollands Korn, Lager 2 Strandpromenaden DK-4900 Nakskov	4 000,000
DLG, Højsiloen Havnen DK-4990 Sakskøbing	1 504,500

<i>(tonnes)</i>	
Places of storage	Quantity
DLG, Siloanlægget Vestervej 6 DK-4700 Næstved	268,960
DLG, Plansilo Syd Gammelsøvej 14 DK-4760 Vordingborg	1 841,340
DLG, Lageret Storegade 4 DK-4780 Stege	1 190,660
Orupgård Gods Egeparken DK-4800 Nykøbing F	6 629,010
Holgershåb v/Otto Hansen Nr. Vedbyvej 12 DK-4840 Nørre Alslev	570,830
A. Nielsen & Co. A/S Boderup, Nye Lade DK-4863 Eskilstrup	5 499,240
Halsted Kloster Gods Lade 1992 DK-4900 Nakskov	3 999,960

The characteristics of the lot shall be supplied to the tenderers by the intervention agency.

Address of the intervention agency :

DENMARK

Landbrugsministeriet
EF-Direktoratet,
Nyropsgade 26,
DK-1780 Copenhagen V;
Tel. : (45 33) 92 70 00 ; Fax : (45-33) 92 69 48.

ANNEX III

(a) Place of take-over in Azerbaijan :

1. Beiuk Kesik — goods not unloaded.

The quantitative and qualitative controls will be carried out at the time of sealing the rail-wagons at Poti or Batumi. The take-over certificate will be issued on arrival at the abovementioned station after verification of the integrity of the seals and the number of wagons.

2. Authority entitled to deliver the take-over certificate :

Gossudarstvenaya Companija Chleboproductov,
370033, Baku,
Ul. Usif Zaade No 13,
Mr F. R. Mamedov — President,
Tel. : (7-8922) 66 74 51/66 38 20.

(b) Place of take-over in Armenia :

1. Airum — goods not unloaded.

The quantitative and qualitative controls will be carried out at the time of sealing the rail-wagons at Poti or Batumi. The take-over certificate will be issued on arrival at the abovementioned station after verification of the integrity of the seals and the number of wagons.

2. Authority entitled to deliver the take-over certificate :

Ministry of Agriculture and Food,
375010 Yerevan,
Dom Pravitelstva,
Ploschad Respubliki 1.

(c) Place of take-over in Georgia

1. Port of Poti or Batumi — goods unloaded.

2. Authority entitled to deliver the take-over certificate :

Gossudarstvenaya Corporatziya Chleboproductov,
Ul. Didi Cheivani No 6,
Tbilisi,
Mr Anzar Burdjanadze ;
Tel. : (7-8832) 99 86 98 ; Fax : (78832) 99 67 40.

*ANNEX IV***Certificate of removal of products from intervention stocks**

Intervention Agency :

Tender Regulation : (EC) No

Tender :

Product :

Lot No :

Identification No	Name of store	Quantities removed	Effective date of last physical removal

Date, stamp and signature
of the intervention agency

.....

ANNEX V

Regulation (EC) No 2461/95

Take-over certificate

I, the undersigned,
 (name/first name/position)

acting on behalf of

certify that the following goods have been taken over:

Product :		
Packaging :		
Total quantity in tonnes (net) : (gross) :		
No	of sacks (flour) :	Not applicable
	of cartons (butter/meat) ('') :	
Place and date of take-over :		
Rail wagon numbers/name of boat/heavy goods vehicle registration number ('') :		
Number of seals on arrival :		
Name and address of transport company :		

Name/address of monitoring agency :

.....

Name and signature of its on-the-spot representative :

.....

Observations or remarks :

.....

Signature and stamp
 of beneficiary

.....

(') Delete as appropriate.

ANNEX V (a)

Regulation (EC) No 2461/95

Train No

Take-over certificate on the arrival of the rail-wagons in the countries of destination

I, the undersigned
 (name/first name/position)

acting on behalf of

certify that the goods indicated below have been taken over :

Type of product :

Place and date of takeover :

Wagon numbers	Seal numbers	Quantity (net weight)	Number of packets	Date frontier crossed	Quantities ⁽¹⁾ Signature and remarks
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

⁽¹⁾ To be completed only for the wagons which have been the subject of a check, inserting the weight found.

Name and address of the transport company :

Name and address of the monitoring agency :

Observations and remarks :

.....

Representative of monitoring agency
 Name, signature and stamp

Name, signature and stamp of the beneficiary

.....

.....

.....

.....

—

ANNEX VI

Transit prices on Georgian territory

ARMENIA

Products	Discharging cost (per tonne)	Transport cost including security of the cargo (per tonne)		Administration cost (per lot)
		Poti	Batumi	
Grain				
— grab	\$ 4	\$ 15	\$ 17	\$ 120
— vacuvator	\$ 5,5			
General cargo in covered wagons	\$ 6	\$ 15	\$ 17	\$ 120
Thermos wagons	\$ 7	\$ 31	\$ 35	\$ 120

AZERBAIJAN

Products	Discharging cost (per tonne)	Transport cost including security of the cargo (per tonne)		Administration cost (per lot)
		Poti	Batumi	
Grain				
— grab	\$ 4	\$ 15,1	\$ 16,5	\$ 120
— vacuvator	\$ 5,5			
General cargo in covered wagons	\$ 6	\$ 15,1	\$ 16,5	\$ 120
Thermos wagons	\$ 7	\$ 30,8	\$ 33,8	\$ 120

GEORGIA

Products	Grain — grab	Grain — vacuvator	General cargo in covered wagons
Discharging cost per tonne	\$ 3	\$ 3,5	\$ 5

COMMISSION REGULATION (EC) No 2462/95

of 20 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 21 October
1995.

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

Done at Brussels, 20 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 20 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	99,7
	060	80,2		064	75,6
	064	59,6		066	49,4
	066	41,7		220	110,8
	068	62,3		400	153,7
	204	50,9		412	132,4
	212	117,9		512	186,0
	624	75,0		600	64,5
	999	67,7		624	123,2
	999	70,1		999	110,6
ex 0707 00 30	052	166,9	0808 10 92, 0808 10 94, 0808 10 98	039	53,5
	053	61,0		064	76,4
	060	53,8		388	39,3
	066	60,4		400	56,8
	068	49,1		404	56,9
	204	207,3		508	68,4
	624	95,5		512	29,6
	999	55,6		524	57,4
	052	77,5		528	48,0
	204	196,3		800	56,0
0709 90 79	624	109,8		804	26,2
	999	67,4		999	51,7
	052	57,5	0808 20 57	052	95,5
	388	151,4		064	81,0
0805 30 30	400	54,8		388	79,6
	512	66,5		512	89,7
	520	50,4		528	84,1
	524	68,8		800	55,8
	528	95,7		804	112,9
	600	78,0		999	85,5
	624	76,7			
	999				

⁽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 4 April 1995

concerning State aid that the Freistaat Bayern, a regional authority of the Federal Republic of Germany, intends to grant to the ECSC steel undertakings Neue Maxhütte Stahlwerke GmbH, Sulzbach-Rosenberg, and Lech-Stahlwerke GmbH, Meitingen-Herbertshofen

(Only the German text is authentic)

(Text with EEA relevance)

(95/422/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 4 (c) thereof,

Having regard to Commission Decision No 3855/91/ECSC of 27 November 1991 establishing Community rules for aid to the steel industry⁽¹⁾,

Having given notice, in accordance with Article 6 (4) of that Decision, to the other Member States and the parties concerned to submit their comments,

Having regard to the comments received,

Whereas :

I

On 14 September 1994 the Commission decided to initiate the procedure pursuant to Article 6 (4) of Decision No 3855/91/ECSC ('steel aids code', hereinafter referred to as 'the SAC') with respect to various financial measures proposed as part of the privatization of the shares which the German Federal State Freistaat Bayern holds in Neue Maxhütte Stahlwerke GmbH (hereinafter referred to as

'NMH') and Lech-Stahlwerke GmbH (hereinafter referred to as 'LSW'). It concluded, on the basis of the information provided by the German Government, that the intended injection of public finance into the equity capital of both companies and the intended public contribution to the financing of certain investments could be regarded as State aid that would not be compatible with the SAC.

The Commission informed the German Government, by letter dated 24 October 1994, of its decision to initiate the procedure and requested its comments and such additional information as it might consider relevant. The reply of the German authorities dated 9 December 1994 contained some additional information on the intended financial measures, some additional arguments to back up the position of the German Government that these measures would not constitute aid or had already been approved by the Commission, and a draft business plan for NMH's future after the intended privatization.

The letter by which the Commission informed the German authorities of its decision to initiate the procedure was published in *Official Journal of the European Communities* No C 377 of 31 December 1994, page 4, inviting the other Member States and interested third parties to submit their comments.

The Commission decided on 30 November 1994 to initiate a second procedure covering shareholders' loans granted to NMH by Bavaria in 10 tranches totalling DM

⁽¹⁾ OJ No L 362, 31. 12. 1991, p. 57.

49,895 million (ECU 26,26 million), between March 1993 and August 1994⁽¹⁾. These loans may represent illegal State aid, because no other shareholder, or not all of the other shareholders, participated in this financing of the company. This decision does not deal with those loans. However, the second procedure has some implications for this Decision because the German authorities intend to grant a part of the intended financial contribution to NMH through waiving claims arising from the loans covered by the second procedure. If the Commission were to authorize the intended financial contribution in favour of NMH, such a decision would *de facto* also cover the shareholders' loans subject to the second procedure. If the Commission does not do so, the procedure concerning the loans will remain unaffected.

In the course of this procedure the Commission received the following comments:

— The Government of a Member State stated that it would consider the injection of public capital to represent State aid that would distort competition inside the Community to the disadvantage of its national competitors. Concerning the investment aid it pointed out that the Commission was supposed to ensure full compliance with the Community rules concerning State aid for the steel industry.

— A German law firm acting on behalf of a German producer of steel tubes competing with the NMH subsidiary, Röhwerke Neue Maxhütte GmbH (RNM), analysed the intended financial measures of Bavaria on the basis of the information published in the Official Journal and concluded that the measures would represent State aid incompatible with the SAC. It pointed out that the aid would indirectly also favour the RNM so that the direct competitor of its client would be improperly subsidized if the plan of the Bavarian Government were carried out.

— A French producer of steel tubes described in detail the situation on the European tube market and its own situation, and reported a 48 % reduction in the workforce that it had been forced to carry out between 1986 and 1993. It called upon the Commission to enforce fully the relevant provisions of the Treaties in relation to any financial measures that might, directly or indirectly, favour the tube-producing subsidiary of NMH.

— A British steel company, pointing out that NMH has already been rescued with the involvement of the

State in 1987, urged the Commission to implement its stated policy to eliminate subsidies to the steel industry which are incompatible with the Treaties, and not to authorize aids designed to offset operating losses or to finance new investment if they are incompatible with the SAC.

— A national steel producers' association expressed its full concurrence with the Commission's initial conclusions that the intended financial measures of the Bavarian State would constitute aid incompatible with the ECSC Treaty and with the SAC, and submitted that the Commission should not authorize the injection of any capital by the Bavarian Government into either NMH or LSW.

— A national steel tube association supported the initial view of the Commission that any capital injection by the Bavarian Government into NMH or LSW might be contrary to the ECSC Treaty and the SAC, and requested the Commission to implement its stated policy to stop subsidies to the steel industry.

— A 'Komitee Erhältet unsere Arbeitsplätze' ('save-our-jobs committee'), a group with unknown membership based in Sulzbach-Rosenberg, pointed out the need to invest in technical improvements of the NMH installations to protect the environment from pollution and explained the outstanding importance of NMH to the regional economic situation. It asked the Commission to give its assent to the intended restructuring of the company. The City of Sulzbach-Rosenberg and a citizen of that city submitted similar comments.

The comments were communicated to the Federal German Government by letters dated 13 February 1995, with the request that it state its position.

By letter dated 9 February 1995, the German authorities submitted some additional information and some examples of rescue measures carried out by private undertakings. It also submitted copies of the contracts between Bavaria, Mr Aicher and the Max Aicher GmbH & Co. concluded on 27 January 1995, covering the sale of the Bavarian State's shareholding in NMH and LSW and the obligation on Bavaria to pay a financial contribution. The contracts were to enter into force after approval by the Commission of the financial contributions.

A meeting between representatives of the Bavarian Government, the German Federal Government and the Commission was held on 14 February 1995. The position of the German Government and some details of the contracts submitted were explained and discussed. By letter dated 1 March 1995, the German authorities submitted its remarks on the comments of other Member States and third parties, as had been requested.

⁽¹⁾ State aid C 55/94 (ex NN 100/94), SEC(94) 1967, IP(94) 1118 (OJ No C 173, 8. 7. 1995, p. 3).

II

On the basis of the information received, the relevant facts appear as follows:

On 16 April 1987, formal insolvency proceedings concerning Eisenwerk-Gesellschaft Maximilianshütte mbH ('Maxhütte') were initiated. The administrator in the insolvency decided to continue operations in order to prepare a restructuring plan. In mid 1990, two newly-created companies, Neue Maxhütte Stahlwerke GmbH (NMH), covering the ECSC product-range of Maxhütte, and Rohrwerke Neue Maxhütte GmbH (RNM), covering tube production, took over the business of Maxhütte iK. NMH is an 85 % shareholder of RNM, the remaining 15 % being held by Kühnlein, Nürnberg, the main sales agency for the tubes produced.

The initial shareholders of NMH were the Federal State of Bavaria (45 %), Thyssen Edelstahlwerke AG (5,5 %), Thyssen Stahl AG (5,5 %), Lech-Stahlwerke GmbH (LSW) (11 %), Krupp Stahl AG (11 %), Klöckner Stahl GmbH (11 %) and Mannesmann Röhrenwerke AG (11 %) ⁽¹⁾. In order to enable LSW to participate in NMH, the Bavarian State took over a 19,734 % share in LSW in 1988. By decision dated 26 July 1988, the Commission concluded that the participation of the State in both companies did not contain State aid elements ⁽²⁾.

By agreement dated 7 December 1992 and 3 March 1993, Klöckner Stahl GmbH transferred its shares in NMH to Annahütte Max Aicher GmbH & Co. KG, Hammerau, for a purchase price of DM 1. On 14 June 1993, Krupp Stahl AG, Thyssen Stahl AG and Thyssen Edelstahlwerke AG transferred their shares in NMH to LSW for a purchase price totalling DM 200 000. The Federal German Government informed the Commission in its letter dated 9 December 1994 that the transfer of the shares had become effective independently of any assent on the part of the creditors.

The present shareholding situation therefore appears as follows:

— Bavaria	45 %
— LSW	33 %
— Annahütte Max Aicher GmbH & Co. KG	11 %
— Mannesmann Röhrenwerke AG	11 %

LSW and Annahütte are controlled by the entrepreneur Mr Aicher.

NMH produces approximately 299 kilotonnes per year (kt/y) of crude steel (capacity: 444 kt/y), 81 kt/y of semi-finished products and approximately 85 kt/y of light and

heavy sections (capacity: 258 kt/y). Its subsidiary RNM produces approximately 70 kt/y of tubes (capacity: 136 kt/y). NMH currently employs 1 040 persons; RNM employs 560 persons. NMH has never made a profit since its creation in mid 1990. The total losses up to the end of 1994 are now quantified at DM 156,4 million (ECU 82,31 million). LSW produces approximately 600 kt/y of steel in an electric arc furnace and approximately 450 kt/y of hot-rolled long products (light profiles and rebars).

The Bavarian State and Max Aicher GmbH & Co. agreed by contract dated 27 January 1995 that the State would sell its 45 % share in NMH to Max Aicher GmbH & Co. for DM 3 (ECU 1,58). They further agreed that the Bavarian State should pay 80,357 % of the losses of NMH accumulated until the end of 1994. The losses were finally fixed at DM 156,4 million (ECU 82,31 million), so that the payment from Bavaria would amount to DM 125,7 million (ECU 66,15 million). Bavaria's contribution would not be an injection of capital into the equity of the company by Bavaria in its capacity as shareholder but would be treated as miscellaneous income reducing the losses of the company. The contract would enter into force after approval from the Bavarian Parliament and the Commission.

The shareholders' loans granted by Bavaria ⁽³⁾ may be set off against the proposed contribution of DM 125,7 million (ECU 66,15 million) once the contract enters into force. The contribution will therefore be granted partly through the waiving of claims arising from the loans under consideration in the procedure opened by the Commission's decision of 30 November 1994 as explained above.

The other shareholders Mannesmann Röhrenwerke AG and Annahütte Max Aicher GmbH & Co. KG, each holding 11 % of the shares of NMH, are not prepared to contribute towards the financial restructuring of NMH.

The parties to the said contract further agreed that Bavaria should pay up to DM 56 million (ECU 29,47 million) to cover costs of investments for 'old burdens' ('Altlasten'), e.g. environmental protection and protection against noise and air pollution.

The Bavarian State and Mr Aicher agreed in a second contract dated 27 January 1995 that the State would sell its 19,734 % share in LSW to Mr Aicher for DM 1 (ECU 0,52) and that it should pay a 'compensatory payment' of DM 20 million (ECU 10,52 million) to LSW. Bavaria's contribution would not be an injection of capital into the equity of the company by Bavaria in its capacity as shareholder but would be treated as a miscellaneous income reducing the losses of the company. The contract would enter into force after approval from the Bavarian Parliament and the Commission.

⁽¹⁾ See Commission Decision of 27 June 1989, 19th Report on Competition Policy (1990), paragraph 75, p. 86, *Bull. EC* 6-1989, point 2.1.74.

⁽²⁾ See 18th Report on Competition Policy (1989), paragraph 198, p. 163.

⁽³⁾ See State aid C 55/94 (ex NN 100/94), footnote 2.

The other shareholder in LSW, Max Aicher GmbH & Co., would become the sole shareholder in LSW. Accordingly, it would have to assume the financial responsibility for losses of this company, limited through the provisions of German law concerning private limited companies. Such a contribution by Max Aicher GmbH & Co. is not comparable to the proposed contribution of Bavaria because Max Aicher GmbH & Co. would have at least the prospect of a return on its financial participation as shareholder.

The agreement on transfer of profits and losses between NMH and RNM was terminated by February 1995.

III

The German authorities stated their position on the Commission's decision to initiate the procedure, and on the comments received from other Member States and third parties. The position of the German Government and its supporting arguments are as follows:

1. The German Government is of the opinion that the proposed contribution of DM 125,7 million (ECU 66,15 million) to NMH is in keeping with the normal behaviour of a private market investor in a comparable situation and therefore does not constitute State aid.
2. The German authorities point out that the sale of the shares held by the State of Bavaria is part of an overall privatization plan which covers a number of State holdings in different companies, e.g. DASA, Bayernwerk, Rhein-Main-Donau AG, IABG, Ferngas Nordbayern, BHS AG, etc. Most of those holdings attract high purchase prices. The Federal German Government is of the opinion that the 'negative purchase price' for the sale of Bavaria's shares in NMH and LSW is only one part of the positive total sales proceeds Bavaria receives for its entire portfolio. Any calculation covering the entire privatization programme leads to a positive purchase price, with the result that the action proposed in the case of NMH would be offset by the sale of the profitable companies. The German authorities are of the opinion that a private investor selling off an entire portfolio would behave similarly in certain sales, provided that the entire operation led to positive sales proceeds reflecting the market value of the portfolio.
3. The German Government further argues that a private investor would consider not only the possible return on investment or the mere limitation of losses caused by an engagement when selling his share in an ailing company. A private investor — at least one who assumes his due responsibilities — would also bear in mind his reputation, his social responsibility and his

standing on the market. In a comparable situation, a private investor would therefore, according to the German authorities, also contribute some of his own capital without any prospect of a return when selling his shares in two companies to another shareholder for a nominal purchase price.

4. The German authorities reported some cases which they consider to be illustrative of their opinion that private investors would behave comparably. The cases referred to are the rescue of Metallgesellschaft by private creditors and shareholders, the management buy-out of Maschinenfabrik Weiherhammer, backed by financing from its parent company Bayerische Berg-, Hütten- und Salzwerke AG (BHS, a company recently privatized by Bavaria to VIAG AG), the financial restructuring of Textilgruppe Hof through the shareholding banks, the management buy-out of a certain part of Digital Equipment and of Graetz Holztechnik GmbH (a former subsidiary of Nokia), the financial restructuring of Kennametal Hertel AG and the sale of Heilit & Woerner Bau AG to Walter Bau AG for a purchase price of DM 1 and with a capital injection of DM 50 million from the seller.

During the meeting on 14 February 1995 the German authorities further argued that the Commission should bear in mind the different approaches of market investors in the different Member States when comparing the behaviour of the State with the hypothetical behaviour of a market investor.

5. The behaviour of the former private shareholders of NMH (Krupp Hoesch, Thyssen, Klöckner), who sold their shares at a nominal or low purchase price and transferred their claims arising from shareholders' loans, to the company taking over these shares without any further financial contribution, is not, according to the German Government, evidence to the contrary, because these private shareholders intended only to shed participation in a loss-making company that competed with their own core business.

The fact that Mannesmann Röhrenwerke AG, a 11 % shareholder of NMH, is not prepared to grant a financial contribution towards the restructuring of the company does not, according to the Federal German Government, indicate that the State's proposed action differs from that of normal market investors, because Mannesmann is only interested in keeping its shareholding in RNM in which it provides the industrial leadership.

Even the fact that Annahütte Max Aicher GmbH & Co. KG, holding another 11 % share in NMH, is not willing to contribute to the financial restructuring of NMH should, according to the German Government,

not cause doubts, because it became a shareholder very recently and its management, controlled by Mr Aicher through Stahlwerk Annahütte Beteiligung GmbH, considers the company not to be responsible for the losses accumulated by NMH.

6. The German Government explained that the Aicher group would also contribute to the financial restructuring of NMH with a total of DM 188 million (ECU 98,95 million), consisting of DM 32 million (ECU 16,8 million) to maintain liquidity of LSW until 1994, DM 32 million (ECU 16,8 million) intended purchase price to be paid by Mr Aicher for claims of banks *vis-à-vis* NMH, DM 99,6 million (ECU 52,4 million) basic cash-flow of NMH in 1995 to 1999 and DM 24,3 million (ECU 12,79 million) arising from synergy effects of the grouping of NMH with LSW and Annahütte. This contribution would prove, according to the German Government, that even a private entrepreneur would, in a comparable situation, provide financial assistance in a comparable way.

7. The German Government is further of the opinion that the Commission approved in 1988 the participation of Bavaria in NMH. The intended conditions of the sale of this share as presented represent, according to the German authorities, only the consequence of this participation so that the intended behaviour of the State should be regarded as already covered by the decision of the Commission of 1988.

8. As regards the intended contribution of DM 20 million (ECU 10,52 million) to LSW in connection with the transfer of the 19,734 % share of Bavaria to Mr Aicher, the German authorities put forward largely the same arguments as those concerning the contribution to NMH. It explained that the DM 20 million is intended to cover the losses that LSW suffered owing to its 11 % participation in NMH. Bavaria had taken over the share in LSW to allow it to take a share in NMH.

9. As for the intended contribution of maximum DM 56 million (ECU 29,47 million) to cover investments of NMH, the German authorities refer to an agreement between the State of Bavaria, Thyssen Edelstahlwerke AG, Thyssen Stahl AG, LSW, Saarstahl Völklingen GmbH, Krupp Stahl AG, Klöckner Stahl GmbH and Mannesmann Röhrenwerke AG of 4 November 1987 which was handed out to representatives of the Commission during a meeting on 17 November 1987. This agreement outlined the plan to continue opera-

tions of the old Maxhütte under the newly created NMH, and contained the following provision :

- '5.5. The installations are taken over free of old burdens. Where a takeover free of old burdens is impossible, the State of Bavaria will ensure that MHN (i.e. NMH) will not be affected by the resultant economic responsibilities.'

The German Government contends that this provision was subjected to the appraisal of the Commission when adopting its decision of 26 July 1988 and has therefore to be considered as approved. It presented an expert report of a German law firm commissioned by the management of NMH, concluding that an interpretation of the term 'altlastenfreie Übernahme der Anlagen' (takeover of installations free of old burdens) indicates that it includes an obligation on the part of the State to ensure that the technical installations will be transferred technologically updated, with the result that outstanding repairs and investments will have to be paid by the State. The Bavarian Government did not share this legal opinion but decided not to risk legal proceedings in order to avoid the impression that Bavaria would endanger the future of NMH by withdrawing from its legal obligations.

Consequently, the German authorities are of the opinion that the said provision obliges the State to pay for repairs and installations that are necessary to comply with technological standards, concerning mainly the protection of the environment from noise, dust and exhaust fumes. They consider such payments to have been already approved under the Community State-aid rules by the Commission decision of 26 July 1988.

IV

The Neue Maxhütte Stahlwerke GmbH and Lech-Stahlwerke GmbH are companies falling under Article 80 of the ECSC Treaty because they produce products listed in Annex I to the ECSC Treaty, so that the provisions of the ECSC Treaty and the steel aids code are applicable. RNM, a producer of products falling under the EC Treaty, would not benefit from the intended financial measures of the State because the agreement on transfer of profit and losses between NMH and RNM has been terminated. The fact that NMH is shareholder of RNM is irrelevant to the applicability of the ECSC Treaty in this case.

The Commission initiated the procedure concerning the State coverage of about 80 % of the total losses accumulated by NMH by the end of 1994. The estimate made at the outset of procedure has now been corrected by the

German authorities. The relevant losses are now established at DM 156,4 million (ECU 82,31 million) so that the intended contribution of Bavaria is fixed at DM 125,7 million (ECU 66,15 million). In such a situation the Commission does not consider an extension of the procedure to be necessary.

State aid within the meaning of Article 4 (c) of the ECSC Treaty is any transfer of State resources to public or private steel firms, in the form of acquisitions of shareholdings or provision of capital or similar financing if the financial transfer is not a genuine provision of risk capital according to usual investment practice in a market economy, allowing for a prospective future return on investment or other revenue⁽¹⁾.

1. The intended payment by the State of DM 125,7 million (ECU 66,15 million) to NMH, intended to coincide with the sale of Bavaria's shares in the company for a nominal price to a private company, constitutes a transfer of State resources to steel firms.

The outstanding question is whether this transfer of State resources may be considered a genuine provision of risk capital according to usual investment practice in a market economy allowing a prospect of future return on investment or other revenue.

The German authorities explained during the procedure that the provision of public capital would not represent an injection into the equity capital of the companies by Bavaria as a shareholder in those companies having any attendant expectation of future revenue from that capital. The payments would be treated as a lost subsidy, paid in order to allow business to continue after the sale of the State's shares, and would be used in the accounting of the companies to reduce the accumulated losses. The State of Bavaria as shareholder participating in a private limited company is not legally obliged to provide finance in excess of its share in the stock capital, so that the operation may be seen as a purchase of shares at a negative purchase price. Bavaria could also decide not to inject further capital and thereby accept the possible bankruptcy of the company. Such an arrangement would be in line with its legal obligations as a shareholder of a private limited company.

2. The fact that Bavaria is currently selling a number of shares in different undertakings and that the total

purchase price would be positive even if it accepted a 'negative purchase price' for NMH and LSW is irrelevant to the current procedure, because every single case has to be considered on its facts. The Treaty does not allow a Member State to grant aid to a company as part of privatization on the sole justification that the State budget is balanced by the sale of some other valuable company.

Article 83 of the ECSC Treaty provides that the Community shall in no way prejudice the system of ownership of the undertakings to which this Treaty applies. Therefore, the Commission has to be neutral on the privatization of shares in ECSC undertakings by the State. It is not permissible to give a premium for the intended privatization when assessing the financial measures of the State in favour of a steel undertaking in that context.

3. The German authorities claim that even a private investor would behave similarly in a situation where a company in which he has held a stake for some years has accumulated losses such as to threaten its survival, and to which he wishes to terminate his commitment. The German Government admitted that there is no legal obligation on a shareholder to cover losses of a company beyond his share in the stock capital. Nevertheless, it is of the opinion that considerations concerning the image, the reputation, the standing and the social responsibility of the investor may lead him to the conclusion that a final contribution covering a major part of the debts accumulated would be proper when selling his share for a nominal sum.

In this context it shall be recalled that the Court of Justice held in its judgment of 21 March 1991⁽²⁾ that :

'... a private shareholder may reasonably subscribe the capital necessary to secure the survival of an undertaking which is experiencing temporary difficulties but is capable of becoming profitable again, possibly after a reorganization. It must therefore be accepted that a parent company may also, for a limited period, bear the losses of one of its subsidiaries in order to enable the latter to close down its operations under the best possible conditions. Such decisions may be motivated not solely by the likelihood of an indirect material profit but also by other considerations, such as a desire to protect the group's image or to redirect its activities.'

⁽¹⁾ Court of Justice Cases C 40/85, *Belgium v. Commission*, [1986] ECR, p. 2321, 2345; C 303/84, *Italy v. Commission*, [1991] ECR I, p. 1433, 1476; Commission Decision No 3855/91/ECSC of 27 November 1991 (OJ No L 362, 31. 12. 1991, p. 57) fifth paragraph under II and Commission communication to Member States concerning public undertakings (OJ No C 307, 13. 11. 1993, p. 3, paragraphs 10 to 21).

⁽²⁾ *Italian Republic v. Commission*, [1991] ECR I, p. 1433, 1476, paragraphs 21 and 22.

However, when injections of capital by a public investor disregard any prospect of profitability, even in the long term, such provision of capital must be regarded as aid.'

The intended final injection of capital to coincide with the sale of the shares of Bavaria would, however, disregard any prospect of profitability, even in the long term, because the Bavarian State will never receive any return on this capital.

4. The examples given by the Federal German Government to prove that the State in taking over losses to preserve its image would be in line with normal market investors' behaviour are not such as to bear out its position.

A shareholder may decide to inject additional risk capital to ensure the survival of a company in which he remains a shareholder so that he may still have the chance of receiving a return on investment in the future (see the first paragraph of the quotation under 3). A company, such as Metallgesellschaft, which ran into economic difficulties on account of management mistakes may be supported by the crediting banks and the shareholders to overcome those past mistakes and to allow for a future return on investment and the limitation of losses caused by them. The supporting banks and shareholders, however, would always decide on the basis of strictly economic considerations covering the limitation of losses or the preservation of revenue prospects.

In the case of Kennametal Hertel AG, the Federal German Government reported that the majority shareholder, a bank, sold its stake at the nominal price of DM 1 and waived more than DM 70 million of claims arising from loans for the financial restructuring of the company. This description does not fully cover the background of the case: the company had run into difficulties through the mistakes of its management and was close to insolvency in mid 1993. In this situation, the shareholders' meeting decided to carry out a reduction of capital under the Aktiengesetz. The shares of a Bavarian bank (25 %) and Mr G. Hertel (also 25 %), who was a member of the management until the crisis became obvious, were sold at a nominal price to the United States company Kennametal Inc., a competitor of Hertel AG, which already had a 25 % stake in the company. Kennametal injected DM 75 million of fresh capital as part of an increase of capital stock, so as to provide a proper basis for its new European subsidiary, in which it came to hold 81 %. The

other shareholders who were willing to terminate the engagement were offered DM 128 per share. Employees and banks contributed towards the financial restructuring DM 128 per share. Employees and banks contributed towards the financial restructuring by foregoing salaries and partly waiving claims arising from the loans. The only shareholder who terminated his commitment without having any economic interest in the limitation of losses (unlike banks, which waived part of their claims in order to save more than they would have done in the event of insolvency) or future return on investment was Mr G. Hertel, who sold his stake for DM 1 and did not agree to inject any further capital, although he had been part of the management team responsible for the deterioration of the company's financial situation. The situation of Bavaria in this case is comparable to the situation of Mr Hertel in the context of Kennametal Hertel AG. The illustration does not therefore bear out the views of the Federal German Government.

A provision of capital to allow the management buy-out of a company which is bound to its parent company by an agreement of transfer of profit and losses (as with Maschinenfabrik Weiherhammer) is based on a comparison of the costs of a liquidation and the costs of the necessary injection of capital. The legal responsibility for the outstanding liabilities of the subsidiary is not limited in the same manner as that of the shareholder in a private limited company (Gesellschaft mit beschränkter Haftung GmbH) not bound by such agreement. The costs for the outsourcing of certain parts of companies (e.g. Digital Equipment and Graetz Holztechnik GmbH) are borne to ensure the future supply of specific parts of in-house products while reducing the costs of those parts and therefore to realize an economic benefit.

In the case of Heilit & Woerner Bau AG (Munich), the Schörghuber group, based in Munich, mainly active in real estate investment and development and the brewery sector, acquired three independent building undertakings and subsequently merged them to form the new Heilit & Woerner Bau AG. The background was its intention to extend the activities of the group to cover the entire real-estate sector, including investment, development, construction and holding. The financial results of the company deteriorated steadily, so the group introduced several restructuring measures which finally led to a 'red zero'. In this situation the group decided to terminate the engagement and to leave the construction sector altogether. The 98 % stake in the company was sold to Walter Bau AG

Augsburg at the nominal price of DM 1 and a final contribution to the equity of DM 50 million (ECU 26,3 million) was paid. According to the management of the Schörghuber group, this final contribution was calculated on the basis of existing construction contracts, mainly with customers abroad, which would have caused losses after the transaction. The desire to protect the reputation of the group persuaded the management to end its involvement by providing this final lost payment of equity capital.

This case seems to illustrate behaviour on the part of a private company which might be considered comparable to the proposed behaviour of the State in the present procedure. However, the following differences need to be pointed out: the Schörghuber group remained active in the real-estate business and therefore was highly interested in retaining good business contacts with other companies working in this sector which would have reacted critically on seeing that the group was prepared to let a number of institutional creditors of Heilit & Woerner slip into economic difficulties or even insolvency; by contrast, Bavaria is about to terminate its industrial participation in NMH and therefore has no similar interest. Furthermore, the Schörghuber group had a vital interest in keeping its good relations with the regional public administration in charge of town planning. All these considerations are not focused on a long- or short-term profit arising direct from the injected capital of DM 50 million, but rather on the indirect economic advantage arising from a good future standing and reputation of a group which is being observed by other companies, and indeed by the public. The good name of the group may indeed be considered an important element in ensuring the profitability of future activities.

It seems to be useful to recall the distinction drawn in the ENI/Lanerossi case between an investor, whose sole motive is profit, and private entrepreneurs, such as an industrial holding whose decisions may be governed not merely by short-term profitability but also by the intention to protect its reputation. In the case of Heilit & Woerner, the holding group Schörghuber acted as such a private entrepreneur, having regard to its future business and to the standing of its entire group on the market and in the public eye. The State's behaviour, however, is to be compared with the behaviour of a normal private investor⁽¹⁾ whose intention is always to realize at least a long-term profit. This is the basis of the criterion laid down by the Court of Justice in the case of ENI/Lanerossi, quoted above.

There is no example amongst those given by the German authorities in which a private investor has paid out his own money in order to transfer the shares

be held to a private entrepreneur without receiving any economic advantage, in preference to the legal alternative, which is to do nothing and to accept the possible bankruptcy of the company rather than to inject more capital into a company that would yield no return on investment.

Following the above analysis of individual examples of investors' behaviour the argument of the Federal German Government that the Commission should consider the differences in the typical behaviour of investors in different Member States does nothing to resolve the present questions because there is no typical behaviour on the part of German investors comparable to that of the Bavarian Government in this case which would support the conclusion that Bavaria had acted like a private investor.

5. When establishing whether a given public provision of capital would correspond to normal market practice, the Commission has always focused on the behaviour of private investors who are exactly in the same situation as the State. The private shareholders of the very company concerned would consider not only general policies but also the company's particular economic situation, when deciding whether an investment would be economically advisable.

The former private shareholders of NMH (Krupp Hoesch, Klöckner, Thyssen) disposed of their shares less than one year before the finalization of the privatisation plan of the Bavarian Government covering the transfer of the shares in NMH and LSW to the Aicher group and did so, at a nominal price or even a positive purchase price at a time when the situation was comparable to the present, or indeed less threatening for NMH. The shareholders also sold their claims arising from shareholders' loans, but only on condition that they would be treated equally with any other creditor as far as the price for these claims was concerned. They were not prepared to inject additional capital on top of what they had already agreed. Their behaviour was a normal operation to terminate a loss-making commitment at the lowest possible economic penalty. The desire to get rid of a competitor cannot have been the motive, because it would then have been better to acquire other shares as cheaply as possible so as to take control of the management. The management could then have sought a winding-up order or could have decided to liquidate the company.

Mannesmann Röhrenwerke AG is still a shareholder of NMH but is not prepared to grant any financial contribution to allow NMH to be restructured. The motive of maintaining the industrial leadership in RNM may be an explanation for the fact that it did not behave in the same way as Krupp Hoesch, Thyssen and Klöckner, but does not prove that the proposed behaviour of the State is a genuine provision of risk capital in an market economy.

⁽¹⁾ See Decision No 3855/91/ECSC of 27 November 1991, paragraph 5 under II.

6. Even the Aicher group, consisting of LSW, Annahütte Max Aicher GmbH & Co KG and some other companies controlled by the entrepreneur Max Aicher, holding 44 % of the shares of NMH (only 1 % less than Bavaria), is not prepared to inject its own capital.

The explanation of the German Government, that the Aicher group is proposing to inject DM 188 million (ECU 98,94 million) is misleading. The earlier contributions designed to maintain the liquidity of LSW are not comparable to the proposed behaviour of the State, because the shareholder providing finance remains a shareholder and therefore has at least the chance of realizing future revenue in return for the provision of funds. The purchase price for the claims of banks on NMH is also not comparable because Mr Aicher, although paying some 40 % of the nominal value, would do so only on condition that the financial restructuring of the company through the proposed public contribution was finally carried out. After the proposed public contribution the purchase price for the claims can indeed be considered to be the market value of the claims. The 'basic cash flow' of NMH is not a contribution of the Aicher group but only reflects the intention of the management controlled by this group to re-invest any future income of NMH. The synergy effects of the industrial group are similarly not a contribution from the Aicher group comparable to the provision of capital, because these effects work to the advantage of every participant of the group — a group which already exists.

Therefore, the Aicher group which would become the 89 % shareholder of NMH and the sole shareholder of LSW after the intended transactions and consequently would be the main or the only beneficiary of any investment or provision of capital to the two companies is not prepared to inject any further capital of its own into either of the two companies.

7. The Commission decided on 26 July 1988 that the participation of the State in NMH did not constitute State aid because other private investors, taking over the majority of the shares, participated on equal terms. Such a decision cannot prejudice any future behaviour the State might consider necessary or desirable in connection with that investment. Every single transfer of public resources needs to be considered in the light of its own particular circumstances. A decision of the Commission that a certain investment does not constitute State aid cannot be considered to include the decision that also any future dealing of the State in connection with such investment would not represent State aid, regardless of whether or not the State considers this behaviour to be a consequence of its participation.

It may therefore be concluded that no private investor in exactly the same situation as the State of Bavaria would be prepared to contribute to the company's

survival in a comparable way. It is consequently concluded that the intended payment of DM 125,7 million (ECU 66,15 million) to NMH in connection with the sale of Bavaria's shares does not qualify as a genuine provision of risk capital in a market economy, and that it thus constitutes State aid.

8. As regards the intended contribution of DM 20 million (ECU 10,52 million) to LSW in connection with the transfer of the shares of Bavaria at a nominal price, it should be pointed out that the majority shareholder would not contribute to the coverage of the losses of this company in a comparable way. The earlier contribution to maintain LSW's liquidity is not comparable to the proposed action of the State, because the shareholder injecting capital remains a shareholder and therefore receives at least the chance of future revenue from this provision of capital. The Aicher group may in future decide to cover the losses of this company, but such behaviour would be matched by the prospect of participating in a possible future profit of the company. Bavaria, however, would inject public financial resources without any such prospect. As a shareholder of a private limited company Bavaria is not obliged to inject its own capital beyond its share in the stock capital of the company. It may decide not to contribute further and to accept the possibility that LSW may not have enough capital to cover the losses suffered, so that its management would have to seek a winding-up order. Here again, the same arguments as those put forward above (under Part IV (1) to (4) and (6)) in relation to the intended contribution to NMH hold good for the intended contribution to LSW. A normal private investor would not make a financial contribution to a company when terminating his participation, because he would never realize any return.

It may therefore be concluded that no private investor exactly in the same situation as the State of Bavaria would be prepared to contribute to the company's future in any comparable way. Consequently, the intended payment of DM 20 million (ECU 10,52 million) to LSW in connection with the sale of Bavaria's shares does not constitute a provision of risk capital in a market economy and is therefore to be seen as State aid.

Any State aid to steel companies is prohibited under Article 4 (c) of the ECSC Treaty. The SAC, adopted with the unanimous assent of the Council pursuant to Article 95 of the ECSC Treaty, provides for the possibility of designating certain types of aid as compatible with the common market, such as aid for research and development (Article 2), environmental protection (Article 3), closures (Article 4) and aid under general regional investment aid schemes in certain territories of the Community (Article 5).

The intended State aid in the form of a contribution of DM 125,7 million (ECU 66,15 million) to NMH and of DM 20 million (ECU 10,52 million) to LSW would not be covered by any of those provisions, so that it is not compatible with the SAC.

9. As regards the intended contribution of DM 56 million (ECU 29,47 million) to cover the costs of certain investments it should be recalled that the Commission decided on 26 July 1988 only that the participation of Bavaria in NMH would not constitute State aid. It did not consider the provision of the agreement of 4 November 1987, quoted above (Part III (9)).

The general understanding of 'Altlasten', which was initially subscribed to by the officials of the Bavarian Government, covers past contamination of the site and installations. It should in this context be recalled that the old Maxhütte had had an ore mine which was closed in 1987 and which presented serious environmental problems requiring a solution.

The Commission is sometimes confronted with a similar arrangement when it comes to the takeover of the installations of an insolvent company by another or a newly founded company. The risk of being made liable for contamination caused in the past by a different management is, in particular where steel or chemical production is concerned, very high and incalculable. There would be no possibility at all of selling such land, even at a nominal price, or of finding anybody willing to own such a site. The result would be that industrial sites, mainly in regions affected by severe restructuring problems, would never be re-used.

The State taking over the economic risk therefore serves only the public interest without conferring any real economic advantage on the purchaser of the land, who would never buy it without such provision. The only possible beneficiary of such a provision might be the company liable for the environmental damage, which in such cases has ceased to exist.

The German Government had never submitted, whether in writing or orally, that the contractual arrangement would include an obligation on the State to bear the costs of repairs of, and investments in, the installations for production. The 53-page expert report of the law firm commissioned by the management of NMH, on the interpretation of the term 'Altlasten', had not been disclosed to the Commission before it took its decision of 26 July 1988 so that it had no opportunity to consider that particular interpretation of the term in question under State aid rules. Therefore the intention of the Bavarian authorities to grant up to

DM 56 million investment aid is not covered by the Commission's decision of 26 July 1988. The nature of the intended payment is thus to be established in the current procedure.

The financial contribution to finance investment costs would be a transfer of State resources to a steel firm without being a genuine provision of risk capital in a market economy, and would therefore constitute State aid.

The intended payment of DM 56 million (EU 29,47 million) is designed for investments that would help to comply with requirements on the protection of the environment. The Commission therefore pointed out, in opening the procedure, that it might be possible to consider this payment pursuant to Article 3 of the SAC, but that the German authorities would have to provide information that would allow the Commission to establish whether the conditions of this provision were met. The German authorities did not provide such information but repeated their arguments that the payment was covered by the Commission's decision of 26 July 88. The German authorities have not demonstrated an interest in having part of those investment costs approved pursuant to Article 3 of the SAC.

The intended contribution of DM 56 million (ECU 29,47 million) may therefore only be considered to be a general investment aid which would not be compatible with the SAC. Article 5 of the SAC does not apply because neither company is located in the territory of the former German Democratic Republic.

V

The Commission therefore concluded that the intended financial measures of the State of Bavaria would constitute State aid that would not be compatible with the ECSC Treaty or the SAC,

HAS ADOPTED THIS DECISION:

Article 1

The intended contribution of DM 125,7 million to cover past losses, and the intended contribution of up to DM 56 million to cover the costs of certain investments to the ECSC steel undertaking Neue Maxhütte Stahlwerke GmbH, Sulzbach-Rosenberg, and also the intended contribution of DM 20 million to cover past losses of the

ECSC steel undertaking Lech-Stahlwerke GmbH, Meitingen-Herbertshofen, constitute State aid prohibited pursuant to the provisions of the ECSC Treaty and not permissible pursuant to Decision No 3855/91/ECSC; such aid shall therefore not be granted.

Article 2

Germany shall inform the Commission, within two months of being notified of this Decision, of the measures taken to comply therewith.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 4 April 1995.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION

of 13 October 1995

authorizing Member States to permit temporarily the marketing of forest reproductive material not satisfying the requirements of Council Directive 66/404/EEC

(95/423/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 66/404/EEC of 14 June 1966 on the marketing of forest reproductive material⁽¹⁾, as last amended by the Act of Accession of Austria, Finland and Sweden, and in particular Article 15 thereof,

Having regard to the requests submitted by certain Member States,

Whereas production of reproductive material of the species set out in the Annex is at present insufficient in all Member States for which the Council has stated the equivalence of the reproductive material there harvested, with the result that their requirements for reproductive material conforming to the provisions of Directive 66/404/EEC cannot be met;

Whereas third countries are not in a position to supply sufficient reproductive material of the relevant species which can afford the same guarantees as Community reproductive material and which conforms to the provisions of the abovementioned Directive;

Whereas the Member States should therefore be authorized to permit, for a limited period, the marketing of reproductive material of the relevant species which satisfies less stringent requirements to cover the shortage of reproductive material satisfying the requirements of Directive 66/404/EEC;

Whereas, for genetic reasons, the reproductive material must be collected at places of origin within the natural range of the relevant species and the strictest possible guarantees should be given to ensure the identity of the material;

Whereas, furthermore, reproductive material should be marketed only if it is accompanied by a document bearing certain details of the reproductive material in question;

Whereas each of the Member States should furthermore be authorized to permit the marketing in its territory of seed which satisfy less stringent requirements in respect of provenance, as laid down in Directive 66/404/EEC, if

the marketing of such material has been authorized in the other Member States pursuant to this Decision;

Whereas the measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry,

HAS ADOPTED THIS DECISION:

Article 1

1. Member States are authorized to permit the marketing in their territory of seed satisfying less stringent requirements in respect of provenance, as laid down in Directive 66/404/EEC, on the terms set out in the Annex hereto and on condition that the proof specified in Article 2 is furnished with regard to the place of provenance of the seed and the altitude at which it was collected.

2. Member States are authorized to permit the marketing in their territory of plants produced in the Community from the abovementioned seed.

Article 2

1. The proof referred to in Article 1 (1) shall be deemed to be furnished where the reproductive material is of the category 'source-identified reproductive material' as defined in the Organization for Economic Cooperation and Development (OECD) scheme for the control of forest reproductive material moving in international trade, or of another category defined in that scheme.

2. Where the OECD scheme referred to in paragraph 1 is not used at the place of provenance of the reproductive material, other official evidence shall be admissible.

3. Where official evidence cannot be provided, Member States may accept other non-official evidence.

Article 3

The Member States other than the applicant Member States are also authorized to permit, on the terms set out in the Annex and for the purposes intended by the applicant Member States, the marketing in their territory of the seeds authorized to be marketed pursuant to this Decision.

⁽¹⁾ OJ No 125, 11. 7. 1966, p. 2326/66.

Article 4

The authorization provided for in Article 1 (1) in so far as it concerns the first placing of forest reproductive material on the market of the Community, shall expire on 30 November 1996. Such authorization, in so far as it concerns subsequent placing on the market of the Community, shall expire on 31 December 1998.

Article 5

With regard to the first placing on the market of forest reproductive material, as referred to in Article 4, Member States shall, by 1 January 1997, notify the Commission of the quantities of such material satisfying less stringent

requirements which have been approved for marketing in their territory pursuant to this Decision. The Commission shall inform the other Member States thereof.

Article 6

This Decision is addressed to the Member States.

Done at Brussels, 13 October 1995.

For the Commission

Franz FISCHLER

Member of the Commission

*LEGEND**1. Member States*

A	= Austria
B	= Kingdom of Belgium
D	= Federal Republic of Germany
DK	= Kingdom of Denmark
E	= Kingdom of Spain
F	= French Republic
GB	= United Kingdom
GR	= Greece
I	= Italian Republic
IRL	= Ireland
L	= Grand Duchy of Luxembourg
NL	= Kingdom of the Netherlands
P	= Republic of Portugal

2. States or regions of provenance

CDN	= Canada
CDN (QCI)	= Canada (Queen Charlotte Island)
CDN (BC)	= Canada (British Columbia)
CDN (VI)	= Canada (Vancouver Island)
CH	= Switzerland
CHINA	= People's Republic of China
CROATIA	= Croatia
CZ	= Czech Republic
EC	= European Community
FYROM	= Former Yugoslav Republic of Macedonia
J	= Japan
PL	= Poland
R	= Romania
SL	= Slovenia
USA	= United States of America

3. Other abbreviations

max. alt.	= maximum altitude
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*ANEXO — BILAG — ANLAGE — ΠΑΡΑΡΤΗΜΑ — ANNEX — ANNEXE — ALLEGATO —
BIJLAGE — ANEXO — LIITE — BILAGA*

Estado miembro Medlemsstat Mitgliedstaat Κράτος μέλος Member State État membre Stato membro Lid-Staat Estado-membro Jäsenmaa Medlemsstat	Abies alba		Larix leptolepis		Pinus strobus	
	kg	Procedencia Oprindelse Herkunft Προέλευση Provenance Provenance Provenienza Herkomst Proveniência Alue Häromst	kg	Procedencia Oprindelse Herkunft Προέλευση Provenance Provenance Provenienza Herkomst Proveniência Alue Häromst	kg	Procedencia Oprindelse Herkunft Προέλευση Provenance Provenance Provenienza Herkomst Proveniência Alue Häromst
A	350	SL, CROATIA, CZ, PL	10	SL	30	USA (Eastern States, Appalachians), SL
B	25	R	60	J (Hokkaido, Nagano)	40	CDN (Ontario), USA, CROATIA, SL
D	100	EC, CZ, CH, R, FYROM	50	EC, J	50	USA (Appalachians), EC
DK	650	R	50	J	—	—
E	80	EC	135	J, China	28	USA
F	—	—	70	J	—	—
GB	5	PL	275	J, China, EC	—	—
GR	—	—	—	—	—	—
I	—	—	10	J (Hokkaido)	5	USA (Eastern States, Appalachians)
IRL	—	—	140	J	—	—
L	—	—	—	—	—	—
NL	40	R	20	J (Hokkaido)	25	USA
P	2	EC	1	EC	1	EC

Estado miembro Medlemsstat Mitgliedstaat Κράτος μέλος Member State État membre Stato membro Lid-Staat Estado-membro Jäsenmaa Medlemsstat	Picca sitchensis		Pseudotsuga taxifolia	
	kg	Procedencia Oprindelse Herkunft Προέλευση Provenance Provenance Provenienza Herkomst Proveniência Alue Häromst	kg	Procedencia Oprindelse Herkunft Προέλευση Provenance Provenance Provenienza Herkomst Proveniência Alue Häromst
A	25	USA (Washington, Oregon)	200	USA (Washington, Oregon) CDN (BC)
B	50	USA (Washington)	500	USA (Washington, West of Cascades, max. alt. 610 m)
D	100	CDN (QCI, West Coast) USA (Washington), EC	2 000	USA (Washington, Oregon) CDN (BC), EC
DK	200	CDN (QCI)	20	USA
E	227	USA	1 305	USA (Oregon, Washington, California)

Estado miembro Medlemsstat Mitgliedstaat Κράτος μέλος Member State État membre Stato membro Lid-Staat Estado-membro Jäsenriik Medlemsstat	<i>Picca sitchensis</i>		<i>Pseudotsuga taxifolia</i>	
	kg	Procedencia Oprindelse Herkunft Προέλευση Provenance Provenance Provenienza Herkomst Proveniência Alue Häromst	kg	Procedencia Oprindelse Herkunft Προέλευση Provenance Provenance Provenienza Herkomst Proveniência Alue Häromst
F	70	USA (California E. 091 and 092 ; Oregon Z041, 051 to 053, 061, 062, 071, 072, 081, 082 and 090 ; Washington, all zones)	3 095	USA [Washington, Oregon, California (SIA), seed orchards], EC
GB	600	CDN (BC, QCI, VI), USA (Washington, Oregon), EC	450	CDN (BC, VI), EC, USA (Washington)
GR	—	—	—	—
I	—	—	150	USA (Western States, Oregon, Northern California)
IRL	550	USA (Washington), CDN (QCI, BC)	150	USA (Washington, Oregon)
L	—	—	10	USA (Washington)
NL	2	USA, CDN	—	—
P	1,5	EC, USA	200	EC, USA (East Coast)

COMMISSION DECISION

of 18 October 1995

adopting the plan allocating to the Member States resources to be charged to the 1996 budget year for the supply of food from intervention stocks for the benefit of the most deprived persons in the Community

(95/424/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3730/87 of 10 December 1987 laying down the general rules for the supply of food from intervention stocks to designated organizations for distribution to the most deprived persons in the Community⁽¹⁾, and in particular Article 6 thereof,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy⁽²⁾, as last amended by Regulation (EC) No 150/95⁽³⁾, and in particular Articles 3 (4) and 6 (2) thereof,

Whereas Commission Regulation (EEC) No 3149/92⁽⁴⁾, as last amended by Regulation (EEC) No 2826/93⁽⁵⁾, lays down detailed rules for the supply of food from intervention stocks for the benefit of the most deprived persons in the Community; whereas, in accordance with Article 2 of the abovementioned Regulation, in order to implement the scheme for the supply of such food to the most deprived section of the population, the Commission must adopt a plan to be financed from resources available in the 1996 budget year; whereas this plan should indicate in particular the quantity of products by type that may be withdrawn from intervention stock for distribution in each Member State and the financial resources made available to implement the plan in each Member State; whereas this plan should also indicate the level of appropriations to be reserved to cover costs of intra-Community transport of intervention products as referred to in Article 7 of Regulation (EEC) No 3149/92;

Whereas for this scheme the Member States involved in the measure have provided for information required in accordance with the provisions of Article 1 of Regulation (EEC) No 3149/92;

Whereas, to implement the plan, the conversion rates to be applied to the budgetary limits which have been set should be specified and Article 3 (4) of Regulation (EEC) No 3813/92 should be applied;

Whereas it is necessary in order to help optimize the utilization of budget appropriations to take account of the degree to which the Member States used the resources allocated to them in 1993, 1994 and 1995;

Whereas in accordance with the provisions of Article 2 (2) of Regulation (EEC) No 3149/92 the Commission has sought the advice of major organizations familiar with the problems of the most deprived persons in the Community when drawing up this plan;

Whereas the measures provided for in this Decision are in accordance with the opinions of all the relevant management committees,

HAS ADOPTED THIS DECISION:

Article 1

For the 1996 financial year, foodstuffs from intervention stocks intended to be distributed to the most deprived persons in the Community, pursuant to Regulation (EEC) No 3730/87, shall be supplied in accordance with the annual distribution plan set out in the Annex.

Article 2

The amounts in ecus shall be converted into national currencies using the rates applicable on 1 October 1995 and published in the *Official Journal of the European Communities*, Series C.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 18 October 1995.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 352, 15. 12. 1987, p. 1.

⁽²⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽³⁾ OJ No L 22, 31. 1. 1995, p. 1.

⁽⁴⁾ OJ No L 313, 30. 10. 1992, p. 50.

⁽⁵⁾ OJ No L 258, 16. 10. 1993, p. 11.

ANNEX

Annual distribution plan for 1996

- (a) Quantity of each type of product that may be withdrawn from intervention stocks for distribution in each Member State up to the maximum amounts indicated under (b):

(in tonnes)

Member State	Products				
	Cereals	Olive oil	Milk powder	Butter	Beef/veal ⁽¹⁾
Belgium	3 000		300	200	281
Denmark					117
Greece		5 500		948	1 771
Spain	50 000	4 000		8 232	2 811
France	28 000		6 500	5 008	3 045
Ireland				50	679
Italy	35 000	1 500		3 000	937
Luxembourg			25		8
Portugal	4 700	1 000	3 000	1 470	1 171
Finland	4 500	75	375	92	180
Total	125 200	12 075	10 200	19 000	11 000

(¹) Beef and veal originating in the United Kingdom must either remain there, or be exported to a third country.

- (b) Financial resources available to carry out the plan in each Member State:

(Ecu)

Member State	Allocation
Belgium	3 780 000
Denmark	2 000 000
Greece	20 580 000
Spain	52 675 000
France	43 590 000
Ireland	6 100 000
Italy	49 890 000
Luxembourg	75 000
Portugal	17 025 000
Finland	2 285 000
Total	198 000 000

- (c) The appropriations needed to cover the intra-Community transfer costs of the intervention products are fixed at ECU 2 million.

CORRIGENDA

Corrigendum to Commission Regulation (CE) No 1850/95 of 26 July 1995 amending Regulation (EEC) No 3886/92 laying down detailed rules for the application of the premium schemes provided for in the beef and veal sector, in particular in respect of the payment of advances

(Official Journal of the European Communities No L 177 of 28 July 1995)

On page 45, in Article 1, paragraph 1 :

for: '...for an amount equal to 80 % ...',

read: '...for an amount up to 80 % ...'.
