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⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 13/97
of 8 January 1997
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 1599/96⁽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,

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ No L 141, 24. 6. 1995, p. 12.

⁽⁴⁾ OJ No L 145, 27. 6. 1968, p. 12.

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 9 January 1997.

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

Done at Brussels, 8 January 1997.

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 because of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 ⁽²⁾
1703 10 00 ⁽¹⁾	7,33	0,00	—
1703 90 00 ⁽¹⁾	11,40	—	0,00

⁽¹⁾ For the standard quality as defined in Article 1 of amended 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 14/97

of 8 January 1997

fixing the maximum export refund for white sugar for the 21st partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1464/96

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 1599/96 ⁽²⁾, and in particular the second subparagraph of Article 17 (5) (b) thereof,

Whereas Commission Regulation (EC) No 1464/96 of 25 July 1996 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 1464/96 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 21st partial invitation to

tender, the provisions set out in Article 1 should be adopted;

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

For the 21st partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1464/96 the maximum amount of the export refund is fixed at ECU 45,902 per 100 kilograms.

Article 2

This Regulation shall enter into force on 9 January 1997.

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

Done at Brussels, 8 January 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ No L 187, 26. 7. 1996, p. 42.

COMMISSION REGULATION (EC) No 15/97

of 8 January 1997

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 1 June 1981 on the common organization of the markets in the sugar sector⁽¹⁾, as last amended by Regulation (EC) No 1599/96⁽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 the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92⁽⁶⁾, as last amended by Regulation (EC) No 150/95⁽⁷⁾, are used to convert amounts expressed in third country currencies and are used as the basis for determining the agricultural conversion rates of the Member States' currencies; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93⁽⁸⁾, as last amended by Regulation (EC) No 1482/96⁽⁹⁾;

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 9 January 1997.

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 206, 16. 8. 1996, p. 43.

⁽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 387, 31. 12. 1992, p. 1.

⁽⁷⁾ OJ No L 22, 31. 1. 1995, p. 1.

⁽⁸⁾ OJ No L 108, 1. 5. 1993, p. 106.

⁽⁹⁾ OJ No L 188, 27. 7. 1996, p. 22.

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

Done at Brussels, 8 January 1997.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

to the Commission Regulation of 8 January 1997 fixing the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Amount of refund
	— ECU/100 kg —
1701 11 90 9100	39,82 ⁽¹⁾
1701 11 90 9910	37,76 ⁽¹⁾
1701 11 90 9950	⁽²⁾
1701 12 90 9100	39,82 ⁽¹⁾
1701 12 90 9910	37,76 ⁽¹⁾
1701 12 90 9950	⁽²⁾
	— ECU/1 % of sucrose × 100 kg —
1701 91 00 9000	0,4329
	— ECU/100 kg —
1701 99 10 9100	43,29
1701 99 10 9910	42,89
1701 99 10 9950	42,89
	— ECU/1 % of sucrose × 100 kg —
1701 99 90 9100	0,4329

⁽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).

COMMISSION REGULATION (EC) No 16/97

of 7 January 1997

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⁾, as amended by Regulation (EEC) No 2454/93 ⁽²⁾,

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, as last amended by Regulation (EC) No 2153/96 ⁽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 10 January 1997.

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

Done at Brussels, 7 January 1997.

For the Commission

Martin BANGEMANN

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 289, 12. 11. 1996, p. 1.

ANNEX

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	ECU FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
1.10	New potatoes 0701 90 51 0701 90 59	a) b) c)	43,52 253,77 376,43	595,50 285,74 1 744,01	84,65 32,55 32,18	323,43 83 260,67	13 382,39 95,02	7 131,55 8 511,06
1.30	Onions (other than seed) 0703 10 19	a) b) c)	2,41 14,04 20,83	32,95 15,81 96,49	4,68 1,80 1,78	17,89 4 606,36	740,38 5,26	394,55 470,87
1.40	Garlic 0703 20 00	a) b) c)	93,53 545,41 809,03	1 279,88 614,12 3 748,29	181,93 69,96 69,17	695,12 178 946,83	28 761,91 204,22	15 327,38 18 292,28
1.50	Leeks ex 0703 90 00	a) b) c)	57,85 337,37 500,43	791,68 379,87 2 318,54	112,53 43,27 42,79	429,97 110 688,98	17 790,91 126,32	9 480,87 11 314,83
1.60	Cauliflowers 0704 10 10 0704 10 05 0704 10 80	a) b) c)	75,84 442,26 656,01	1 037,81 497,97 3 039,36	147,52 56,72 56,09	563,65 145 101,64	23 322,01 165,60	12 428,43 14 832,56
1.70	Brussels sprouts 0704 20 00	a) b) c)	53,71 313,21 464,59	734,98 352,66 2 152,48	104,47 40,17 39,72	399,18 102 761,19	16 516,68 117,27	8 801,83 10 504,44
1.80	White cabbages and red cabbages 0704 90 10	a) b) c)	30,88 180,08 267,11	422,57 202,76 1 237,54	60,06 23,10 22,84	229,50 59 081,47	9 496,09 67,43	5 060,52 6 039,42
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)	105,95 617,84 916,46	1 449,84 695,67 4 246,04	206,08 79,25 78,36	787,43 202 709,90	32 581,32 231,34	17 362,77 20 721,38
1.100	Chinese cabbage ex 0704 90 90	a) b) c)	78,85 459,81 682,05	1 079,00 517,73 3 159,98	153,37 58,98 58,32	586,02 150 860,55	24 247,64 172,17	12 921,70 15 421,25
1.110	Cabbage lettuce (head lettuce) 0705 11 10 0705 11 05 0705 11 80	a) b) c)	56,79 331,17 491,23	777,13 372,88 2 275,91	110,46 42,48 42,00	422,07 108 654,04	17 463,83 124,00	9 306,57 11 106,82
1.120	Endives ex 0705 29 00	a) b) c)	21,82 127,24 188,74	298,59 143,27 874,46	42,44 16,32 16,14	162,17 41 747,33	6 710,00 47,64	3 575,80 4 267,49
1.130	Carrots ex 0706 10 00	a) b) c)	30,34 176,93 262,44	415,18 199,21 1 215,90	59,01 22,69 22,44	225,49 58 048,31	9 330,04 66,25	4 972,03 5 933,81
1.140	Radishes ex 0706 90 90	a) b) c)	159,90 932,44 1 383,11	2 188,08 1 049,89 6 408,08	311,02 119,60 118,26	1 188,38 305 927,60	49 171,38 349,14	26 203,70 31 272,49
1.160	Peas (<i>Pisum sativum</i>) 0708 10 90 0708 10 20 0708 10 95	a) b) c)	406,21 2 368,79 3 513,69	5 558,66 2 667,17 16 279,23	790,12 303,83 300,42	3 018,99 777 185,34	124 916,07 886,95	66 568,48 79 445,33

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	ECU FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
1.170	Beans:							
1.170.1	Beans (<i>Vigna</i> spp., <i>Phaseolus</i> spp.) ex 0708 20 90 ex 0708 20 20 ex 0708 20 95	a) b) c)	113,28 660,60 979,89	1 550,19 743,82 4 539,92	220,35 84,73 83,78	841,93 216 740,02	34 836,37 247,35	18 564,49 22 155,57
1.170.2	Beans (<i>Phaseolus</i> spp., <i>vulgaris</i> var. <i>Compressus</i> Savi) ex 0708 20 90 ex 0708 20 20 ex 0708 20 95	a) b) c)	96,51 562,79 834,80	1 320,66 633,68 3 867,73	187,72 72,18 71,38	717,27 184 648,72	29 678,37 210,73	15 815,77 18 875,14
1.180	Broad beans ex 0708 90 00	a) b) c)	92,83 541,33 802,97	1 270,30 609,52 3 720,25	180,56 69,43 68,65	689,92 177 607,93	28 546,71 202,69	15 212,70 18 155,41
1.190	Globe artichokes 0709 10 30	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
1.200	Asparagus:							
1.200.1	— green ex 0709 20 00	a) b) c)	400,37 2 334,73 3 463,16	5 478,72 2 628,82 16 045,12	778,76 299,46 296,10	2 975,58 766 008,65	123 119,66 874,20	65 611,16 78 302,83
1.200.2	— other ex 0709 20 00	a) b) c)	287,28 1 675,26 2 484,95	3 931,20 1 886,28 11 513,00	558,79 214,87 212,46	2 135,09 549 641,33	88 343,20 627,27	47 078,58 56 185,36
1.210	Aubergines (eggplants) 0709 30 00	a) b) c)	205,99 1 201,20 1 781,77	2 818,77 1 352,51 8 255,11	400,67 154,07 152,34	1 530,92 394 106,50	63 344,27 449,77	33 756,52 40 286,30
1.220	Ribbed celery (<i>Apium graveolens</i> L., var. <i>dulce</i> (Mill.) Pers.) ex 0709 40 00	a) b) c)	62,66 365,41 542,02	857,47 411,43 2 511,21	121,88 46,87 46,34	465,71 119 887,55	19 269,38 136,82	10 268,76 12 255,13
1.230	Chantarelles 0709 51 30	a) b) c)	1 213,16 7 074,48 10 493,75	16 601,12 7 965,61 48 618,48	2 359,73 907,38 897,22	9 016,33 2 321 090,50	373 066,11 2 648,91	198 809,02 237 266,19
1.240	Sweet peppers 0709 60 10	a) b) c)	122,20 712,60 1 057,02	1 672,20 802,36 4 897,25	237,69 91,40 90,37	908,20 233 799,42	37 578,30 266,82	20 025,69 23 899,41
1.250	Fennel 0709 90 50	a) b) c)	73,55 428,90 636,20	1 006,47 482,93 2 947,58	143,06 55,01 54,40	546,63 140 720,27	22 617,80 160,59	12 053,15 14 384,69
1.270	Sweet potatoes, whole, fresh (intended for human consumption) 0714 20 10	a) b) c)	53,74 313,36 464,81	735,33 352,83 2 153,51	104,52 40,19 39,74	399,37 102 810,75	16 524,65 117,33	8 806,08 10 509,51
2.10	Chestnuts (<i>Castanea</i> spp.), fresh ex 0802 40 00	a) b) c)	157,27 917,08 1 360,33	2 152,05 1 032,60 6 302,54	305,90 117,63 116,31	1 168,81 300 889,03	48 361,53 343,39	25 772,13 30 757,44
2.30	Pineapples, fresh ex 0804 30 00	a) b) c)	63,30 369,14 547,55	866,23 415,64 2 536,86	123,13 47,35 46,82	470,46 121 112,04	19 466,19 138,22	10 373,64 12 380,30

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	ECU FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
2.40	Avocados, fresh ex 0804 40 90 ex 0804 40 20 ex 0804 40 95	a) b) c)	71,67 417,91 619,90	980,68 470,55 2 872,04	139,40 53,60 53,00	532,62 137 113,78	22 038,13 156,48	11 744,25 14 016,03
2.50	Guavas and mangoes, fresh ex 0804 50 00	a) b) c)	161,95 944,38 1 400,82	2 216,10 1 063,34 6 490,13	315,00 121,13 119,77	1 203,60 309 844,80	49 800,99 353,61	26 539,22 31 672,91
2.60	Sweet oranges, fresh:							
2.60.1	— Sanguines and semi-sanguines 0805 10 42 0805 10 51 0805 10 37	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.60.2	— Navels, navelines, navelates, salustianas, vernas, Valencia lates, Maltese, shamou- tis, ovalis, trovita and hamlins 0805 10 44 0805 10 55 0805 10 38	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.60.3	— Others 0805 10 39 0805 10 46 0805 10 59	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.70	Mandarins (including tangerines and satsu- mas), fresh; clementines, wilkings and simi- lar citrus hybrids, fresh:							
2.70.1	— Clementines 0805 20 21	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.70.2	— Monreales and satsumas 0805 20 23	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.70.3	— Mandarines and wilkings 0805 20 25	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.70.4	— Tangerines and others ex 0805 20 27 ex 0805 20 29	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.85	Limes (<i>Citrus aurantifolia</i>), fresh ex 0805 30 90	a) b) c)	128,78 750,99 1 113,95	1 762,28 845,58 5 161,05	250,49 96,32 95,24	957,12 246 393,26	39 602,49 281,19	21 104,39 25 186,78

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	ECU FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
2.90	Grapefruit, fresh:							
2.90.1	— white	a)	38,60	528,23	75,08	286,89	11 870,52	6 325,87
	ex 0805 40 90	b)	225,10	253,46	28,87	73 854,32	84,29	7 549,53
	ex 0805 40 20	c)	333,90	1 546,98	28,55			
	ex 0805 40 95							
2.90.2	— pink	a)	35,63	487,50	69,29	264,77	10 955,29	5 838,13
	ex 0805 40 90	b)	207,75	233,91	26,65	68 160,08	77,79	6 967,45
	ex 0805 40 20	c)	308,15	1 427,71	26,35			
	ex 0805 40 95							
2.100	Table grapes	a)	239,22	3 273,47	465,30	1 777,87	73 562,53	39 201,89
	0806 10 21	b)	1 394,97	1 570,69	178,92	457 681,06	522,32	46 785,01
	0806 10 29	c)	2 069,20	9 586,77	176,92			
	0806 10 61							
	0806 10 30							
	0806 10 69							
2.110	Water melons	a)	35,01	479,12	68,10	260,22	10 767,03	5 737,81
	0807 11 00	b)	204,18	229,89	26,19	66 988,78	76,45	6 847,72
		c)	302,86	1 403,17	25,89			
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)	61,18	837,26	119,01	454,73	18 815,21	10 026,73
	ex 0807 19 00	b)	356,79	401,74	45,76	117 061,86	133,60	11 966,28
		c)	529,24	2 452,02	45,25			
2.120.2	— other	a)	83,26	1 139,33	161,95	618,79	25 603,41	13 644,20
	ex 0807 19 00	b)	485,52	546,68	62,27	159 295,73	181,79	16 283,51
		c)	720,18	3 336,67	61,58			
2.140	Pears							
2.140.1	Pears — nashi (<i>Pyrus pyrifolia</i>)	a)	—	—	—	—	—	—
	ex 0808 20 41	b)	—	—	—	—	—	—
		c)	—	—	—	—	—	—
2.140.2	Other	a)	—	—	—	—	—	—
	ex 0808 20 41	b)	—	—	—	—	—	—
		c)	—	—	—	—	—	—
2.150	Apricots	a)	249,40	3 412,80	485,10	1 853,54	76 693,51	40 870,40
	0809 10 10	b)	1 454,34	1 637,54	186,54	477 160,92	544,55	48 776,28
	0809 10 50	c)	2 157,26	9 994,80	184,45			
2.160	Cherries	a)	222,81	3 048,98	433,39	1 655,95	68 517,64	36 513,43
	0809 20 11	b)	1 299,31	1 462,97	166,65	426 293,46	486,50	43 576,51
	0809 20 19	c)	1 927,29	8 929,31	164,78			
	0809 20 21							
	0809 20 29							
	0809 20 71							
	0809 20 79							
2.170	Peaches	a)	188,65	2 581,59	366,95	1 402,10	58 014,40	30 916,20
	0809 30 19	b)	1 100,13	1 238,71	141,10	360 945,87	411,92	36 896,56
	0809 30 59	c)	1 631,85	7 560,51	139,52			
2.180	Nectarines	a)	204,40	2 797,06	397,58	1 519,13	62 856,45	33 496,56
	ex 0809 30 11	b)	1 191,95	1 342,09	152,88	391 071,49	446,30	39 976,06
	ex 0809 30 51	c)	1 768,05	8 191,54	151,17			

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	ECU FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
2.190	Plums	a)	242,53	3 318,77	471,74	1 802,48	74 580,53	39 744,38
	0809 40 10	b)	1 414,28	1 592,42	181,40	464 014,72	529,55	47 432,45
	0809 40 40	c)	2 097,83	9 719,44	179,36			
2.200	Strawberries	a)	423,04	5 788,97	822,86	3 144,08	130 091,66	69 326,58
	0810 10 10	b)	2 466,94	2 777,68	316,41	809 386,08	923,70	82 736,95
	0810 10 05	c)	3 659,27	16 953,72	312,87			
2.205	Raspberries	a)	1 274,40	17 439,21	2 478,86	9 471,50	391 899,80	208 845,60
	0810 20 10	b)	7 431,63	8 367,74	953,19	2 438 267,34	2 782,64	249 244,23
		c)	11 023,51	51 072,91	942,51			
2.210	Fruit of the species <i>Vaccinium myrtillus</i>	a)	1 081,32	14 796,97	2 103,28	8 036,46	332 522,56	177 203,13
	0810 40 30	b)	6 305,65	7 099,93	808,77	2 068 842,29	2 361,04	211 480,91
		c)	9 353,32	43 334,79	799,71			
2.220	Kiwi fruit (<i>Actinidia chinensis Planch.</i>)	a)	61,55	842,23	119,72	457,43	18 926,84	10 086,22
	0810 50 10	b)	358,91	404,12	46,03	117 756,37	134,39	12 037,28
	0810 50 20	c)	532,38	2 466,57	45,52			
2.230	Pomegranates	a)	107,21	1 467,03	208,53	796,77	32 967,65	17 568,65
	ex 0810 90 85	b)	625,17	703,92	80,19	205 113,53	234,08	20 967,09
		c)	927,33	4 296,39	79,29			
2.240	Khakis (including sharon fruit)	a)	75,05	1 027,00	145,98	557,78	23 079,05	12 298,95
	ex 0810 90 85	b)	437,65	492,78	56,13	143 589,97	163,87	14 678,03
		c)	649,18	3 007,69	55,50			
2.250	Lychees	a)	177,02	2 422,39	344,33	1 315,64	54 436,76	29 009,65
	ex 0810 90 30	b)	1 032,29	1 162,32	132,40	338 687,01	386,52	34 621,22
		c)	1 531,22	7 094,27	130,92			

COMMISSION REGULATION (EC) No 17/97

of 8 January 1997

amending Annexes I, II, III and IV of Council Regulation (EEC) No 2377/90 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2377/90 of 26 June 1990 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin⁽¹⁾, as last amended by Commission Regulation (EC) No 2034/96⁽²⁾ and in particular Articles 6, 7 and 8 thereof,

Whereas, in accordance with Regulation (EEC) No 2377/90, maximum residue limits must be established progressively for all pharmacologically active substances which are used within the Community in veterinary medicinal products intended for administration to food-producing animals;

Whereas maximum residue limits should be established only after the examination within the Committee for Veterinary Medicinal Products of all the relevant information concerning the safety of residues of the substance concerned for the consumer of foodstuffs of animal origin and the impact of residues on the industrial processing of foodstuffs;

Whereas, in establishing maximum residue limits for residues of veterinary medicinal products in foodstuffs of animal origin, it is necessary to specify the animal species in which residues may be present, the levels which may be present in each of the relevant meat tissues obtained from the treated animal (target tissue) and the nature of the residue which is relevant for the monitoring of residues (marker residue);

Whereas, for the control of residues, as provided for in appropriate Community legislation, maximum residue limits should usually be established for the target tissues of liver or kidney; whereas, however, the liver and kidney are frequently removed from carcasses moving in international trade, and maximum residue limits should therefore also always be established for muscle or fat tissues;

Whereas, in the case of veterinary medicinal products intended for use in laying birds, lactating animals or honey bees, maximum residue limits must also be established for eggs, milk or honey;

Whereas, eprinomectin should be inserted into Annex I to Regulation (EEC) No 2377/90;

Whereas zinc acetate, zinc chloride, zinc gluconate, zinc oleate, zinc stearate, chlorhexidine, glycerol formal, hesperidin, hesperidin methyl chalcone, menbutone and quaternary ammonium compounds should be inserted into Annex II to Regulation (EEC) No 2377/90;

Whereas, in order to allow for the completion of scientific studies, flumequine, doxycycline and albendazole sulfoxide should be inserted into Annex III to Regulation (EEC) No 2377/90;

Whereas it appears that maximum residue limits cannot be established for chlorpromazine because residues, at whatever limit, in foodstuffs of animal origin constitute a hazard to the health of the consumer; whereas chlorpromazine should therefore be inserted into Annex IV to Regulation (EEC) No 2377/90;

Whereas a period of 60 days should be allowed before the entry into force of this Regulation in order to allow Member States to make any adjustment which may be necessary to the authorisations to place the veterinary medicinal products concerned on the market which have been granted in accordance with Council Directive 81/851/EEC⁽³⁾, as last amended by Directive 93/40/EEC⁽⁴⁾ to take account of the provisions of this Regulation;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Veterinary Medicinal Products,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I, II, III and IV of Regulation (EEC) No 2377/90 are hereby amended as set out in the Annex hereto.

Article 2

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

⁽¹⁾ OJ No L 224, 18. 8. 1990, p. 1.

⁽²⁾ OJ No L 272, 25. 10. 1996, p. 2.

⁽³⁾ OJ No L 317, 6. 11. 1981, p. 1.

⁽⁴⁾ OJ No L 214, 24. 8. 1993, p. 31.

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

Done at Brussels, 8 January 1997.

For the Commission

Martin BANGEMANN

Member of the Commission

ANNEX

Regulation (EEC) No 2377/90 is modified as follows:

A. Annex I is modified as follows:

2. Anti-parasitic agents
- 2.3. Agents acting against endo- and ectoparasites
- 2.3.1. Avermectins

Pharmacologically active substance	Marker residue	Animal Species	MRLs	Target tissues	Other provisions
'2.3.1.4. Eprinomectin	Eprinomectin B1a	Bovine	30 µg/kg	Muscle	
			30 µg/kg	Fat	
			600 µg/kg	Liver	
			100 µg/kg	Kidney	
			30 µg/kg	Milk'	

B. Annex II is modified as follows:

1. Inorganic chemicals

Pharmacologically active substance(s)	Animal Species	Other provisions
'1.24. Zinc acetate	All food producing species	
1.25. Zinc chloride	All food producing species	
1.26. Zinc gluconate	All food producing species	
1.27. Zinc oleate	All food producing species	
1.28. Zinc stearate	All food producing species'	

2. Organic compounds

Pharmacologically active substance(s)	Animal Species	Other provisions
2.69. Chlorhexidine	All food producing species	For topical use only
2.70. Glycerol formal	All food producing species	
2.71. Hesperidin	Equidae	
2.72. Hesperidin methyl chalcone	Equidae	
2.73. Menbutone	Bovine, ovine, caprine, porcine, equidae	
2.74. Quatresin	All food producing species	For use as preservative only at concentrations of up to 0,5 %

C. Annex III is modified as follows:

1. Anti-infectious agents
- 1.2. Antibiotics
- 1.2.6. Quinolones

Pharmacologically active substance	Marker residue	Animal Species	MRLs	Target tissues	Other provisions
1.2.6.4. Flumequine	Flumequine	Bovine, ovine, porcine, chicken	50 µg/kg	Muscle, fat or fat/skin	Provisional MRLs expire on 1.1.2000
			100 µg/kg	Liver	
			300 µg/kg	Kidney	
		Salmonidae	150 µg/kg	Muscle/skin	

1.2.8. Tetracyclines

Pharmacologically active substance	Marker residue	Animal Species	MRLs	Target tissues	Other provisions
'1.2.8.1. Doxycycline	Sum of parent drug and its 4-epimer	Porcine, poultry	600 µg/kg	Kidney	Provisional MRLs expire on 1.1.1998'
			300 µg/kg	Liver, skin/fat	
			100 µg/kg	Muscle	
		Bovine	600 µg/kg	Kidney	
			300 µg/kg	Liver	
			100 µg/kg	Muscle	

2. Antiparasitic agents

2.1. Agents acting against endoparasites

2.1.1. Benzimidazoles and pro-benzimidazoles

Pharmacologically active substance	Marker residue	Animal Species	MRLs	Target tissues	Other provisions
'2.1.1.10. Albendazole sulphoxide	Sum of albendazole, albendazole sulphoxide, albendazole sulphone, and albendazole 2-amino sulphone, expressed as albendazole	Bovine, ovine, pheasant	1 000 µg/kg	Liver	Provisional MRLs expire on 1.1.1998'
			500 µg/kg	Kidney	
			100 µg/kg	Muscle, fat	
		Bovine, ovine	100 µg/kg	Milk	

D. Annex IV is modified as follows:

List of pharmacologically active substances for which no maximum levels can be fixed:

'8. Chlorpromazine'

COMMISSION REGULATION (EC) No 18/97

of 8 January 1997

amending Regulation (EEC) No 3886/92 laying down detailed rules for the application of premium schemes in the beef and veal sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organisation of the market in beef and veal⁽¹⁾, as last amended by Regulation (EC) No 2222/96⁽²⁾, and in particular Articles 4i (5) and 25 thereof,

Whereas Commission Regulation (EEC) No 3886/92, of 23 December 1992, laying down detailed rules for the application of the premium schemes provided for in Council Regulation (EEC) No 805/68 on the common organisation of the market in beef and repealing Regulations (EEC) No 1244/82 and (EEC) No 714/89⁽³⁾, as last amended by Regulation (EC) 2311/96⁽⁴⁾, lays down certain rules of application for the early marketing premium for veal calves; whereas in order to ensure an efficient management of the scheme it is necessary to clarify certain provisions, in particular regarding the presentation of the carcass and the notification to the Commission of relevant information;

Whereas in order to avoid speculative movements of animals the retention period fixed in Article 50 (4) (a) of Regulation (EEC) No 3886/92 should be extended;

Whereas Article 4i (2) of Regulation (EEC) No 805/68 allows, under certain conditions, for the use of other statistics than those published by Eurostat as references for determining the maximum carcass weight for eligible veal calves; whereas Germany has presented alternative figures for veal production in 1995; whereas, after verification of those statistics, the Commission can agree to them being used for the calculation of the maximum weight; whereas, consequently, the weight for Germany indicated in Annex IV to Regulation (EEC) No 3886/92 should be altered;

Whereas Article 53 (a) of Regulation (EEC) No 3886/92 provides that the conversion rate to apply on the processing premium and the early marketing premium shall be the agricultural rate valid on 1 January of the calendar year of slaughter; whereas in the light of the market-oriented nature of the premiums the conversion rates

should more closely reflect the actual economic circumstances; whereas, therefore, the agricultural rate shall be the one applicable on the first day of the month preceding the month of slaughter;

Whereas in the light of the late publication of the Community's implementing rules and in order to provide equal access to the scheme certain transitional measures should be adopted with regard to the deadline by which applications for premiums should be submitted;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3886/92 is hereby amended as follows:

1. Article 50 (2) shall be replaced by the following:

'2. The carcass weight of each animal shall be established following the carcass specification used for the establishment of the statistical production of veal in 1995 as communicated to the Statistical Office of the Commission, where appropriate after application of uniform national coefficients used in 1995 for the purpose of taking into account a different presentation of the carcass when weighed warm at the weighing scale of the slaughter premises.'

2. In Article 50 (4) (a) the figure of '60' shall be replaced by '90'.

3. In Article 50 (4) (b) the words 'or part thereof' shall be deleted.

4. The following sentence shall be added to the first subparagraph of Article 50a (1):

'However, applications for animals slaughtered before 25 December 1996 may be submitted until 15 January 1997 inclusive.'

5. The third indent of Article 50a (2) shall be deleted.

6. In the second subparagraph of Article 50b (3) the word 'daily' shall be deleted.

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 24.

⁽²⁾ OJ No L 296, 21. 11. 1996, p. 50.

⁽³⁾ OJ No L 391, 31. 12. 1992, p. 20.

⁽⁴⁾ OJ No L 313, 3. 12. 1996, p. 9.

7. Article 52 (c) (iii) and (iv) shall be replaced by the following:

'(iii) Member States shall notify the Commission each Wednesday:

- of the number of animals, broken down in 10 kilogram groups starting at the maximum weight referred in Annex IV, for which premium applications have been received during the preceding week,
- of the number of animals subject of (a) premium applications and (b) premium acceptance, since the beginning of the scheme.

(iv) Member States shall notify the Commission on the 15th of each month of the total number of veal calves slaughtered in the preceding month and their total carcase weight as established in conformity with the provision of Article 50 (2).'

8. Article 53 (a) shall be replaced by the following:

'(a) — for processing and early marketing premiums at the agricultural conversion rate applicable on

the first working day of the month immediately preceding the month during which the animal was slaughtered,

- for the deseasonalization premium at the agricultural conversion rate applicable on 1 January of the calendar year during which the animal was slaughtered.'

9. In Annex IV the weight of '103' for Germany shall be replaced by the weight of '112'.

Article 2

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

It shall apply from 1 December 1996. However, Article 1 points 2 and 8 shall apply from the day of entry into force of this Regulation.

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

Done at Brussels, 8 January 1997.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 19/97
of 8 January 1997
fixing the import duties in the rice sector

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

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1503/96 of 29 July 1996 laying down detailed rules for the application of Council Regulation (EC) No 3072/95 as regards import duties in the rice sector ⁽²⁾, as amended by Regulation (EC) No 2131/96 ⁽³⁾, and in particular Article 4 (1) thereof,

Whereas Article 11 of Regulation (EC) No 3072/95 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation; whereas, however, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by a certain percentage according to whether it is husked or milled rice, minus the cif import price provided that duty does not exceed the rate of the Common Customs Tariff duties;

Whereas, pursuant to Article 12 (3) of Regulation (EC) No 3072/95, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market or on the Community import market for the product;

Whereas Regulation (EC) No 1503/96 lays down detailed rules for the application of Regulation (EC) No 3072/95 as regards import duties in the rice sector;

Whereas the import duties are applicable until new duties are fixed and enter into force; whereas they also remain in force in cases where no quotation is available from the source referred to in Article 5 of Regulation (EC) No 1503/96 during the two weeks preceding the next periodical fixing;

Whereas, in order to allow the import duty system to function normally, the market rates recorded during a reference period should be used for calculating the duties;

Whereas application of Regulation (EC) No 1503/96 results in import duties being fixed as set out in the Annexes to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import duties in the rice sector referred to in Article 11 (1) and (2) of Regulation (EC) No 3072/95 shall be those fixed in Annex I to this Regulation on the basis of the information given in Annex II.

Article 2

This Regulation shall enter into force on 9 January 1997.

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

Done at Brussels, 8 January 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 329, 30. 12. 1995, p. 18.

⁽²⁾ OJ No L 189, 30. 7. 1996, p. 71.

⁽³⁾ OJ No L 285, 7. 11. 1996, p. 6.

ANNEX I

to the Commission Regulation of 8 January 1997 fixing the import duties on rice and broken rice

(ECU/tonne)

CN code	Duties ⁽¹⁾		
	Third countries (except ACP and Bangladesh) ⁽²⁾ ⁽³⁾	ACP Bangladesh ⁽¹⁾ ⁽³⁾ ⁽⁴⁾	Basmati India and Pakistan ⁽⁵⁾
1006 10 21	(7)	140,81	
1006 10 23	(7)	140,81	
1006 10 25	(7)	140,81	
1006 10 27	(7)	140,81	
1006 10 92	(7)	140,81	
1006 10 94	(7)	140,81	
1006 10 96	(7)	140,81	
1006 10 98	(7)	140,81	
1006 20 11	354,90	173,11	
1006 20 13	354,90	173,11	
1006 20 15	354,90	173,11	
1006 20 17	306,01	148,67	56,01
1006 20 92	354,90	173,11	
1006 20 94	354,90	173,11	
1006 20 96	354,90	173,11	
1006 20 98	306,01	148,67	56,01
1006 30 21	(7)	271,09	
1006 30 23	(7)	271,09	
1006 30 25	(7)	271,09	
1006 30 27	(7)	271,09	
1006 30 42	(7)	271,09	
1006 30 44	(7)	271,09	
1006 30 46	(7)	271,09	
1006 30 48	(7)	271,09	
1006 30 61	(7)	271,09	
1006 30 63	(7)	271,09	
1006 30 65	(7)	271,09	
1006 30 67	(7)	271,09	
1006 30 92	(7)	271,09	
1006 30 94	(7)	271,09	
1006 30 96	(7)	271,09	
1006 30 98	(7)	271,09	
1006 40 00	(7)	84,38	

⁽¹⁾ Subject to the application of the provisions of Articles 12 and 13 of amended Council Regulation (EEC) No 715/90 (OJ No L 84, 30. 3. 1990, p. 85).

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

⁽³⁾ The import levy on rice entering the overseas department of Réunion is specified in Article 11 (3) of Regulation (EC) No 3072/95.

⁽⁴⁾ The duty on imports of rice not including broken rice (CN code 1006 40 00), originating in Bangladesh is applicable under the arrangements laid down in Council Regulation (EEC) No 3491/90 (OJ No L 337, 4. 12. 1990, p. 1) and amended Commission Regulation (EEC) No 862/91 (OJ No L 88, 9. 4. 1991, p. 7).

⁽⁵⁾ No import duty applies to products originating in the OCT pursuant to Article 101 (1) of amended Council Decision 91/482/EEC (OJ No L 263, 19. 9. 1991, p. 1).

⁽⁶⁾ For husked rice of the Basmati variety originating in India and Pakistan, a reduction of ECU 250 per tonne applies (Article 4b of amended Regulation (EC) No 1503/96).

⁽⁷⁾ Duties fixed in the Common Customs Tariff.

ANNEX II

Calculation of import duties for rice

	Paddy	Indica rice		Japonica rice		Broken rice
		Husked	Milled	Husked	Milled	
1. Import duty (ECU/tonne)	(¹)	306,01	572,00	354,90	572,00	(¹)
2. Elements of calculation:						
(a) Arag cif price (\$/tonne)	—	405,92	364,72	380,00	430,00	—
(b) fob price (\$/tonne)	—	—	—	350,00	400,00	—
(c) Sea freight (\$/tonne)	—	—	—	30,00	30,00	—
(d) Source	—	USDA	USDA	Operators	Operators	—

(¹) Duties fixed in the Common Customs Tariff.

COMMISSION REGULATION (EC) No 20/97

of 8 January 1997

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 2375/96⁽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 Regulation (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 multilateral trade negotiations, the criteria whereby the Commis-

sion 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 standard 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 9 January 1997.

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

Done at Brussels, 8 January 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ No L 325, 14. 12. 1996, p. 5.

⁽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 8 January 1997 establishing the standard import values for determining the entry price of certain fruit and vegetables

(ECU/100 kg)		
CN code	Third country code (1)	Standard import value
0702 00 15	052	31,9
	204	48,6
	624	176,0
	999	85,5
0707 00 10	053	158,5
	624	112,4
	999	135,5
0709 10 10	220	182,0
	999	182,0
0709 90 71	052	85,9
	999	85,9
0805 10 01, 0805 10 05, 0805 10 09	052	50,6
	204	52,1
	448	26,9
	624	39,3
	999	42,2
0805 20 11	052	55,2
	204	63,4
	999	59,3
0805 20 13, 0805 20 15, 0805 20 17, 0805 20 19	052	64,3
	464	86,0
	624	92,4
	999	80,9
0805 30 20	052	78,2
	528	45,5
	600	70,4
	999	64,7
0808 10 51, 0808 10 53, 0808 10 59	060	48,0
	064	65,4
	400	86,3
	404	71,1
	720	58,5
	999	65,9
0808 20 31	052	66,4
	064	71,6
	400	107,9
	624	70,4
	999	79,1

(1) Country nomenclature as fixed by Commission Regulation (EC) No 68/96 (OJ No L 14, 19. 1. 1996, p. 6). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 21/97

of 8 January 1997

introducing safeguard measures in respect of imports of rice originating in the overseas countries and territories

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community⁽¹⁾, and in particular Article 109 thereof,

Having consulted the Committee set up by Article 1 (2) of Annex IV to that Decision,

Whereas on 29 November and 10 December 1996 the Italian and Spanish Governments respectively applied to the Commission, pursuant to Article 109 of Decision 91/482/EEC, for safeguard measures to be introduced in respect of imports of rice from the overseas countries and territories (OCTs);

Whereas the Italian and Spanish Governments have pointed out that increased imports of cheap rice from the OCTs have caused serious disruption in the Community rice sector and may cripple this sector of the Community economy;

Whereas on 4 December 1996 the Commission decided that safeguard measures should be introduced;

Whereas this rice, which is exempt from the levy on import into the Community in accordance with Article 101 (1) of Decision 91/482/EEC, is sold on the Community market at a much lower price than that at which Community rice can be sold given the level of processing involved;

Whereas the combined effect of the quantities and low prices of those imports is causing a disturbance on the Community market in rice, which has experienced a normal harvest of Indica rice in 1996/97 after two years of drought;

Whereas the Community has provided aid per hectare on a temporary basis to encourage Community producers to grow more Indica rice; whereas imports of cheap rice from the OCTs may undermine these attempts to diversify production, leading European producers initially to

put enormous quantities into intervention and subsequently to return to growing Japonica rice, for which there is already a surplus;

Whereas the quantities of rice imported from the OCTs are likely to increase still further owing to the region's unrealized potential;

Whereas, consequently, the threat of damage to a sector of the Community economy exists; whereas safeguard measures should therefore, as noted by the Commission in its Decision of 4 December 1996, be applied to imports into the Community of rice from the OCTs pursuant to Article 109 of Decision 91/482/EEC;

Whereas priority should be given to measures which would least disturb the functioning of the association and the Community, in accordance with Article 109 (2) of Decision 91/482/EEC; whereas such measures must, moreover, be limited to what is strictly necessary to remedy the difficulties that have arisen;

Whereas the introduction of a tariff quota would guarantee OCT rice access to the Community market within the limits compatible with the stability of that market while preserving the greatest possible degree of preferential treatment for that product consistent with the objectives of Decision 91/482/EEC;

Whereas the quota should be opened for a period sufficient to monitor trends on the Community market and long enough to be compatible with the stability and predictability of trade; whereas a period of four months from 1 January 1997 would meet those requirements; whereas prior to the end of that period there should be an evaluation of the situation to determine whether the measures need to be extended or adjusted;

Whereas the quota should be opened for a quantity of 42 650 tonnes of husked rice equivalent originating in the OCTs, corresponding to the quantities imported over the last four years for which statistics are available; whereas, in accordance with Article 110 of Decision 91/482/EEC, particular attention should be paid to the interests of the least-developed OCTs listed in Article 230 of that Decision; whereas, for those territories, reference should therefore be made to the period during which imports took place for which statistics are actually available, namely the first four months of 1995;

(¹) OJ No L 263, 19. 9. 1991, p. 1.

Whereas the total available quantities should be allocated among the interested importers and speculation should be prevented; whereas the number of licence applications made daily by each importer for each origin should be restricted and measures should be adopted to facilitate the transition between the current arrangements and the arrangements introduced by this Regulation; whereas the transitional measures can apply from 4 January since importers were informed on that date by a notice published in Official Journal No L 2 of 4 January 1997;

Whereas, with a view to guaranteeing proper administration of the measures, special rules should be laid down regarding the submission of applications and the issuing of licences; whereas those rules will either supplement or derogate from the provisions of Commission Regulation (EEC) No 3719/88⁽¹⁾, as last amended by Regulation (EC) No 2402/96⁽²⁾; whereas this Regulation should enter into force on the day of its publication so as to prevent speculation,

HAS ADOPTED THIS REGULATION:

Article 1

1. Imports into the Community of rice originating in the OCTs falling within CN code 1006 and benefiting from exemption from customs duties shall be restricted during the period of 1 January to 30 April 1997 to the following quantities of husked rice equivalent:

- (a) 4 594 tonnes for rice originating in Montserrat;
- (b) 1 328 tonnes for rice originating in the Turks and Caicos Islands;
and
- (c) 36 728 tonnes for rice originating in the other OCTs.

2. The quantity of rice originating in the regions referred to in paragraph 1 for which import licences have been issued since 1 January 1997 shall be allocated from the quotas specified in paragraph 1.

3. Licences shall be issued for applications for import licences for rice originating in the regions referred to in paragraph 1 submitted between 1 and 3 January 1997 in accordance with the provisions applicable when the applications were submitted.

4. Applications for import licences for rice originating in the regions referred to in paragraph 1 submitted between 4 January 1997 and the date of entry into force of this Regulation for which licences have not been issued shall be deemed admissible under this Regulation provided that:

- they concern a quantity not greater than 1 000 tonnes per application and per origin, or the quantity applied for is reduced to 1 000 tonnes per origin,
- the applicant has submitted no more than one application per origin per day or, if he has submitted more than one application per day, the other applications have been rejected and
- the importer lodges an additional security to ensure compliance with the obligation referred to in Article 3 (4).

Admissible applications shall be treated as applications submitted pursuant to Articles 2 and 3. For the purpose of applying Article 4 (3), such applications shall be considered admissible on the date of their submission.

5. Within five working days following the date of entry into force of this Regulation, the Member States shall inform the Commission of:

- (a) the quantity of rice originating in the regions referred to in paragraph 1 for which import licences have been issued in accordance with paragraph 2;
- (b) the quantity for which licences have been applied for pursuant to paragraph 3 as well as the quantity for which licences have actually been issued;
- (c) the quantity for which applications have been accepted pursuant to paragraph 4, broken down by date of submission of the application.

Article 2

1. Applications for import licences shall be for a quantity not less than 100 tonnes and not more than 1 000 tonnes of rice.

2. Applications for import licences shall be accompanied by:

- proof that the applicant is a natural or legal person who has carried out a commercial activity in the rice sector for at least 12 months and who is registered in the member state in which the application is submitted,
- a written declaration by the applicant stating that he has not submitted more than one application on the day in question for each of the origins referred to in Article 1. Where an applicant submits more than one application for an import licence, all his applications shall be rejected.

Article 3

1. The licence application and the import licence shall contain the following indications:

- (a) in box 8, the country of origin must be indicated and 'yes' must be marked with a cross;

⁽¹⁾ OJ No L 331, 2. 12. 1988, p. 1.

⁽²⁾ OJ No L 327, 18. 12. 1996, p. 14.

(b) in box 24 of the licence, one of the following entries must be made:

- Exención del derecho de aduana (Decisión 91/482/CEE; artículo 101)
- Toldfri (artikel 101 i Rådets afgørelse 91/482/EØF)
- Zollfrei (Ratsbeschluss Nr. 91/482/EEG, Artikel 101)
- Απαλλαγή από τους δασμούς (Απόφαση αριθ. 91/482/ΕΟΚ του Συμβουλίου άρθρο 101)
- Exemption from customs duty (Council Decision No 91/482/EEC; Article 101)
- Exemption du droit de douane (Décision du Conseil n° 91/482/CEE; article 101)
- Esenzione dal dazio doganale (Decisione del Consiglio n. 91/482/CEE, articolo 101)
- Vrijgesteld van douanerecht (Besluit van de Raad nr. 91/482/EEG; Artikel 101)
- Isenção de direito aduaneiro (Decisão do Conselho n° 91/482/CEE; artigo 101)
- Tullfri (rådets beslut nr 91/482/EEG, artikel 101)
- Tullivapaa (neuvoston päätöksen N:o 91/482/ETY; Artikla 101).

2. Notwithstanding Article 8 (4) of Regulation (EEC) No 3719/88, the quantity entered for free circulation may not exceed that entered in boxes 17 and 18 of the import licence. The figure '0' shall accordingly be entered in box 19 of the licence.

3. Notwithstanding Article 9 of Regulation (EEC) No 3719/88, the rights arising from import licences shall not be transferable.

4. Notwithstanding Article 10 of Commission Regulation (EC) No 1162/95⁽¹⁾, the amount of the security in respect of the import licences shall be equal to the customs duty calculated in accordance with Article 11 of Council Regulation (EC) No 3072/95⁽²⁾ applicable on the date on which the application was lodged.

5. The concept 'originating products' for the purposes of applying this Decision and the methods of administrative cooperation relating to it shall be as defined in Annex 11 to Decision 91/482/EEC.

Article 4

1. On the day on which licence applications are lodged, the Member States shall inform the Commission's departments by telex or fax of the quantities, by CN code

and by country of origin, for which import licences have been applied for and the names and addresses of the applicants.

2. Without prejudice to paragraph 3, import licences shall be issued on the 11th working day following that on which the application was lodged.

3. If the quantities applied for exceed the quantities still available for one or more of the quotas specified in Article 1, the Commission shall, within 10 working days following the date on which the licence applications were lodged, set a single percentage reduction to be applied to the quantities for which applications were lodged on the day on which the quotas were exceeded.

4. If the quantity for which the import licence is issued is less than the quantity applied for, the amount of the security referred to in Article 3 (4) shall be reduced proportionately.

Article 5

Member States shall notify the Commission by telex or fax:

- (a) within two working days following issue, of the quantities for which licences have been issued, specifying date, CN code, country of origin and name and address of holder;
- (b) on the last working day of the following month, of the quantities by CN code and by country of origin actually entered for free circulation during each month.

The above information must be notified in the same way but separately from information on other import licence applications in the rice sector.

Article 6

1. Regulation (EEC) No 719/88 shall apply, including Article 33 (5) thereof.

2. Regulation (EC) No 1162/95 shall apply without prejudice to this Regulation.

Article 7

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

It shall apply from 1 January to 30 April 1997.

⁽¹⁾ OJ No L 117, 24. 5. 1995, p. 2.

⁽²⁾ OJ No L 329, 30. 12. 1995, p. 18.

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

Done at Brussels, 8 January 1997.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 22/97

of 8 January 1997

fixing, for December 1996, the specific agricultural conversion rate for the amount of the reimbursement of storage costs 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 markets in the sugar sector ⁽¹⁾, as last amended by Regulation (EC) No 1599/96 ⁽²⁾,

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

Having regard to Commission Regulation (EEC) No 1713/93 of 30 July 1993 establishing special detailed rules for applying the agricultural conversion rate in the sugar sector ⁽⁵⁾, as last amended by Regulation (EC) No 2926/94 ⁽⁶⁾, and in particular Article 1 (3) thereof,

Whereas Article 1 (2) of Regulation (EEC) No 1713/93 provides that the amount of the reimbursement of storage costs referred to in Article 8 of Regulation (EEC) No 1785/81 is to be converted into national currency using a specific agricultural conversion rate equal to the average, calculated *pro rata temporis*, of the agricultural

conversion rates applicable during the month of storage; whereas that specific rate must be fixed each month for the previous month;

Whereas application of these provisions will lead to the fixing, for December 1996, of the specific agricultural conversion rate for the amount of the reimbursement of storage costs in the various national currencies as indicated in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The specific agricultural conversion rate to be used to convert the amount of the reimbursement of storage costs referred to in Article 8 of Regulation (EEC) No 1785/81 into each of the national currencies for December 1996 shall be as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 9 January 1997.

It shall apply with effect from 1 December 1996.

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

Done at Brussels, 8 January 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 22, 31. 1. 1995, p. 1.

⁽⁵⁾ OJ No L 159, 1. 7. 1993, p. 94.

⁽⁶⁾ OJ No L 307, 1. 12. 1994, p. 56.

ANNEX

to the Commission Regulation of 8 January 1997 fixing, for December 96, the specific agricultural conversion rate for the amount of the reimbursement of storage costs in the sugar sector

Agricultural conversion rates		
ECU 1 =	39,9325	Belgian and Luxembourg francs
	7,49997	Danish kroner
	1,93738	German marks
	311,761	Greek drachmas
	165,198	Spanish pesetas
	6,61023	French francs
	0,812908	Irish punt
	1 973,93	Italian lire
	2,17367	Dutch guilders
	13,6332	Austrian schillings
	198,202	Portuguese escudos
	6,02811	Finnish marks
	8,64446	Swedish kroner
	0,809915	Pound sterling

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 26 June 1996

concerning German aid granted to Mercedes-Benz in Ludwigsfelde
(Brandenburg)

(Only the German text is authentic)

(Text with EEA relevance)

(97/13/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93 (2) thereof,

Having regard to the Agreement establishing the European Economic Area, and in particular Article 62 (1) (a) thereof,

Having given the parties concerned the opportunity to submit their comments, in accordance with the first subparagraph of Article 93 (2) (1),

Whereas:

I

By letter dated 14 January 1992⁽¹⁾, the Commission informed the German authorities of its decision of 18 December 1991 to initiate the procedure of Article 93 (2) of the EC Treaty with respect to certain State aid measures proposed by them for Mercedes-Benz (MB) in the new *Länder*, and in particular in the Land of Brandenburg.

In initiating the procedure, the Commission expressed serious doubts as to the compatibility of the aid, for the following reasons:

- the planned measures had not been properly notified to the Commission in accordance with the procedure of Article 93 (3) of the Treaty and could not yet be accurately quantified,

- a high aid intensity proposed for a project that might involve a significant expansion of capacity within the European truck market could give rise to distortion of competition,

- insufficient evidence had been presented to justify the combination of a relatively high intensity of regional aid and the granting of indirect investment as well as temporary operating aid by the Treuhandanstalt (THA), given the structural and economic problems in the new *Länder*; indeed, it was feared that the overall aid intensity might be disproportionately high and incompatible with the Community Framework on State aid to the motor vehicle industry⁽²⁾.

II

By letters dated 19 September and 14 December 1990 and 14 March 1991, the Commission called on the German authorities to notify, in accordance with the Community framework on State aid to the motor vehicle industry, certain aid measures in support of investment by Mercedes-Benz AG in the new German *Länder* and stressed that such aid could not be granted without prior notification and approval by the Commission.

The German Government explained by letter dated 29 May 1991 that, in its view, the Community framework did not apply to the new German *Länder* between 1 January and 31 March 1991 because it had been due to expire by the end of 1990 and its renewal by the Commission in

⁽¹⁾ OJ No C 68, 17. 3. 1992, p. 8.

⁽²⁾ OJ No C 123, 18. 5. 1989, p. 3.

December 1990 could become legally binding only upon formal acceptance of the prolongation by the German Government or upon a formal decision of the Commission pursuant to the Article 93 (2) procedure. However, given that the aid measures in question were approved before 31 March 1991, they could be scrutinized by the Commission only with reference to the approved regional aid schemes for the new *Länder*.

The legal position taken by the German Government was not accepted by the Commission, on the following grounds:

1. the Decision of 21 February 1990 on the applicability of the Community framework in question to Germany, which was not challenged by the German Government, was not limited in time, and hence its renewal by the Commission in December 1990 did not affect the fundamental notification requirement;
2. the German Government did not challenge or react to the renewal of the Framework itself so the Commission could legitimately assume it would comply with the applicable provisions;
3. when approving the extension of existing regional aid schemes to the new *Länder*⁽³⁾, the Commission stipulated that Community frameworks should be complied with. That extension means that the provisions of the 19th outline plan for the joint Federal Government/*Länder* scheme, which was published by the German Government in July 1991 and approved by Commission letter SG(90) D/27707 of 2 October 1991, must also be complied with in the case of aid cases in the new *Länder*. Hence the prior notification requirement for State aid to the motor vehicle industry applies in these cases too.

Consequently, the Commission considered these cases as non-notified cases, given that the aid was approved by the German authorities before prior agreement by the Commission.

The decision to initiate the Article 93 (2) procedure was based on a first detailed analysis of the information contained in the German authorities' letters of 16 September and 10 December 1991 and of several bilateral contacts with representatives of the German authorities.

In its letter of 14 January 1992, the Commission requested the German Government not only to comment within one month on the decision to initiate the Article 93 (2) procedure in the Mercedes-Benz case but also to confirm within 10 working days whether it agreed to suspend all aid payments to Mercedes-Benz for its investments in Ludwigsfelde and Ahrensdorf. If such confirmation were not received in due course, the Commission reserved the right to halt, by interim decision, the payment of any State aid for the projects.

III

By letter dated 29 January 1992, the German Government declared its willingness to suspend further payments of aid until termination of the Article 93 (2) procedure. By letter dated 30 March 1992, it provided its observations on the Commission's letter of 14 January 1992. By way of a notice in the Official Journal, the Commission invited the other Member States and third parties to comment on the initiation of the Article 93 (2) procedure⁽⁴⁾. However, no such comments were received by the Commission during the procedure.

By letter dated 24 April 1992, the Commission requested the German authorities and the THA to provide such further information as it deemed necessary to enable it to complete its analysis of the case. The relevant questions, which were explained by the Commission at a bilateral meeting on 28 April 1992 and further clarified in letters dated 14 May, 5 June, 21 August and 17 November 1992, were answered progressively by the German authorities in letters of 20 May, 20 July, 27 August and 6 and 16 October 1992. The replies were further discussed at meetings between representatives of the Commission, the German authorities concerned and Mercedes-Benz on 15 and 16 June and 13 October 1992.

The investment was originally planned to take place in two stages. The first stage was the privatization by the THA of the former East German IFA-Kombinat Nutzfahrzeuge (responsible prior to unification for truck production in the German Democratic Republic) and the establishment of a production company, Nutzfahrzeuge Ludwigsfelde (NL) and a development company, Entwicklungsgesellschaft für Kraftfahrzeugtechnik (EGL) as part of the holding company Fahrzeugbau- und Fahrzeugtechnik Beteiligungsgesellschaft (FBG). FBG would initially be wholly owned by the THA but MB acquired a 25 % share in 1992. NL would assemble MB light trucks pursuant to a *Lohnmontagevertrag* (an assembly commission contract) commercial contract until 1994. The second stage was to involve the building of a new plant by MB in Ahrensdorf close to Ludwigsfelde, where production of LN1 (also known as T2) and LN2 trucks was due to start at the end of 1994, when NL was to be closed down.

Among the issues to be clarified at that stage of proceedings in the letters referred to above and at the meetings were:

- details of MB's investment plans for the new *Länder*, in relation to the company's existing activities in the truck sector,
- the precise amounts of State aid proposed or already paid to Mercedes-Benz or to the joint venture NL,

⁽³⁾ Letter SG(91) D/12002 of 9 January 1991.

⁽⁴⁾ See footnote 1.

- the exact scope of the obligations assumed by the THA with regard to MB and the joint venture,
- an analysis of capacity, production, production costs, price structure and the financial performance of NL,
- the evaluation and calculation of the purchase price for the THA-owned plant NL or for its assets in the event of a takeover by MB,
- capacity, production and cost forecasts for the new plant in Ahrensdorf as well as the development of annual capacity of all MB truck and van plants in Europe up to and including 1996,
- an analysis of the proposed items of expenditure in order to determine their eligibility for aid in the light of the criteria applied by the Commission in implementing the Community framework on State aid to the motor vehicle industry,
- a detailed analysis of the net additional costs of the new plant at Ahrensdorf as compared with an equivalent plant in a central, non-assisted region in the Community to be chosen by MB as a 'comparator plant',
- possible adverse effects on the sector as a whole arising from the granting of the proposed aid measures, in particular with respect to the development of capacity.

As the market for light and medium trucks and vans developed much less favourably than originally expected, MB decided at the end of 1992 to defer construction of the new plant for the foreseeable future and to continue with the small existing Ludwigsfelde assembly plant, in which it would buy the remaining shares following an agreement with the THA. After the company's decision to change its plan, the Commission, on request from the German Government in a letter dated 22 December 1992, terminated its investigations of the case.

After a full year of negotiations between MB and THA on the terms of sale for the remaining shares in FBG, the German Government, by letter dated 17 February 1994, renotified the Commission of the aid and investment plans for NL and EGL as modified following the definitive abandonment of the new project in Ahrensdorf. This information was clarified and supplemented at the Commission's request by letters from the German Government dated 29 July and 28 October 1994, and also at a meeting on 28 November 1994. Further information on the purchase of the holding company FBG by MB and a copy of the sales agreement between the THA and MB were also transmitted.

By letter dated 20 December 1994, the Commission asked the German authorities to arrange for an independent evaluation of FBG in order to ensure that the sale of 75 % of FBG to MB did not contain any elements of

State aid. By letter dated 7 April 1995, the German authorities informed the Commission that they had selected the Arthur Andersen company to make the evaluation; they also included a proposed methodology for this valuation. After examination of this methodology, the Commission, by letter dated 8 September 1995, accepted the proposal and made a number of observations. As it had not received the valuation by the appointed date, the Commission, by letter of 27 December 1995, urgently requested its transmission, threatening to seek an interim order in case of non-compliance. By letter dated 29 February 1996, the German Government transmitted the valuation. Its content and some further questions put by the Commission were discussed at a meeting on 19 March 1996 and clarified by the Commission by letter of 27 March 1996. All the remaining issues were clarified by the German Government's letters dated 17 April and 26 April 1996.

Among the issues considered following the changes to MBs plans were:

1. the nature, content and conditions of the agreement by which MB purchases the remaining 75 % of FBG from the THA;
2. the restructuring plan for NL and its implementation;
3. the determination of the net aid granted to FBG by the THA under the contract;
4. the value of FBG as a going concern after the change in plans;
5. the net capacity reduction of NL following MB's involvement.

IV

As to the compatibility of the proposed aid measures with the common market, the German Government referred to three provisions of the Treaty:

1. Article 92 (2) (c): aid for certain areas of the Federal Republic of Germany affected by the division of Germany.

The German Government regards this provision as the legal basis for the Commission's assessment of the compatibility of the aid measures. Despite the fact that Germany was unified on 3 October 1990, the new *Länder* still suffer from economic disadvantages attributable to the division of the country. Therefore, the Commission needed to examine whether such economic disadvantages still justified State aid. If this were the case, all the other assessment criteria, and in particular those set out in the Community framework for the motor vehicle industry, including sectoral considerations and the possible risk of overcapacity, would not apply.

2. Article 92 (3) (a): aid for areas where the standard of living is abnormally low or where there is serious underemployment

With regard to the permissible level of aid, the German authorities claim that the new *Länder* now qualify as least-developed areas if the latest statistics are taken into account. They refer to the Delors II package, where these areas are proposed as Objective 1 areas, making them eligible for regional aid of up to 75 % net grant equivalent.

3. Article 92 (3) (b): aid to remedy a serious disturbance in the economy of a Member State

The German authorities regard this provision as an additional legal basis for the granting of the aid in question. In their view, the problems of integration and restructuring of the former planned economy into a market economy represents a serious disturbance of Germany's economy.

With regard to the joint ventures NL and EGL, the German Government and Mercedes-Benz further argued as follows:

1. Following the completion of monetary union between the two parts of Germany in July 1990, sales of the old IFA trucks W50 and L60 collapsed altogether. In order to safeguard employment in Ludwigsfelde, NL was set up in February 1991 as part of the restructuring of the former IFA-Nutzfahrzeuge Kombinat. Talks were held with several truck producers concerning a commitment in Ludwigsfelde but, apart from MB, all other potential operators declined because of the high risks associated with the project.
2. Through the consortium agreement between THA, IFA and MB, truck production in eastern Germany was continued and a large number of the jobs involved were safeguarded. Originally, MB agreed to assist in the restructuring of NL until such time as a greenfield project could be established. To that effect, it transferred part of its production of light and medium trucks from western to eastern Germany. MB production at NL is not necessarily to satisfy market demand. The production volume at NL could have been taken over by other MB plants — partly with the help of a partner — with little additional investment and recruitment. As MB pays the same transfer prices for NL products as for trucks produced at comparable Mercedes factories, the production on NL's site does not confer any additional advantage on MB.
3. The interest-free investment loan of DM 100 million granted by the THA in 1991 to FBG was necessary to establish the minimum conditions in terms of buildings and machinery that would allow a continuation of production at the site.

4. The losses of NL, originally put at over DM 300 million, were reduced to DM 7,2 million by the end of 1993 thanks to the management services performed by MB for NL. Thus, the share of losses assumed by the THA under the original consortium agreement (limited to DM 200 million) was reduced to DM 63,2 million, with MB assuming the rest.

5. NL took over the IFA training centre, which provides basic training for apprentices of NL and of other mechanical engineering firms in Brandenburg. In exchange for making available these training posts, which far exceed NL's needs, MB received training assistance of DM 0,98 million from the German authorities.

6. As a result of the changes to its investment plans in the new *Länder*, MB acquired the remaining 75 % of FBG with effect from 1 January 1994. It guaranteed production of the LN1 (T2) truck (or a successor model), with a minimum annual volume at Ludwigsfelde — and only there — of 10 000 units until 2003, including body-in-white, paint shop and final assembly. At least 1 000 persons are to be employed. Furthermore, MB is obliged to invest an additional DM 70 million in the plant by the end of 1998. If MB does not fulfil its contractual obligations, it will have to pay a fine of DM 100 million to the THA. The agreement that specifies these obligations replaces the former consortium agreement between the parties.
7. Until the sale of NL, the THA financed expenditure to clean up ecological damage from the past (*Altlastensanierung*) to the tune of DM 7,4 million, while a further DM 19,5 million is expected in future years. The THA is attempting to obtain a waiver in respect of the latter amount from the Federal Government; if this cannot be obtained, the THA will bear 80 % of the costs. In any event, MB will pay the remaining 20 %.
8. The new agreement improves the financial situation of the THA significantly, as its net cash result from the sale of NL will be DM 132,2 million, instead of an estimated DM 70 million if NL and EGL were wound up. At the same time, jobs will be safeguarded in the region.
9. Capacity at NL will only replace former IFA-Kombinat capacity. Since operating capacity previously amounted to 35 000 units a year and production volumes in the second half of the 1980s were stable at around 30 000 units, while NL will have a capacity of only 18 000 units, with production in 1994 to 1996 being forecast at around 12 000 units a year, the involvement of MB will lead to a significant reduction in capacity. Therefore, after the abandonment of the new Ahrensdorf project, the project will bring about a considerable reduction of truck capacity in eastern Germany, at a time when the market in eastern Europe is expanding.

V

According to the information obtained from the German authorities in the course of the Article 93 (2) procedure, the Commission can summarize the restructuring efforts and costs as follows:

1. The production plans of MB and the THA have been substantially revised since the opening of the procedure. In the first phase, the truck capacity at Ludwigsfelde of 35 000 IFA heavy and medium-sized trucks was converted to a temporary capacity of 24 000 medium-sized (LN2) and light (T2) MB trucks. On account of the abandonment of the second phase (establishment of a new truck plant at Ahrensdorf), the first phase has been revised, so that the plant at Ludwigsfelde will permanently produce MB light trucks instead of being closed down at the end of 1994 as originally planned.
2. In order not to interrupt production, MB transferred facilities to Ludwigsfelde so that truck production of MB trucks could rapidly start, making use of the other facilities at the plant, so that the production facilities could be optimized and so that as many workers as possible could retain their jobs. The capacity of the plant was shared between the LN1 and LN2 light truck models, but production of the latter model was halted in early 1994.
3. After the implementation of the revised second phase, the truck plant at Ludwigsfelde has a body shop, a paint shop and an assembly facility with an annual capacity of 18 000 units, which is currently used for the production of the LN1 (T2) light truck model series. In order to make the plant self-sufficient, a new, large paint shop has been constructed for the van-derivative of the LN1 model (*Kastenwagen*). This considerable investment, together with complete rationalization of the installations and layout of the plant and further modernization of the buildings and logistics, delayed the restructuring process, which was completed only at the end of 1995. Employment at NL will be 1 250, while the engineering company EGL will employ a further 150 persons.
4. Through the development of the Ludwigsfelde site, MB was able to rationalize the production structure of its commercial vehicle division, with each production site specializing in the production of certain models: light vans in Vitoria (Spain), heavy vans in Düsseldorf, light trucks in Ludwigsfelde and medium and heavy trucks in Würth.
5. At the time the joint venture between Mercedes-Benz and the Treuhandanstalt was set up, total operating losses of NL until 1994 were forecast in excess of DM 300 million. The Treuhandanstalt had agreed to cover the losses in proportion to its share in the company — that is, up to a maximum of DM 200 million. Actual losses, however, were limited to DM 70,2 million at the end of 1993. The losses were due to start-up and training costs and to restructuring efforts as well as to an excessive number of employees being taken over from the former IFA-Kombinat. Moreover, given the lack of a paint facility for the *Kastenwagen* variant of the LN1, bodies had to be shipped to Düsseldorf for painting and back to Ludwigsfelde for final assembly. While THA paid an advance of DM 80,7 million to FBG in 1992 on its loss-compensation obligations, FBG repaid to the THA the unused amount plus the interest earned on the advance. The parallel production of LN2 trucks during the period 1991 to 1994 in Ludwigsfelde and Würth also caused additional costs for MB. The termination of this parallel production as regards Ludwigsfelde and the associated reduction in the workforce will cost the company a maximum of DM 12 million, which would be borne in full by MB direct.
6. NL had invested DM 88,9 million in modernizing its facilities by the end of 1993 and invested a further DM 51,4 million in the years 1994 and 1995. During the first few years, those investments were financed with an investment loan of DM 100 million from the THA. However, the THA has written down the value of the loan in line with depreciation of the machinery bought with it and thus waives repayment of part of its loan, so that the losses of NL and the concomitant obligation on the THA to cover the losses have been reduced accordingly. The new agreement now requires MB to pay interest of DM 5,58 million to THA on the unused part of the loan. Part of the DM 100 million loan was used to adapt buildings to legal requirements (DM 29 million). A further DM 24,6 million were invested by IFA in site clearance and infrastructure measures. This investment to maintain the site's value and operability ought to have been made much earlier, but was neglected under the old economic system in the former German Democratic Republic. Without these investments the sales price of the land and buildings to MB would have been significantly lower.
7. By the end of 1993, the cost of restructuring NL and EGL amounted to DM 177,4 million (investments in machinery, buildings and infrastructure, negative cash flows, and changes in working capital). To this amount must be added a further DM 62,5 million invested by MB in the years 1994 and 1995 in upgrading installations, land rehabilitation and social costs for voluntary redundancies. Consequently, the restructuring costs are much higher than originally foreseen. The total amount for the period 1991 to 1995 was DM 239,9 million.

8. Mercedes-Benz purchased the remaining shares of FBG with effect from 1 January 1994 for a total of DM 7,875 million. In line with the sales contract, MB paid DM 476 000 to the THA in 1994 for provisions made previously and which had not been necessary and had therefore been released. In addition, it purchased for DM 55 million the land and buildings previously rented by NL.

9. While the sales price for land and buildings in 1994 was not established on the basis of an independent evaluation but was the result of negotiations between THA/IFA and MB after a second bidder who had pre-emption rights on the plot dropped out of the negotiations, the price per square metre was probably higher than that for comparable plots on the Ludwigsfelde site previously sold by IFA to other private companies, when market prices were considerably higher. Furthermore, the agreement stipulates that, if MB resells or rents out part of the land for a higher price, a revaluation will have to be carried out and an additional payment made to THA of the difference in excess of 7 %.

10. After the investment and privatization, NL and the holding company FBG have been profitable since 1994, as only one product is now being produced while, with the installation of a paint shop for the *Kastenwagen* variant of the T2, transport costs have fallen and efficiency has increased. Furthermore, since transfer prices are based on total costs at comparable sites, the reduction in production volume (see below) has improved NL's earnings per truck.

VI

In assessing a case, the Commission must first consider which measures taken by the authorities of a Member State contain State aid elements and which are caught by the State aid provisions of Article 92 of the Treaty.

The information obtained from the German authorities and MB in the course of the procedure has enabled the Commission to gain a full picture of all the aid elements in the measures in favour of the ex-THA company NL and to quantify this aid accurately.

1. For NL and EGL, the German authorities have authorized State aid under regional aid schemes of up to DM 25,56 million in the form of investment grants (*Investitionszuschüsse*) totalling DM 15,28 million and investment allowances (*Investitionszulagen*) totalling DM 9,08 million and special depreciation totalling DM 1,2 million. Of the first amount DM 8,9 million and of the second amount DM 8,45 million were paid unlaw-

fully to NL until the payments were stopped following commencement of the procedure.

2. With regard to the undertaking by THA to cover 100 % of the losses of NL up to 1991 and 75 % in 1992 and 1993, subject to a ceiling of DM 200 million, the Commission considers that this undertaking is not in keeping with the normal behaviour of a private investor participating in a joint venture. This follows from the fact that, although the THA held all the shares of FBG at first and 75 % of them from 1992 onwards FBG was taken over by MB with effect from 1 January 1994 at a price based on the company's assets. The THA would not therefore have been in a position to recover any of the funds hitherto earmarked for covering the joint venture's losses. Before the payments were stopped in January 1992, the Treuhandanstalt had paid an advance on its loss-compensation obligations of DM 80,7 million. Since, however, the accumulated losses of FBG up to 1993 totalled only DM 70,2 million, Mercedes-Benz reimbursed the THA that part of the advance payment that had not been used to cover the 75 % loss share of the THA, inclusive of interest, when it bought the remaining shares in FBG from the THA. The Commission concludes therefore that the net payment by the THA of DM 58,8 million inclusive of interest (less the partial reimbursement by MB of the THA advance) to compensate for the losses of FBG constitutes State aid.

3. As regards that part of the shareholders' loan from the THA that was used by NL for investments in machinery and equipment (DM 71 million), the Commission notes that the intention by THA to forgo in advance repayment in full of this loan in line with the depreciation of the company's assets is not keeping with the normal behaviour of a private investor participating in a joint venture. Therefore, the part of the loan not repaid by MB, namely DM 39,8 million, has also to be regarded as State aid.

4. That part of the shareholders loan from the THA that was used for investments by IFA in restoring and modernizing buildings in accordance with legal requirements (DM 29 million) and the additional DM 24,6 million invested by IFA, giving a total of DM 53,6 million for site clearance and infrastructure measures, would also have to be regarded as State aid in so far as they are not covered by the sales price paid by MB in 1994. Since the THA, however, received DM 55,43 million (including the costs to MB of assessing ecological damage), its investments in the land and in the buildings of NL were covered. Given that the real estate value of the site without rehabilitation would have been virtually zero and that a second potential buyer existed, the Commission takes the view that the sales transaction does not contain any further elements of State aid.

5. As for the DM 7,2 million incurred by the THA in cleaning up ecological damage from the past (*Altlastensanierung*) and the further DM 14,85 million (80 % of the total of DM 19,8 million) that might have to be spent by the THA in the future for the same purpose, the Commission has stated previously that it does not consider public expenditure on *Altlastensanierung* to be State aid. This approach has also been followed in the present case.
6. The training assistance of DM 0,98 million provided by Germany to NL for basic vocational training for trainees of other manufacturing companies does not constitute State aid either.
7. As regards the sale of the remaining FBG shares (75 %) to MB by the THA, the Commission was concerned that this might result in a price below the market value of FBG. In line with the original agreement between the THA and MB, the actual sales price amounted to DM 7,875 million, which corresponds to the nominal value of FBG's subscribed capital. In order to verify whether this price reflected the true market value of FBG, the Commission requested that an independent valuation of FBG at the date of sale be carried out. This valuation was undertaken by the auditing firm Arthur Andersen and yielded a value at 31 December 1993 of DM 16,47 million. As the actual amount paid by MB was only DM 7,9 million, the difference between the estimated value of the company and the actual purchase price, namely DM 8,6 million, has to be regarded as State aid.

Adding together the amounts at points 1, 2, 3 and 7, the measures that have to be regarded as constituting State aid amount to DM 132,8 million.

Since these aid measures reduce the financial burden on MB of its investments in the new *Länder*, they threaten to distort competition between motor vehicle manufacturers within the Community. Given the very high level of intra-Community trade in the motor vehicle sector, the proposed measures also affect trade between Member States. They consequently fall within the scope of Article 92 (1) of the EC Treaty and Article 61 (1) of the EEA Agreement.

VII

The German Government has infringed Article 93 (3) of the Treaty in that it has failed to notify, in accordance with that provision, some of the investment aid measures and loss-compensation payments made in support of investments in Ludwigsfelde. Direct grants of DM 8,9 million and investment allowances of DM 9,08 million were paid to FBG. NL received from the THA an investment loan of DM 100 million and an advance of DM 80,7 million to cover losses. Since the Commission was not

notified of the aid measures in advance, in accordance with Article 93 (3), it was unable to comment on those measures. Consequently, the non-notified aid was granted unlawfully.

Since the procedural provisions of Article 93 (3), which are also of significance for public order, are binding and since the Court of Justice confirmed their direct effect in its judgment of 19 June 1973 in Case 77/72, *Capolongo v. Maya*, the unlawful nature of the aid cannot be remedied after the event.

Following commencement of the procedure pursuant to Article 93 (2), Germany has suspended all further payments of aid until termination of the procedure.

VIII

Germany has argued that the Commission should apply the derogations provided for in Article 92 (2) (c) (for certain areas of the Federal Republic of Germany affected by the division of Germany), in Article 92 (3) (a) (for areas where the standard of living is abnormally low or where there is serious underemployment) and in Article 92 (3) (b) (to remedy a serious disturbance in the economy of a Member State) to any payments by the authorities that it might consider to constitute State aid during its appraisal of the compatibility of the proposed measures.

The derogation in Article 92 (3) (b) can certainly not be applied to Germany. It is true that German unification and the accompanying political and economic changes have had negative effects on the German economy, but these disadvantages alone are not sufficient to warrant applying that provision to an aid scheme, let alone to an *ad hoc* case of aid. The last time the Commission considered that an aid scheme remedied a serious disturbance in the economy of a Member State was in 1991, when it approved a privatization programme of the Greek Government. In that decision the Commission noted that the privatization programme was an integral part of the undertakings given by the Greek Government pursuant to Council Decision 91/136/EEC⁽⁵⁾ of 4 March 1991 in connection with the rationalization of the national economy as a whole. The German situation is clearly different.

The exemption pursuant to Article 92 (2) (c) of the Treaty should again be narrowly interpreted. The Commission therefore concludes that the derogations provided for in Article 92 (3) (a) and (c) (aid to facilitate development of certain economic activities or areas) and, given the matter at issue, the Community framework for State aid to the motor vehicle industry allow it to deal with the problems which the new *Länder* are facing.

⁽⁵⁾ OJ No L 66, 13. 3. 1991, p. 22.

Following the monetary union of Germany in July 1990, the existing truck production at Ludwigsfelde ceased to be viable, since the market for the W50 and L60 trucks had virtually vanished. In order, however, to safeguard truck production at the traditional location, the THA arranged with MB to establish the joint ventures NL and EGL that would restructure and modernize the former IFA-Kombinat plant in Ludwigsfelde as an interim solution until a completely new production facility came on stream. From the beginning, it was clear that this restructuring would entail not only substantial investments, but also heavy operating losses during the first years of production which no private investor would be willing to bear alone. The Commission therefore views both the regional investment aid provided by the German authorities and the loss coverage and investments provided by the THA as part of the efforts to restore the long-term viability of truck production at Ludwigsfelde and, consequently, it concludes that they must be assessed as restructuring aid in the light of the Guidelines on State aid for rescuing and restructuring firms in difficulty⁽⁶⁾. In sectors where special Community rules exist, such as in the motor vehicle industry (the Community framework on State aid to the motor vehicle industry)⁽⁷⁾, the guidelines apply only to the extent that they are consistent with those special rules. Since, however, the criteria set out in the Community framework do not differ from those set out in the horizontal guidelines, which nevertheless specify the procedure more clearly, the following assessment is based on those guidelines.

IX

Under the Community rules, restructuring aid should, in principle, be approved only if such approval is in the Community interest. As a first condition, it must be linked to a satisfactory restructuring plan capable of restoring the long-term viability and health of the firm within a reasonable timescale on the basis of realistic assumptions as to its future operating conditions. A second condition is the avoidance of undue distortions of competition through the aid in question. Thirdly, the aid has to be in proportion to the restructuring costs and benefits. Lastly, the Commission must ensure that the company implements the restructuring plan in full and satisfies all the conditions laid down in the Commission's decision.

The Commission acknowledges that the economic and political situation after the unification of Germany was a special one. In particular, the reconstruction of large plants such as a truck plant on which many direct and

indirect (suppliers) jobs depend was an enormous task for the authorities and private investors alike. With regard to the social problems created for the region by the closure of a plant of this size and the objective of socio-economic cohesion, the Commission agrees with the German Government that keeping NL in business is in the best interests of the Community. The plant has saved 1 200 direct jobs in an area suffering from low productivity and high unemployment. After the abandonment of Ahrens-dorf, only the success of the restructuring plan for Ludwigsfelde will guarantee the continuation of truck production on this site.

Condition 1: Restoration of viability

The Commission has examined the business plan and financial forecasts of FBG, NL and EGL and is satisfied that they reflect a sound approach towards restoring the economic viability of the former IFA truck plants. The joint venture has invested DM 239,9 million in restructuring the existing facilities. By adapting the buildings to present-day standards, replacing equipment not suitable for the production of modern trucks and completing the construction of the paint shop, NL has been transformed into a state-of-the-art facility.

The Commission appreciates that producing trucks at Ludwigsfelde would inevitably be a loss-making business during the first few years. In early 1991, when LN2 (and later T2) truck production was started in Ludwigsfelde on one of the two lines of the former IFA-Kombinat plant, this assembly of semi- and completely knocked-down kits (SKD and CKD) was *a priori* uneconomic when compared with a modern fully built-up (FBU) production plant. This was due to a lack of infrastructure and to the absence of just-in-time suppliers who could deliver products of the desired quality, and to the lack of logistics capabilities in terms of modern warehousing. Furthermore, intensive training of the existing workforce for the requirements of modern truck production would have been required, while a reduction in the excessive workforce taken over from IFA took place at considerable cost to MB. Given that the existing paint-shop installations were suitable only for vehicle cabs, the *Kastenwagen* variant of the T2 had to be shipped to Düsseldorf for painting. Given these enormous cost disadvantages, no private investor would have been prepared to undertake investment on such a scale and for such a long time without State aid.

In the course of the restructuring process, NL installed in 1995 a new assembly line and new paint installation for the *Kastenwagen* variant with a view to becoming more self-sufficient. Furthermore, the parallel production of LN2 trucks in Wörth was finally terminated and T2 production is now exclusively located in Ludwigsfelde, enhancing the efficiency of the plant.

⁽⁶⁾ OJ No C 368, 23. 12. 1994, p. 12.

⁽⁷⁾ OJ No C 123, 18. 5. 1989, p. 3.

As a result of the restructuring efforts of MB and the THA, production at NL had become economically viable by the end of 1995, as shown by the financial statements presented to the Commission. At a consolidated level, FBG should prove profitable as from 1994. The Commission is therefore satisfied that the proposed aid is linked to a viable restructuring plan.

Condition 2: Avoidance of undue distortions of competition through the aid

Where an objective assessment of the demand and supply situation points to structural overcapacity in the relevant market, the restructuring plan must make a contribution — proportionate to the amount of aid received — to the restructuring of the branch of industry concerned, by irreversibly reducing or closing capacity. All industry specialists agree that the truck industry was suffering from excess capacity in the early 1990s. This was also the principal reason for the abandonment by MB of the Ahrens-dorf project, which would have replaced the completely outdated NL facilities with a new, extremely modern plant. The Commission here takes into consideration the fact that the modernization of NL has involved a reduction of the assembly facility from a capacity of 35 000 trucks per year to 18 000. Thus, the Commission accepts that this second condition has basically been met.

Condition 3: Aid in proportion to the restructuring costs and benefits

The Commission recognizes that even the very latest equipment of the plant former IFA-Kombinat in Ludwigsfelde fell far short of the requirements of modern truck production. Other equipment was outdated too, and had to be replaced in its entirety. As a result, expenditure by the THA and MB on restructuring the plant totalled DM 239,9 million.

With regard to the amount of aid, the Community rules stipulate that aid must be in proportion to the problem it seeks to redress. The Commission considers that the regional investment aid of DM 25,72 million and the net contribution of DM 39,8 million by the THA to the investments in machinery and equipment are proportionate to the expenditure necessary to transform the plant into a modern truck assembly facility. This transformation is an essential component of the restructuring plan.

As regards the net contribution of DM 58,8 million by the THA to loss coverage for NL, the Commission agrees with Germany that no private investor would have invested in the outdated Ludwigsfelde plant at the time when the joint venture was formed, had it not been for the participation of the THA and its undertaking to cover a large proportion of the operating losses arising from uneconomic production in the early years. The under-

taking to cover losses must consequently be seen as an essential part of THA's plan for a socially viable privatization of the plant. In this context, the Commission recalls that it has acknowledged the special role of the THA in transforming a planned economy into a market economy (see, for example, letter SG(91) D/17825 concerning certain financing and other measures within the scope of activities of the THA).

However, the exceptional nature of these measures means that they must be strictly tailored to the features of the individual case. Particular vigilance is necessary where support is granted to a company such as NL which was partly privatized. In view of the justification given by the THA for its undertaking to cover operating losses, such coverage can be approved only to the extent that the losses are attributable to uneconomic production methods or other regional disadvantages linked to producing in the new *Länder*. The Commission is satisfied that the THA has ensured that its contribution to NL's losses is the minimum necessary and is far below original expectations.

The Commission is considering authorizing restructuring aid totalling DM 124,32 million. In view of the reduction in capacity from 35 000 trucks per year when the aid was granted, to the current level of 18 000 trucks per year, this represents an appropriate contribution to resolving the structural problems of the sector as a whole. This is in line with the approach taken by the Commission in former cases of restructuring aid — see Decisions 88/454/EEC (Renault) (OJ No L 220, 11. 8. 1988, p. 30), 89/58/EEC (Rover) (OJ No L 25, 28. 1. 1989, p. 92), 89/633/EEC (Enasa) (OJ No L 367, 16. 12. 1989, p. 62), and 94/1068/EC (Volkswagen Sachsen) (OJ No L 385, 31. 12. 1994, p. 1) — where restructuring aid was considered to be in proportion to the restructuring effort if the share of the aid in the total restructuring costs of the company (DM 239,9 million over the period 1991 to 1995) was approximately equivalent to the scale of capacity reductions undertaken. In the case of NL, the share of the aid (51,8 %) slightly exceeds the relative capacity reduction (48,6 %). This slight overcompensation is, in the Commission's opinion, justified by the particularly difficult economic and social conditions in the new *Länder*, which in the meantime have been recognized as assisted areas pursuant to Article 92 (3) (a). A similar overcompensation was also accepted by the Commission in the Volkswagen Sachsen case.

Accordingly, the restructuring aid to FBG is considered by the Commission to be appropriate to its objective, namely the restructuring of the company that was successfully completed at the end of 1995. Nevertheless, the Commission has established, on the basis of an independent valuation, that the sales price paid by MB for the THA's shares is below their market value and thus contains an element of State aid.

This additional aid of 8,6 million is thus disproportionate to the expenditure incurred and is not justified by regional considerations. If anything, therefore, it resembles operating aid, which, under the Community framework, can under no circumstances be allowed. The same holds for any additional aid which may be requested by MB in connection with the investments made by it since full privatization of FBG and before the end of the restructuring plan.

Consequently, the German Government must reclaim from MB the difference between the value of the company and the actual purchase price, i.e. DM 8,595 million. This amount will be increased by interest calculated at the market rate on the date of the sale. Furthermore, the German Government should not grant any further restructuring aid in whatever form.

The German Government should also present to the Commission a report showing that MB has implemented the restructuring plan in full and giving details of the investments made and of the aid granted to MB. In the light of this report, which should be submitted by the end of 1996, the Commission will ensure that the effective aid intensity does not exceed the ceiling of 51,8 % considered admissible by it since otherwise adverse effects on the industry cannot be ruled out,

HAS ADOPTED THIS DECISION:

Article 1

The following aid granted by Germany to Mercedes-Benz AG in respect of investments in Brandenburg in Fahrzeugtechnik Beteiligungsgesellschaft mbH, Ludwigsfelde, Nutzfahrzeuge Ludwigsfelde GmbH, Ludwigsfelde, and Entwicklungsgesellschaft für Kraftfahrzeugtechnik mbH, Ludwigsfelde, is compatible with Article 92 (3) (c) of the EC Treaty and Article 61 (3) (c) of the EEA Agreement:

- aid in the form of investment grants (*Investitionszuschüsse*) of up to DM 15,28 million, of which DM 8,89 million was granted unlawfully before the payments were halted, in the form of investment allowances (*Investitionszulagen*) of DM 9,08 million, of which DM 8,45 million was granted unlawfully before the payments were halted, and in the form of a special depreciation allowance of DM 1,2 million,
- aid in the form of loss-compensation payments of DM 58,8 million provided by the Treuhandanstalt (THA) and paid unlawfully before the payments were halted,
- aid in the form of part of an investment loan by the THA, the repayment of which THA has forgone in line with the depreciation of the assets in question

and which is equivalent to a net payment of DM 39,8 million.

Article 2

Germany shall recover from Mercedes-Benz AG the difference between the purchase price paid by MB to the THA for Fahrzeugbau- und Fahrzeugtechnik Beteiligungsgesellschaft, Ludwigsfelde, and the market value of the company as established by an independent valuation, since this difference of DM 8,595 million represents State aid incompatible with Article 92 (3) (c) of the EC Treaty and Article 61 (3) (c) of the EEA Agreement. The repayment shall include interest charged from the date of the sale, namely 1 January 1994, at the rate applied in Germany in calculating the net grant equivalent of various types of aid with differing objectives.

Article 3

Germany shall refrain from granting any further aid for investments made by Mercedes-Benz as part of the restructuring programme for Fahrzeugbau- und Fahrzeugtechnik Beteiligungsgesellschaft mbH, Ludwigsfelde, Nutzfahrzeuge Ludwigsfelde GmbH, Ludwigsfelde and Entwicklungsgesellschaft für Kraftfahrzeugtechnik mbH, Ludwigsfelde.

Article 4

Germany shall submit to, and discuss with, the Commission a final report on the restructuring expenditure at Ludwigsfelde and the aid payments made so as to ensure that the intensity of the restructuring aid does not exceed 51,8 %. The Commission expects this report to be presented by the end of 1996.

Article 5

Germany shall inform the Commission within one month of the notification of this Decision of the measures taken to comply herewith.

Article 6

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 26 June 1996.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION

of 17 July 1996

on aid granted to the Compagnie Générale Maritime in the context of a restructuring plan

(Only the French text is authentic)

(Text with EEA relevance)

(97/14/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first paragraph of Article 93 (2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62 (1) (a) thereof,

Having given the parties concerned notice, in accordance with the abovementioned Articles, to submit their comments, and having regard to such comments,

Whereas:

This procedure was extended by Decision of 20 December 1995 to include an additional amount of aid which the French Government had notified to the Commission for investigation. Both decisions were published in the Official Journal on 28 February 1996⁽¹⁾.

As a result of publication, comments have been received from the United Kingdom Government and from two companies, one of which competes with CGM on the French West Indies route and the other of which was formerly a partner of CGM in a consortium providing services to the islands of the Indian Ocean. The French authorities have also submitted comments and information, both in writing and at bilateral meetings, the most recent of which was held on 3 July 1996.

THE FACTS

I

The Commission learned from press reports beginning in July 1993 that the French authorities had granted aid totalling FF 700 million to the State-owned shipping company, Compagnie Générale Maritime (CGM), and its parent company the Compagnie Générale Maritime et Financière (CGMF). By letter of 13 August 1993, the Commission asked the French authorities to provide information on this situation and justification for any sum of aid paid out. However, official bilateral meetings and exchanges of correspondence failed to provide comprehensive answers.

In November 1994, the French authorities advised the Commission that CGM was accelerating its restructuring plan and had decided to withdraw from liner services to the Far East. In return, the French Government had granted additional aid of FF 1 550 million.

Despite the repeated assurances given by the French authorities that they would provide justification for the aid, they did not succeed in allaying the Commission's doubts as to its compatibility with the common market; by Decision of 31 October 1995, the Commission decided to initiate the procedure provided for in Article 93 (2) of the EC Treaty against the French Government.

II

CGM has primarily operated liner shipping services in a highly competitive international environment, involving many of the major shipping lines of the Member States and third countries. At the end of the 1980s, CGM developed a global strategy to provide independent east-west container services by investing in commercial, logistics and information technology areas. Despite its improved productivity, its freight rate dropped and its operating returns were not sufficient to cover its development costs. In its 1989 guidelines the Commission recognized this situation as a prolonged recession.

Because of its worsening level of indebtedness and its increasingly heavy operating losses, CGM began a restructuring process in May 1992. It agreed with its shareholder, the French authorities, on the outline of a coherent physical and financial restructuring policy to restore the company's viability. Accordingly, it withdrew its loss-making North American services and adopted a restructuring plan — approved by the French authorities in October 1992 — which proposed three areas for action:

⁽¹⁾ Commission Decision 96/C 58/06, OJ No C 58, 28. 2. 1996, p. 4; Commission Decision 96/C 58/07, OJ No C 58, 28. 2. 1996, p. 6.

(i) *reduction of debts through the sale of assets, including shares and real estate;*

Since July 1992 CGM has surrendered its interests in various subsidiaries of the group and has sold real estate and vessels;

(iii) *reduction of fleet, personnel and operating costs.*

The CGM fleet has been flagged out to the Kerguelen register (TAAF — French Southern and Antarctic Territories), which has enabled the company to make savings in the order of FF 50 million a year.

(ii) *structural changes to improve efficiency and reduce costs;*

CGM has set up subsidiaries and partnerships to improve commercial efficiency and make accounting more transparent. On 28 December 1992 it created seven new subsidiaries, which began to operate on 1 May 1993. Three separate shipping subsidiaries were made responsible for liner services:

— CGM Sud, which covers Latin American services;

— CGM Orient, which covers Far Eastern services;

— CGM Tour du Monde, which covers services between Europe and the islands of the Pacific via various American and Asian ports.

Four CGM agencies, in Le Havre, Marseilles, Bordeaux and Dunkirk, were converted into handling subsidiaries and CGM sought partners to operate their scheduled services and port agencies.

CGM has also withdrawn from its loss-making services, including those to North America and the Far East. Its annual turnover was reduced by FF 7 100 million to FF 3 800 million between 1995 and 1996.

Staff was reduced from 3 529 at the end of 1991 to 1 576 at the end of 1996. Job losses affected both seafarers and the company's administrative staff.

The CGM fleet has been reduced from 25 to 16 vessels. By the end of 1996 the company is expected to have only 15 vessels, 9 of which will be operated by CGM and 5 others chartered out.

III

The French authorities have confirmed that to date the restructuring plan has cost it a total of FF 2 050 million, which has been made to CGM in instalments without the Commission's authorization. It is proposed to pay a further FF 1 125 million, plus an amount of FF 148 million for the transfer of the lease on the building which is currently occupied by the registered office of CGM. Of this final instalment, FF 250 million has already been paid, in June 1996, when CGM had a serious cashflow problem with debts to be paid immediately. The aid was linked to measures taken by CGM under the restructuring plan.

Date	Action	Aid (in FF million)	Comment
October 1992	Restructuring plan adopted; sale of assets begins	150	Current returns improved by FF 270 million a year; social restructuring aid of FF 233 million
December 1992	Plan to set up subsidiaries adopted, negotiations on fleet organization begin; North American services stop	200	
June 1993	Subsidiary plan goes ahead	150	
June 1994	More assets sold, European agencies reorganized	800	Assets worth FF 1 360 million sold
Autumn 1994	Far East services cease: cost of FF 587 million plus loss of FF 66 million for future charters and FF 70 million for a staff reduction programme	750	Continuation of services: additional cost of FF 120 million in annual operating losses for seven years, plus the same costs for possible sale

Date	Action	Aid (in FF million)	Comment
June 1996	Debt servicing	250	Total debt reduction: FF 2 900 million; aid used: FF 1 586 million, plus FF 1 314 million from the activities of CGM
After July 1996	Debt reduction; transfer of lease on building used as CGM registered office	875 148	1995 debts (FF 2 000 million) reduced to less than FF 1 000 million
1992-1996	Total amount: social aid (FF 535 million), debt reduction (FF 2 471 million), debt servicing (FF 250 million), other physical and financial restructuring (FF 77 million); operating losses (FF 1 020 million), paid for by sale of assets (FF 1 360 million), and other debt reductions (FF 340 million)	3 323	Staff cuts: 55 % (1992-96); capacity reduction: 31 %; reduced turnover: 46 %

IV

return to the viability and profitability needed for a transfer to the private sector;

When initiating the procedure, the Commission listed the principal questions which it considered had remained unanswered:

- (a) How had the aid already granted been distributed?
- (b) What were the detailed restructuring plans and how, in the context of the programme of State support, would viability be restored?
- (c) How and when did the French authorities intend to complete the privatization of CGM?

The procedure was extended to include the measures which the French authorities were intending to take to give a further capital injection of FF 1 125 million (ECU 173 million) to CGMF (the parent company of CGM), which would itself subscribe to an increase in the capital of CGM.

Provision was also made for CGMF to take over the registered office of CGM. As was stressed by the French authorities at a bilateral meeting on 21 November 1995, this additional capital injection formed part of the restructuring of CGM, an undertaking since 1992, and was intended to facilitate its switch from the public to the private sector.

According to these authorities, the amount of this injection was determined on the basis of two elements:

- the need to deal with CGM's debts in order to achieve a financial structure enabling the undertaking to

- the prior transfer to CGMF of the building partly occupied as the registered office of CGM and of the corresponding lease in order to meet the expectations of potential purchasers.

At the above meeting, the Commission obtained some clarification as to the details and timetable of the planned privatization procedure. This procedure began when CGM was included on the list of companies to be privatized under the Law of 14 July 1993. Given the objective of transferring CGM to the private sector as soon as possible, the French Government stressed the need to initiate the privatization procedure at the earliest opportunity through a public call for bids, with the choice of purchasers and conditions of transfer being determined with the agreement of the French privatization commission.

The aim pursued by the Government is to transfer all CGM shares held by CGMF, if necessary after transfer by CGM to one or more separate purchasers of all or some of its port-handling activities in continental France. This should give CGM private share ownership, enabling it to develop a normal commercial strategy. It was stated that there would be no discrimination of any kind against potential purchasers on the grounds of their nationality.

V

Three interested parties have submitted comments on the State aid to CGM pursuant to the procedure set out in Article 93 (2) of the Treaty.

(i) *The United Kingdom Government*

The United Kingdom Government welcomed the decision to initiate the procedure since State aid had been used to subsidize inefficient operations, thus protecting CGM from market forces and seriously distorting competition between undertakings established in the EU. The UK authorities agreed with the Commission's assessment which was designed to show that the restructuring plan was inadequate since it failed to envisage clearly the point at which the viability of CGM would be restored. They also argued that the State aid had allowed CGM to cut its rates to below operating costs in order to eliminate competition on the French West Indies route. Once competition had been eliminated, CGM immediately increased its rates. The United Kingdom Government highlighted a number of points raised by the thorough investigation conducted by the Commission and concluded that, unless the French Government had acted in the same way as a market investor who had fully evaluated the various possible options, the aid should be declared incompatible with the common market.

(ii) *A competitor of CGM on the West Indies route*

A competitor of CGM on the West Indies route reported behaviour by CGM which it claimed to be anti-competitive. However, the Commission officials responsible have found no proof of this behaviour, nor of predatory pricing (which would have led CGM to offer rates below the average variable cost).

(iii) *A competitor of CGM on the Indian Ocean routes*

A competitor of CGM on the Indian Ocean routes considered that, in this highly competitive market, the granting of aid to cover operating losses protected CGM against market forces and that CGM should not be authorized to use the aid to move into new markets or to remain in existing markets from which it would have been forced to withdraw had it not been for the aid.

A particular cause for concern was the situation in the Southern Indian Ocean where a consortium had recently disappeared since the competitor had withdrawn. It was suggested that a CGM decision to continue to operate this service would entail significant investment in agencies, staff and vessels.

(iv) *Reply by the French authorities*

The French authorities replied to these comments by insisting that all the aid already paid or to be paid in the future was part of the plan to restructure and

privatize the company. The French authorities made the following comments on the specific points raised:

With regard to services to the French West Indies, the French authorities stated that aid had always been paid each time a new stage in the restructuring process had been completed. CGM had not applied rates which would have allowed it to operate below cost and the service had always been profitable, over the years. The increase in freight rates in April 1996 was made possible by the increase in demand and the improvement in the quality of services provided by CGM.

With regard to the Indian Ocean trade, the French authorities stressed that the consortium in question had made profits and that the service had recently been reorganized (financed jointly by two companies) so that profits could be expected in the future. The market had developed steadily over the last decade (from 65 000 to 82 000 TEU in the ten years up to 1995) and the French authorities consider that CGM, using the shipping capacity available under a charter-party, has the staff and know-how required to operate the service economically, and that in the present circumstances no restrictions should be placed on CGM.

VI

The Commission issued a call for tenders and selected a consultant to evaluate the financial structures of the CGM and the economic proportionality of the aid package envisaged by the French Government. The consultant examined all the relevant documents made available by the French authorities and by the complainants and questioned the managerial staff. The final report concluded that:

- (a) the payments made under the staff reduction plan are in conformity with similar major restructuring operations;
- (b) the level of indebtedness at the end of 1995 was 40 % lower than the 1991 level (down from FF 4 904 million to FF 2 000 million); since the FF 2 904 million reduction exceeds the aid granted for this purpose (FF 1 586 million), this implies that reducing the debt burden was a fundamental component of CGM's restructuring strategy;
- (c) the costs allocated to withdrawal of services were realistic;
- (d) CGM should be profitable in the future and, with the total capital injection proposed, can be considered viable.

LEGAL ASSESSMENT

VII

Article 92 (1) of the Treaty states that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

In order to be compatible with the common market the aid in question must be covered by one of the exceptions to Article 92 (1). The only possible exception would seem to be that specified in Article 92 (3)(c), namely 'aid to facilitate the development of certain economic activities... where such aid does not adversely affect trading conditions to an extent contrary to the common interest'.

Two documents setting out guidelines on State aid (for Community shipping companies and for the reorganization of companies in difficulties) elaborate on this measure in contexts which relate to the CGM aid package.

The 1989 guidelines for the examination of State aid to Community shipping companies⁽¹⁾ recognized that the prolonged recession in world trade and excess shipping capacity had caused problems for Community fleets. Many of these problems were due to the tax and employment rules by which Community operators were bound, including income tax and social security payments for seafarers, and company tax. These aids were therefore considered acceptable where they helped to support the development of Community fleets and the notion of 'common interest' was defined in terms of keeping vessels under a Community flag and keeping as high a proportion of Community seafarers as possible on board those vessels.

At the same time, the aid had to be proportional to the objective sought (the Commission specified that a ceiling would be set based on the recorded difference between the operating costs of vessels flying a Community flag and non-Community vessels); aid should also be transparent, provisional and preferably degressive.

Guidelines were given on the different types of aid which the Commission may authorize. Operating aid in particular was considered to be in the common interest of

the Community, *inter alia*, if it is directly linked to a restructuring plan which is considered compatible with the common market.

The compatibility of a restructuring plan with the common market therefore has to be evaluated on the basis of the Commission's general approach to reorganizing companies in difficulties. The Commission's guidelines⁽²⁾ lay down a number of conditions in this connection, all of which must be met:

- restoration of long-term viability,
- avoidance of undue distortions of competition through the aid,
- aid in proportion to the restructuring costs and benefits,
- full implementation of restructuring plan and observance of conditions,
- monitoring by the Commission together with annual reports.

VIII

When initiating the procedure, the Commission stated that at this stage all that was required of the French authorities was to demonstrate that the aid formed an essential part of a complete restructuring plan designed to restore viability. Although staff had been cut, it was not clear that a coordinated strategy has been developed to restore viability. Generally the aid had been granted in response to the awkward financial position in which the company found itself rather than as a tool for developing and improving economic performance. In fact, it seemed that the aid had protected CGM from market forces.

The company's problems derived mainly from management decisions, like the new strategy adopted in 1989, the serious overcapacity on certain routes (particularly services to North America and the Far East where CGM was making heavy losses) and the weakness of the dollar. This resulted in higher levels of debt (which levelled out at FF 2 500 million in 1990 and then rose to FF 5 million at the end of 1992) that could not be wiped out by operating revenue.

The plans for restructuring CGM prepared by the French authorities identified areas where costs could be reduced, envisaging the gradual withdrawal of the company from loss-making activities and the gradual sale of its assets and

⁽¹⁾ 'Financial and fiscal measures concerning shipping operations with ships registered in the Community', Doc. SEC(89) 921 final of 3 August 1989.

⁽²⁾ 'Community Guidelines on State aid for rescuing and restructuring firms in difficulty', OJ No C 368, 23. 12. 1994, p. 12.

reductions in staff and capacity. The aim of the national authorities is to privatize the company in the autumn since they considered that market conditions are currently favourable. In view of the number of declarations of interest, this assessment is probably correct.

The alternative to State support leading to the restructuring of CGM would have been the liquidation of the company. However, for political reasons, the French authorities did not consider this option.

IX

The common interest of the Community

The main question concerning aid to CGM is whether granting this aid is in the common interest. In shipping, the common interest would be served by measures designed to keep vessels flying a Community flag and to employ as high a proportion of Community seafarers as possible on board these vessels. To date, the subsidies have allowed CGM to continue to operate vessels under the French flag and to continue to employ Community seafarers.

In addition, the restructuring aid must satisfy a number of conditions:

(i) *Restoration of long-term viability*

Restructuring plans must make it possible to restore long-term viability within a reasonable timescale and on the basis of realistic assumptions. The improvement in viability must result mainly from internal measures contained in the restructuring plan and should involve the abandonment of structural loss-making activities.

CGM has considerably reduced its operations (46 % of turnover and 55 % of staff) and capacity (31 %) during the 1992-1996 period. It is now concentrating on its main profitable activities. The French authorities, who originally calculated losses for 1996 at FF 23 million, have now revised their estimates to between FF 40 million in losses and FF 4 million in profit, on a turnover of FF 3 800 million. Estimates for the future put profits for 1997 at between FF 25 and FF 65 million and for 1998 at between FF 70 and FF 105 million if CGM continues to operate as at present. Those improvements in profitability would be the result of gradual reductions in the cost of employing seafarers (as the agreements signed with the trade unions at the end of 1996 expire and seafarers on CGM vessels are gradually replaced by cheaper foreign sailors), more management changes

at head office and at the different agencies (on the assumption that a purchaser would not need to maintain the whole CGM organization, since in some areas such as administration there would be duplication with his own company), the expected returns on loadings of bananas on the French West Indies route and the lower debt burden requiring to be wiped out. Successful privatization should enable the company to operate profitably thereafter.

CGM made a sizeable contribution to its own restructuring by using the money from the sale of its assets (FF 1 360 million). The aid was used for the physical and financial restructuring of CGM. The first instalment concentrated on the social aspects, the commercial activities and the non-essential assets of the company. The last instalment of aid completed the financial restructuring process leaving the company with a debt burden similar to that of other companies in the sector, which can be reduced in an acceptable manner through normal operations.

OECD forecasts predict growth in world trade in the order of 8 % and over-capacity on certain shipping routes. The investigations carried out by independent consultants show that CGM is operating in sectors where the company could benefit from these developments as early as 1998, or even earlier. On the basis of present forecasts, CGM should make a profit in 1997, so it has to be concluded that the aid has restored the company's viability.

(ii) *Avoidance of undue distortions of competition through the aid*

A further condition of the aid for restructuring is that measures are taken to offset as far as possible adverse effects on competitors. This is particularly important where there is an excess of production capacity in the relevant market in the European Community served by the recipient. Where, on the other hand, there is no structural excess of production capacity, the Commission will normally not require a reduction of capacity in return for the aid. However, the aid must be used only for the purpose of restoring the firm's viability and not to enable the recipient to expand production capacity during implementation of the restructuring plan.

In this connection, the independent consultants confirmed that the principal activities of CGM are the French West Indies route (the banana trade) and the French overseas interests (overseas departments and territories), including the islands of the Indian Ocean and the Pacific. The restructuring of the company is therefore covered by the concept of

'common interest', partly because CGM has withdrawn from services where there is currently excess capacity and partly because, once privatized, the company will have to face up to normal market pressures and its commercial strategy will then fully meet market conditions. Moreover, there is no proof of structural over-capacity on the routes currently operated by CGM.

With regard to the specific complaints made regarding the West Indies route, the Commission has not been given sufficient proof to conduct a formal inquiry into the allegations concerning anti-competitive behaviour pursuant to Article 86 of the Treaty on the abuse of dominant positions.

As regards use of the aid to encourage development of the market, the Commission has to take into consideration the fact that CGM is already involved in shipping links with the islands since it is still a member of a consortium. The Commission will impose conditions to ensure that CGM does not use the final instalment of aid to develop new or loss-making activities on these routes.

(iii) *Aid in proportion to the restructuring costs and benefits*

The amount and intensity of the aid must be limited to the strict minimum needed to enable the restructuring to be undertaken and must be related to the benefits anticipated from the Community's point of view. Therefore, aid beneficiaries will normally be expected to make a significant contribution to the restructuring plan from their own resources, and the company should not be provided with surplus cash which could be used for aggressive, market-distorting activities.

The aid granted is the minimum required to restore CGM to a position of viability and profitability compatible with transfer to the private sector. It was granted in order to meet the real needs of CGM so as to meet the objectives set for restructuring. Furthermore, it has been confirmed that the total aid amount envisaged by the French Government is the minimum required to restore CGM's viability and allow the proposed privatization. The aid provides the company with an adequate financial structure without giving it a cash surplus. As already mentioned, the CGM has also used the revenue from the sale of its assets — a total of FF 1 360 million — to help with the restructuring process.

The aid is provisional, since it was granted during the period from 1993 to 1996, and no further aid is envisaged after privatization.

(iv) *Full implementation of the restructuring plan and observance of conditions*

The full restructuring plan adopted for the company in 1992 planned to restore its viability by the adoption of specific measures. The plan has been implemented and viability has been restored.

The Commission did not impose conditions since it was not sent the plan for approval.

(v) *Monitoring by the Commission by means of annual reports*

Progress with a restructuring plan must be monitored by the Commission. To this end a report will be sent to the Commission by 1 February 1997 at the latest.

X

In conclusion, an amount of aid of FF 2 050 million has been paid and another amount estimated at FF 1 125 million is still envisaged, after which the company will be privatized. At present, of the planned total amount of FF 1 125 million, a first instalment of FF 250 million has already been paid in June 1996 to settle pressing debts. In addition, the French authorities are paying FF 148 million towards the transfer to CGMF of the building used by the CGM as its registered office and of the lease on it (after re-evaluation to take account of the slump in real estate prices) so that the operation will have a neutral impact on CGM.

It has not been shown that the aid has resulted in distortion of competition to an extent contrary to the common interest, but it has been shown that the State aid has supported a radical restructuring scheme and helped to restore the viability of a Community shipping company which employs Community seafarers.

In addition, the French authorities have undertaken to ensure the transparency of the CGM privatization procedure.

XI

GENERAL CONSIDERATIONS

As a general point, the Commission would emphasize that pursuant to Article 93 (3) of the Treaty it should be given prior information of any operation which could involve elements of State aid.

Moreover, the Member States are required not to put State aid measures into effect before the Commission has given a final decision. The Commission regrets that the French Government did not comply with the provisions of Article 93 (3) in this respect and that the aid was granted to CGM illegally,

HAS ADOPTED THIS DECISION:

Article 1

1a. The restructuring aid granted to CGM in the form of capital injections during the period from 1992 to 1996 is unlawful, having been granted in breach of the provisions of Article 93 (3) of the Treaty. However, the aid may be considered to be compatible with the common market, pursuant to Article 92 (3)(c) of the Treaty, provided that the French Government complies with the commitments and conditions set out in paragraph 2 of this Article.

1b. The additional restructuring aid to be paid to CGM in 1996 in the form of further capital injections is also considered to be compatible with the common market pursuant to Article 92 (3)(c) of the Treaty, provided that the French Government complies with the commitments and conditions set out in paragraph 2 of this Article.

2. The French authorities shall comply with the following conditions and commitments:

- until privatization has been completed CGM shall confine itself to operating only its current services;
- until privatization has been completed CGM shall confine itself, as far as the Indian Ocean is concerned, to operating capacity on a scale comparable with that used by the consortium, namely 9 000 TEU in both directions annually;
- the French authorities shall submit a report to the Commission after privatization or by 1 February 1997 at the latest; this report shall give details of the

services operated by CGM, its transport capacity on those services and its operating revenue so that the Commission can check that the aid has not been used to support aggressive behaviour on the market or loss-making activities; the report shall also include details of the procedure leading up to privatization so that the Commission can check that the financial objectives set for the company have been met;

- until privatization has been completed, CGM shall not apply rates for any of its services which do not fully cover the additional operating costs; accordingly, the report to be submitted must include details of the operating returns for all the services operated by CGM, either by using its own vessels or by means of chartering agreements, up to the date on which privatization is completed;
- no further aid shall be granted to CGM and all aid granted shall be used for the physical and financial restructuring of the company;
- the CGM restructuring plan shall be implemented in its entirety, as agreed with the Commission.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 17 July 1996.

For the Commission

Neil KINNOCK

Member of the Commission
