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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 2378/90

of 14 August 1990

fixing the import levies on cereals and on wheat or rye flour, groats and meal

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EEC) No 1340/90 ⁽²⁾, and in particular Article 13 (5) thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy ⁽³⁾, as last amended by Regulation (EEC) No 2205/90 ⁽⁴⁾, and in particular Article 3 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas the import levies on cereals, wheat and rye flour, and wheat groats and meal were fixed by Commission Regulation (EEC) No 1801/90 ⁽⁵⁾ and subsequent amending Regulations;

Whereas, if the levy system is to operate normally, levies should be calculated on the following basis:

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %; a rate of exchange based on their central rate, multiplied by the corrective factor provided for in

the last paragraph of Article 3 (1) of Regulation (EEC) No 1676/85,

- for other currencies, an exchange rate based on the arithmetic mean of the spot market rates of each of these currencies recorded for a given period in relation to the Community currencies referred to in the previous indent, and the aforesaid coefficient;

Whereas these exchange rates being those recorded on 13 August 1990;

Whereas the aforesaid corrective factor affects the entire calculation basis for the levies, including the equivalence coefficients;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 1801/90 to today's offer prices and quotations known to the Commission that the levies at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies to be charged on products listed in Article 1 (a), (b) and (c) of Regulation (EEC) No 2727/75 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 15 August 1990.

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

Done at Brussels, 14 August 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 134, 28. 5. 1990, p. 1.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 201, 31. 7. 1990, p. 9.

⁽⁵⁾ OJ No L 167, 30. 6. 1990, p. 8.

ANNEX

to the Commission Regulation of 14 August 1990 fixing the import levies on cereals and on wheat or rye flour, groats and meal

(ECU/tonne)

| CN code | Levies | |
|------------|----------|--------------------------------------|
| | Portugal | Third country |
| 0709 90 60 | 36,66 | 146,92 ^(?) ^(?) |
| 0712 90 19 | 36,66 | 146,92 ^(?) ^(?) |
| 1001 10 10 | 14,02 | 182,89 ⁽¹⁾ ^(?) |
| 1001 10 90 | 14,02 | 182,89 ⁽¹⁾ ^(?) |
| 1001 90 91 | 21,81 | 157,84 |
| 1001 90 99 | 21,81 | 157,84 |
| 1002 00 00 | 47,31 | 124,48 ⁽⁶⁾ |
| 1003 00 10 | 38,54 | 136,57 |
| 1003 00 90 | 38,54 | 136,57 |
| 1004 00 10 | 30,18 | 119,48 |
| 1004 00 90 | 30,18 | 119,48 |
| 1005 10 90 | 36,66 | 146,92 ^(?) ^(?) |
| 1005 90 00 | 36,66 | 146,92 ^(?) ^(?) |
| 1007 00 90 | 53,63 | 153,36 ^(*) |
| 1008 10 00 | 38,54 | 46,60 |
| 1008 20 00 | 38,54 | 100,98 ^(*) |
| 1008 30 00 | 38,54 | 9,00 ^(?) |
| 1008 90 10 | (?) | (?) |
| 1008 90 90 | 38,54 | 9,00 |
| 1101 00 00 | 43,70 | 234,15 |
| 1102 10 00 | 79,41 | 187,44 |
| 1103 11 10 | 34,80 | 296,55 |
| 1103 11 90 | 47,01 | 252,70 |

- (1) Where durum wheat originating in Morocco is transported directly from that country to the Community, the levy is reduced by ECU 0,60/tonne.
- (2) In accordance with Regulation (EEC) No 715/90 the levies are not applied to products imported directly into the French overseas departments, originating in the African, Caribbean and Pacific States or in the 'overseas countries and territories'.
- (3) Where maize originating in the ACP or OCT is imported into the Community the levy is reduced by ECU 1,81/tonne.
- (4) Where millet and sorghum originating in the ACP or OCT is imported into the Community the levy is applied in accordance with Regulation (EEC) No 715/90.
- (5) Where durum wheat and canary seed produced in Turkey are transported directly from that country to the Community, the levy is reduced by ECU 0,60/tonne.
- (6) The import levy charged on rye produced in Turkey and transported directly from that country to the Community is laid down in Council Regulation (EEC) No 1180/77 (OJ No L 142, 9. 6. 1977, p. 10) and Commission Regulation (EEC) No 2622/71 (OJ No L 271, 10. 12. 1971, p. 22).
- (7) The levy applicable to rye shall be charged on imports of the product falling within CN code 1008 90 10 (triticale).

COMMISSION REGULATION (EEC) No 2379/90

of 14 August 1990

fixing the premiums to be added to the import levies on cereals, flour and malt

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 1340/90⁽²⁾, and in particular Article 15 (6) thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy⁽³⁾, as last amended by Regulation (EEC) No 2205/90⁽⁴⁾, and in particular Article 3 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas the premiums to be added to the levies on cereals and malt were fixed by Commission Regulation (EEC) No 1802/90⁽⁵⁾ and subsequent amending Regulations;

Whereas, if the levy system is to operate normally, levies should be calculated on the following basis:

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Regulation (EEC) No 1676/85,

- for other currencies, an exchange rate based on the arithmetic mean of the spot market rates of each of these currencies recorded for a given period in relation to the Community currencies referred to in the previous indent, and the aforesaid coefficient;

Whereas these exchange rates being those recorded on 13 August 1990;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. The premiums referred to in Article 15 of Regulation (EEC) No 2727/75 to be added to the import levies fixed in advance in respect of cereals and malt coming from Portugal shall be zero.

2. The premiums referred to in Article 15 of Regulation (EEC) No 2727/75 to be added to the import levies fixed in advance in respect of cereals and malt coming from third countries shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 15 August 1990.

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

Done at Brussels, 14 August 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 134, 28. 5. 1990, p. 1.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 201, 31. 7. 1990, p. 9.

⁽⁵⁾ OJ No L 167, 30. 6. 1990, p. 11.

ANNEX

to the Commission Regulation of 14 August 1990 fixing the premiums to be added to the import levies on cereals, flour and malt

A. Cereals and flour

| CN code | <i>(ECU/tonne)</i> | | | |
|------------|--------------------|-----------------|------------------|------------------|
| | Current 8 | 1st period 9 | 2nd period 10 | 3rd period 11 |
| 0709 90 60 | 0 | 0,27 | 0,27 | 0,47 |
| 0712 90 19 | 0 | 0,27 | 0,27 | 0,47 |
| 1001 10 10 | 0 | 2,38 | 2,38 | 2,38 |
| 1001 10 90 | 0 | 2,38 | 2,38 | 2,38 |
| 1001 90 91 | 0 | 0 | 0 | 0 |
| 1001 90 99 | 0 | 0 | 0 | 0 |
| 1002 00 00 | 0 | 0 | 0 | 0 |
| 1003 00 10 | 0 | 0 | 0 | 0 |
| 1003 00 90 | 0 | 0 | 0 | 0 |
| 1004 00 10 | 0 | 0,68 | 0,68 | 2,04 |
| 1004 00 90 | 0 | 0,68 | 0,68 | 2,04 |
| 1005 10 90 | 0 | 0,27 | 0,27 | 0,47 |
| 1005 90 00 | 0 | 0,27 | 0,27 | 0,47 |
| 1007 00 90 | 0 | 0 | 0 | 0 |
| 1008 10 00 | 0 | 0 | 0 | 0 |
| 1008 20 00 | 0 | 0 | 0 | 0 |
| 1008 30 00 | 0 | 20,14 | 20,14 | 26,86 |
| 1008 90 90 | 0 | 20,14 | 20,14 | 26,86 |
| 1101 00 00 | 0 | 0 | 0 | 0 |

B. Malt

| CN code | <i>(ECU/tonne)</i> | | | | |
|------------|--------------------|-----------------|------------------|------------------|------------------|
| | Current 8 | 1st period 9 | 2nd period 10 | 3rd period 11 | 4th period 12 |
| 1107 10 11 | 0 | 0 | 0 | 0 | 0 |
| 1107 10 19 | 0 | 0 | 0 | 0 | 0 |
| 1107 10 91 | 0 | 0 | 0 | 0 | 0 |
| 1107 10 99 | 0 | 0 | 0 | 0 | 0 |
| 1107 20 00 | 0 | 0 | 0 | 0 | 0 |

COMMISSION REGULATION (EEC) No 2380/90

of 14 August 1990

fixing for Great Britain the level of the variable slaughter premium for sheep and the amounts to be charged on products leaving region 1

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 3013/89 of 25 September 1989 on the common organization of the market in sheepmeat and goatmeat ⁽¹⁾,

Having regard to Commission Regulation (EEC) No 1633/84 of 8 June 1984 laying down detailed rules for applying the variable slaughter premium for sheep and repealing Regulation (EEC) No 2661/80 ⁽²⁾, as last amended by Regulation (EEC) No 1075/89 ⁽³⁾, and in particular Articles 3 (1) and 4 (1) thereof,

Whereas the United Kingdom is the only country which grants the variable slaughter premium, in region 5, within the meaning of Article 22 (2) of Regulation (EEC) No 3013/89 whereas it is necessary therefore for the Commission to fix, for the week beginning 23 July 1990, the level of the premium and the amount to be charged on products leaving that region;

Whereas Article 3 (1) of Regulation (EEC) No 1633/84 stipulates that the level of the variable slaughter premium is to be fixed each week by the Commission;

Whereas Article 4 (1) of Regulation (EEC) No 1633/84 lays down that the amount to be charged on products leaving region 1 shall be fixed weekly by the Commission;

Whereas in the Annex to Commission Regulation (EEC) No 3618/89 of 1 December 1989 on the application of the guarantee limitation arrangements for sheepmeat and goatmeat ⁽⁴⁾ the weekly amounts of the guide level are set out pursuant to Article 25 of Regulation (EEC) No 3013/89;

Whereas, pursuant to the provisions of Article 24 (2) and (3) of Regulation (EEC) No 3013/89, for the week beginning 23 July 1990, the variable slaughter premium for

sheep certified as eligible in the United Kingdom is to be in accordance with the amounts fixed in the Annexes hereto; whereas, for that week, in the light of the Judgment of the Court of Justice of 9 February 1988 in Case 61/86, the provisions of Article 9 (5) of Regulation (EEC) No 3013/89 and of Article 4 of Regulation (EEC) No 1633/84 lead to the amounts to be charged on products, leaving region 12, being fixed in accordance with those Annexes;

Whereas, as regards the controls necessary for the application of the provisions relating to the said amounts, the system of controls provided for by Regulation (EEC) No 1633/84 should be maintained without prejudice to the preparation of any more specific provisions;

HAS ADOPTED THIS REGULATION:

Article 1

For sheep or sheepmeat certified as eligible in the United Kingdom in region 1, within the meaning of Article 22 (2) of Regulation (EEC) No 3013/89, for the variable slaughter premium during the week beginning 23 July 1990, the level of the premium is fixed at ECU 71,292 per 100 kilograms of estimated or actual dressed carcass weight within the limits laid down by Article 1 (1) (b) of Regulation (EEC) No 1633/84.

Article 2

For products referred to in Article 1 (a) and (c) of Regulation (EEC) No 3013/89 which left the territory of region 1 during the week beginning 23 July 1990, the amounts to be charged shall be equivalent to those fixed in the Annexes hereto.

Article 3

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

It shall apply with effect from 23 July 1990.

⁽¹⁾ OJ No L 289, 7. 10. 1989, p. 1.

⁽²⁾ OJ No L 154, 9. 6. 1984, p. 27.

⁽³⁾ OJ No L 114, 27. 4. 1989, p. 13.

⁽⁴⁾ OJ No L 351, 2. 12. 1989, p. 18.

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

Done at Brussels, 14 August 1990.

For the Commission
Ray MAC SHARRY
Member of the Commission

ANNEX

to the Commission Regulation of 14 August 1990 fixing for Great Britain the level of the variable slaughter premium for sheep and the amounts to be charged on products leaving region 1

(ECU/100 kg)

| CN code | Amounts | |
|---------------------|---|--|
| | A. Products qualifying for the premium specified in Article 24 of Regulation (EEC) No 3013/89 | B. Products specified in Article 4 (4) of Regulation (EEC) No 1633/84 ⁽¹⁾ |
| | Live weight | Live weight |
| 0104 10 90 | 33,507 | 0 |
| 0104 20 90 | | 0 |
| | Net weight | Net weight |
| 0204 10 00 | 71,292 | 0 |
| 0204 21 00 | 71,292 | 0 |
| 0204 50 11 | | 0 |
| 0204 22 10 | 49,904 | |
| 0204 22 30 | 78,421 | |
| 0204 22 50 | 92,680 | |
| 0204 22 90 | 92,680 | |
| 0204 23 00 | 129,751 | |
| 0204 30 00 | 53,469 | |
| 0204 41 00 | 53,469 | |
| 0204 42 10 | 37,428 | |
| 0204 42 30 | 58,816 | |
| 0204 42 50 | 69,510 | |
| 0204 42 90 | 69,510 | |
| 0204 43 00 | 97,314 | |
| 0204 50 13 | | 0 |
| 0204 50 15 | | 0 |
| 0204 50 19 | | 0 |
| 0204 50 31 | | 0 |
| 0204 50 39 | | 0 |
| 0204 50 51 | | 0 |
| 0204 50 53 | | 0 |
| 0204 50 55 | | 0 |
| 0204 50 59 | | 0 |
| 0204 50 71 | | 0 |
| 0204 50 79 | | 0 |
| 0210 90 11 | 92,680 | |
| 0210 90 19 | 129,751 | |
| 1602 90 71 : | | |
| — unboned (bone-in) | 92,680 | |
| — boned or boneless | 129,751 | |

⁽¹⁾ Eligibility for these reduced amounts is subject to compliance with the conditions laid down in the second subparagraph of Article 5 (3) of Regulation (EEC) No 1633/84.

COMMISSION REGULATION (EEC) No 2381/90

of 14 August 1990

reducing the basic and buying-in prices of nectarines for the 1990/91 marketing year following the monetary realignment of 5 January 1990 and a correction to the overrun on the intervention threshold

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables⁽¹⁾, as last amended by Regulation (EEC) No 1193/90⁽²⁾, and in particular Article 16a (5) thereof,

Having regard to Council Regulation (EEC) No 1677/85 of 11 July 1985 on monetary compensatory amounts in agriculture⁽³⁾, as last amended by Regulation (EEC) No 1889/87⁽⁴⁾, and in particular Article 6 (3) thereof,

Whereas Commission Regulation (EEC) No 1370/89⁽⁵⁾ fixed the intervention threshold for nectarines in the 1989/90 marketing year at 45 800 tonnes; whereas, on the basis of information received from the Member States, the Commission determined in May 1990 that the threshold for the said marketing year had been exceeded by 37 264 tonnes; whereas, as a result of this and following the monetary realignment of 5 January 1990, Commission Regulation (EEC) No 1492/90⁽⁶⁾ reduced the basic and buying-in prices for nectarines in line with Article 16a of Regulation (EEC) No 1035/72;

Whereas, in the light of a correction transmitted by one of the Member States, the threshold for nectarines was in fact exceeded by 74 867 tonnes; whereas, in order to save the Community unjustified expenditure, and in accordance with Article 16a (1) of Regulation (EEC) No 1035/72, an immediate reduction of 20 % should be

made in the basic and buying-in prices for nectarines fixed in Council Regulation (EEC) No 1194/90⁽⁷⁾ for the 1990/91 marketing year, notwithstanding the cut due to the agri-monetary changes; whereas this reduction in nectarine prices should apply throughout the Community, with the exception of Portugal;

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

HAS ADOPTED THIS REGULATION:

Article 1

The basic and buying-in prices for nectarines fixed in Regulation (EEC) No 1194/90 are hereby reduced by 20,14 % to give the following amounts in ecus per 100 kg net:

| | |
|----------------------|--------|
| — basic price | |
| — Community of Ten : | 43,46, |
| — Spain : | 43,46; |
| — buying-in price | |
| — Community of Ten : | 20,86, |
| — Spain : | 20,86. |

These prices shall apply to the varieties listed in the Annex to Regulation (EEC) No 1194/90.

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 until 31 August 1990.

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

Done at Brussels, 14 August 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

(¹) OJ No L 118, 20. 5. 1972, p. 1.
 (²) OJ No L 119, 11. 5. 1990, p. 43.
 (³) OJ No L 164, 24. 6. 1985, p. 6.
 (⁴) OJ No L 182, 3. 7. 1987, p. 1.
 (⁵) OJ No L 137, 20. 5. 1989, p. 19.
 (⁶) OJ No L 140, 1. 6. 1990, p. 109.

(⁷) OJ No L 119, 11. 5. 1990, p. 46.

COMMISSION REGULATION (EEC) No 2382/90

of 14 August 1990

fixing the amount of aid for peas, field beans and sweet lupins

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 1431/82 of 18 May 1982 laying down special measures for peas, field beans and sweet lupins ⁽¹⁾, as last amended by Regulation (EEC) No 1104/88 ⁽²⁾, and in particular Article 3 (6) (a) thereof,

Having regard to Commission Regulation (EEC) No 3540/85 of 5 December 1985 laying down detailed rules for the application of the special measures for peas, field beans and sweet lupins ⁽³⁾, as last amended by Regulation (EEC) No 2249/90 ⁽⁴⁾, and in particular Article 26a (7) thereof,

Whereas, as provided for in Article 3 (1) of Regulation (EEC) No 1431/82, aid is granted for peas, field beans and sweet lupins harvested in the Community and used in the manufacture of feedingstuffs where the world market price of soya cake is lower than the activating price; whereas this aid is equal to a proportion of the difference between these prices; whereas this proportion of the price difference was fixed in Article 3a of Council Regulation (EEC) No 2036/82 ⁽⁵⁾, as last amended by Regulation (EEC) No 2206/90 ⁽⁶⁾;

Whereas, in accordance with Article 3 (2) of Regulation (EEC) No 1431/82, aid is granted for peas and field beans harvested in the Community where the world market price for these products is lower than the guide price; whereas this aid is equal to the difference between the two prices;

Whereas the threshold price activating the aid for peas, field beans and sweet lupins for the 1990/91 marketing year was fixed by Council Regulation (EEC) No 1189/90 ⁽⁷⁾; whereas, as provided for in Article 2a of Regulation (EEC) No 1431/82, the activating price for the aid for peas, field beans and sweet lupins is increased monthly as from the beginning of the third month of the

marketing year; whereas the amount of the monthly increases in the threshold price was fixed by Council Regulation (EEC) No 1191/90 ⁽⁸⁾;

Whereas the abatement of the subsidy which arises, where appropriate, from the system of maximum guaranteed quantities for the 1990/91 marketing year, has not, to date, been fixed; whereas the amount of the subsidy for the 1990/91 marketing year has been provisionally calculated on the basis of the abatement applicable for the marketing year 1989/90;

Whereas the threshold price activating the aid and the minimum price fixed by the Council are to be reduced in accordance with Commission Regulation (EEC) No 1755/90 of 27 June 1990 establishing the activating threshold price for aid, the guide price and the minimum price for peas, field beans and sweet lupins fixed in ecus by the Council and reduced as a result of the monetary realignment of 5 January 1990 ⁽⁹⁾;

Whereas, pursuant to Article 4 of Regulation (EEC) No 1431/82, the world market price for soya cake must be determined on the basis of the most favourable purchase possibilities, excepting offers and quotations which cannot be considered representative of the real market trend; whereas account must be taken both of all offers on the world market and of the prices quoted on exchanges that are important for international trade; whereas this price is adjusted under the conditions and in the manner specified in Article 1 (2) of Regulation (EEC) No 2036/82, in order to take account of the prices of competing products in the case of field beans intended for animal feed;

Whereas, pursuant to Article 1 of Commission Regulation (EEC) No 2049/82 ⁽¹⁰⁾, as last amended by Regulation (EEC) No 1238/87 ⁽¹¹⁾, the price must be determined per 100 kilograms of bulk soya cake of the standard quality defined in Article 1 (2) of Council Regulation (EEC) No 1464/86 ⁽¹²⁾ delivered to Rotterdam; whereas the necessary adjustments, notably those referred to in Article 2 of Regulation (EEC) No 2049/82, must be made for offers and quotations not of the type referred to above;

Whereas, if the aid system is to operate normally, refunds should be calculated on the following basis:

⁽¹⁾ OJ No L 162, 12. 6. 1982, p. 28.

⁽²⁾ OJ No L 110, 29. 4. 1988, p. 16.

⁽³⁾ OJ No L 342, 19. 12. 1985, p. 1.

⁽⁴⁾ OJ No L 203, 1. 8. 1990, p. 56.

⁽⁵⁾ OJ No L 219, 28. 7. 1982, p. 1.

⁽⁶⁾ OJ No L 201, 31. 7. 1990, p. 11.

⁽⁷⁾ OJ No L 119, 11. 5. 1990, p. 37.

⁽⁸⁾ OJ No L 119, 11. 5. 1990, p. 40.

⁽⁹⁾ OJ No L 162, 28. 6. 1990, p. 18.

⁽¹⁰⁾ OJ No L 219, 28. 7. 1982, p. 36.

⁽¹¹⁾ OJ No L 117, 5. 5. 1987, p. 9.

⁽¹²⁾ OJ No L 133, 21. 5. 1986, p. 21.

- in the case of currencies which are maintained in relation to each other at any moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the correcting factor provided for in the last subparagraph of Article 3 (1) of Council Regulation (EEC) No 1676/85⁽¹⁾, as last amended by Regulation (EEC) No 2205/90⁽²⁾,
- for other currencies, an exchange rate based on the arithmetic mean of the spot market rates of each of these currencies recorded over a given period in relation to the Community currencies referred to in the previous indent, and the aforesaid correcting factor ;

Whereas pursuant to Articles 121 (2) and 307 (2) of the Act of Accession the amount of the aid for products harvested and processed in either of these Member States should be reduced by the customs duty charged on importation of products from third countries ; whereas, moreover, in the case of sweet lupins harvested in Spain it must be reduced by the difference between the activating threshold price applied in Spain and the common price ;

Whereas the world market price for peas and field beans and the amount of aid referred to in Article 3 (2) of Regulation (EEC) No 1431/82 were fixed by Commission Regulation (EEC) No 1938/89⁽³⁾ ; whereas in terms of Article 2a of Regulation (EEC) No 1431/82 the guide price is increased monthly as from the beginning of the third month of the marketing year ;

Whereas, pursuant to Article 26a of Regulation (EEC) No 3540/85, the gross aid expressed in ecus that results from Article 3 of Regulation (EEC) No 1431/82 shall be

weighted by the differential amount referred to in Article 12a of Regulation (EEC) No 2036/82 and then converted into the final aid in the currency of the Member State in which the products are harvested using the agricultural conversion rate of that Member State ;

Whereas the abatement of the subsidy which arises, where appropriate, from the system of maximum guaranteed quantities for the 1989/90 marketing year, has been fixed by Regulation (EEC) No 2656/89⁽⁴⁾,

HAS ADOPTED THIS REGULATION :

Article 1

1. The amounts of aid provided for in Article 3 of Regulation (EEC) No 1431/82 is indicated in the Annexes hereto.
2. However, the amount of the subsidy in the case of advance fixing for the 1990/91 marketing year for peas, field beans and sweet lupins will be confirmed or replaced as from 16 August 1990 to take into account, the application of maximum guaranteed quantities for the marketing year 1990/91.

Article 2

This Regulation shall enter into force on 16 August 1990.

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

Done at Brussels, 14 August 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽²⁾ OJ No L 201, 31. 7. 1990, p. 9.

⁽³⁾ OJ No L 187, 1. 7. 1989, p. 68.

⁽⁴⁾ OJ No L 255, 1. 9. 1989, p. 71.

ANNEX I

Gross aid

Products intended for human consumption :

(ECU per 100 kg)

| | Current 8 (°) | 1st period 9 (°) | 2nd period 10 (°) | 3rd period 11 (°) | 4th period 12 (°) | 5th period 1 (°) | 6th period 2 (°) |
|---------------------------|------------------|---------------------|----------------------|----------------------|----------------------|---------------------|---------------------|
| Peas used : | | | | | | | |
| — in Spain | 8,621 | 8,779 | 8,937 | 9,095 | 9,253 | 9,411 | 9,569 |
| — in Portugal | 8,648 | 8,806 | 8,964 | 9,122 | 9,280 | 9,438 | 9,596 |
| — in another Member State | 8,850 | 9,008 | 9,166 | 9,324 | 9,482 | 9,640 | 9,798 |
| Field beans used : | | | | | | | |
| — in Spain | 8,850 | 9,008 | 9,166 | 9,324 | 9,482 | 9,640 | 9,798 |
| — in Portugal | 8,648 | 8,806 | 8,964 | 9,122 | 9,280 | 9,438 | 9,596 |
| — in another Member State | 8,850 | 9,008 | 9,166 | 9,324 | 9,482 | 9,640 | 9,798 |

Products used in animal feed :

(ECU per 100 kg)

| | Current 8 (°) | 1st period 9 (°) | 2nd period 10 (°) | 3rd period 11 (°) | 4th period 12 (°) | 5th period 1 (°) | 6th period 2 (°) |
|--|------------------|---------------------|----------------------|----------------------|----------------------|---------------------|---------------------|
| A. Peas used : | | | | | | | |
| — in Spain | 11,572 | 11,729 | 11,733 | 11,798 | 11,956 | 11,775 | 11,933 |
| — in Portugal | 11,629 | 11,787 | 11,792 | 11,858 | 12,016 | 11,839 | 11,996 |
| — in another Member State | 11,629 | 11,787 | 11,792 | 11,858 | 12,016 | 11,839 | 11,996 |
| B. Field beans used : | | | | | | | |
| — in Spain | 11,572 | 11,729 | 11,733 | 11,798 | 11,956 | 11,775 | 11,933 |
| — in Portugal | 11,629 | 11,787 | 11,792 | 11,858 | 12,016 | 11,839 | 11,996 |
| — in another Member State | 11,629 | 11,787 | 11,792 | 11,858 | 12,016 | 11,839 | 11,996 |
| C. Sweet lupins harvested in Spain and used : | | | | | | | |
| — in Spain | 15,012 | 15,012 | 14,808 | 14,685 | 14,685 | 14,234 | 14,234 |
| — in Portugal | 15,089 | 15,089 | 14,886 | 14,764 | 14,764 | 14,318 | 14,318 |
| — in another Member State | 15,089 | 15,089 | 14,886 | 14,764 | 14,764 | 14,318 | 14,318 |
| D. Sweet lupins harvested in another Member State and used : | | | | | | | |
| — in Spain | 15,002 | 15,002 | 14,798 | 14,675 | 14,675 | 14,224 | 14,224 |
| — in Portugal | 15,079 | 15,079 | 14,876 | 14,754 | 14,754 | 14,308 | 14,308 |
| — in another Member State | 15,079 | 15,079 | 14,876 | 14,754 | 14,754 | 14,308 | 14,308 |

ANNEX VIII

Corrective amount to be added to amounts in Annex VII

(in national currency per 100 kg)

| Use of products : | BLEU | DK | DE | EL | ES | FR | IRL | IT | NL | PT | UK |
|------------------------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Products harvested in : | | | | | | | | | | | |
| — BLEU (Bfrs/Lfrs) | 0,00 | 0,00 | 0,00 | 4,00 | 3,42 | 0,00 | 0,00 | 0,00 | 0,00 | 0,00 | 0,00 |
| — Denmark (Dkr) | 0,00 | 0,00 | 0,00 | 0,74 | 0,63 | 0,00 | 0,00 | 0,00 | 0,00 | 0,00 | 0,00 |
| — Federal Republic of Germany (DM) | 0,00 | 0,00 | 0,00 | 0,19 | 0,17 | 0,00 | 0,00 | 0,00 | 0,00 | 0,00 | 0,00 |
| — Greece (Dr) | 0,00 | 0,00 | 0,00 | 18,26 | 15,62 | 0,00 | 0,00 | 0,00 | 0,00 | 0,00 | 0,00 |
| — Spain (Pta) | 0,00 | 0,00 | 0,00 | 12,59 | 10,77 | 0,00 | 0,00 | 0,00 | 0,00 | 0,00 | 0,00 |
| — France (FF) | 0,00 | 0,00 | 0,00 | 0,65 | 0,56 | 0,00 | 0,00 | 0,00 | 0,00 | 0,00 | 0,00 |
| — Ireland (£ Irl) | 0,000 | 0,000 | 0,000 | 0,072 | 0,062 | 0,000 | 0,000 | 0,000 | 0,000 | 0,000 | 0,000 |
| — Italy (Lit) | 0 | 0 | 0 | 145 | 124 | 0 | 0 | 0 | 0 | 0 | 0 |
| — Netherlands (Fl) | 0,00 | 0,00 | 0,00 | 0,22 | 0,19 | 0,00 | 0,00 | 0,00 | 0,00 | 0,00 | 0,00 |
| — Portugal (Esc) | 0,00 | 0,00 | 0,00 | 17,16 | 14,67 | 0,00 | 0,00 | 0,00 | 0,00 | 0,00 | 0,00 |
| — United Kingdom (£) | 0,000 | 0,000 | 0,000 | 0,065 | 0,055 | 0,000 | 0,000 | 0,000 | 0,000 | 0,000 | 0,000 |

ANNEX IX

Exchange rate of the ecu to be used

| | BLEU | DK | DE | EL | ES | FR | IRL | IT | NL | PT | UK |
|-------------------------------|---------|---------|---------|---------|---------|---------|----------|----------|---------|---------|----------|
| In national currency, ECU 1 = | 42,1679 | 7,79845 | 2,04446 | 201,781 | 125,876 | 6,85684 | 0,763159 | 1 529,70 | 2,30358 | 180,144 | 0,693703 |

(¹) Subject to the reduction from the maximum guaranteed quantities system and the prices and related measures for the 1990/91 marketing year.

COMMISSION REGULATION (EEC) No 2383/90
of 14 August 1990
fixing the aid for soya beans

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

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 1491/85 of 23 May 1985 laying down special measures in respect of soya beans ⁽¹⁾, as last amended by Regulation (EEC) No 2217/88 ⁽²⁾, and in particular Article 2 (7) thereof,

Having regard to Council Regulation 2286/88 of 19 July 1988 providing for the granting of special aid for soya beans produced and processed in Portugal ⁽³⁾,

Whereas the abatement of the subsidy which arises, where appropriate, from the system of maximum guaranteed quantities for the 1990/91 marketing year, has not yet been fixed; whereas the amount of the subsidy for the 1990/91 marketing year has been calculated provisionally on the basis of the abatement for the 1989/90 marketing year;

Whereas the amount of the aid referred to in Article 2 (1) of Regulation (EEC) No 1491/85 was fixed by Commission Regulation (EEC) No 1478/90 ⁽⁴⁾, as last amended by Regulation (EEC) No 2244/90 ⁽⁵⁾;

Whereas it follows from applying the rules and other provisions contained in Regulation (EEC) No 1478/90 to

the information at present available to the Commission that the amount of the aid at present in force should be altered as set out in this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. The amount of the aid provided for in Regulation (EEC) No 1491/85 and the amount of the special aid provided for in Article 1 of Regulation (EEC) No 2286/88 in the case of Portugal shall be as set out in the Annex hereto.

2. However, the amount of the subsidy in the case of advance fixing for the 1990/91 marketing year for soya beans, will be confirmed or replaced as from 15 August 1990 to take into account the prices, and like measures, for the 1990/91 marketing year and, in particular, those concerning the application of maximum guaranteed quantities.

Article 2

This Regulation shall enter into force on 15 August 1990.

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

Done at Brussels, 14 August 1990.

For the Commission
Ray MAC SHARRY
Member of the Commission

⁽¹⁾ OJ No L 151, 10. 6. 1985, p. 15.

⁽²⁾ OJ No L 197, 26. 7. 1988, p. 11.

⁽³⁾ OJ No L 201, 27. 7. 1988, p. 2.

⁽⁴⁾ OJ No L 140, 1. 6. 1990, p. 72.

⁽⁵⁾ OJ No L 203, 1. 8. 1990, p. 45.

ANNEX

to the Commission Regulation of 14 August 1990 fixing the aid for soya beans

(ECU/100 kg)

| | Seed harvested in | | |
|-------------------------------------|-------------------|------------|----------------------|
| | Spain | Portugal | another Member State |
| Seed processed in current period | | | |
| — Spain | 0,000 | 28,647 | 28,647 |
| — Portugal | 20,720 | 28,647 (*) | 28,647 |
| — another Member State | 20,720 | 28,647 | 28,647 |
| Seed processed in first period | | | |
| — Spain | 0,000 | 27,996 | 27,996 |
| — Portugal | 21,799 | 27,996 (*) | 27,996 |
| — another Member State | 21,799 | 27,996 | 27,996 |
| Seed processed in second period (*) | | | |
| — Spain | 0,000 | 28,030 | 28,030 |
| — Portugal | 21,833 | 28,030 (*) | 28,030 |
| — another Member State | 21,833 | 28,030 | 28,030 |
| Seed processed in third period (*) | | | |
| — Spain | 0,000 | 28,030 | 28,030 |
| — Portugal | 21,833 | 28,030 (*) | 28,030 |
| — another Member State | 21,833 | 28,030 | 28,030 |
| Seed processed in fourth period (*) | | | |
| — Spain | 0,000 | 27,860 | 27,860 |
| — Portugal | 21,663 | 27,860 (*) | 27,860 |
| — another Member State | 21,663 | 27,860 | 27,860 |
| Seed processed in fifth period (*) | | | |
| — Spain | 21,511 | 27,708 | 27,708 |
| — Portugal | 21,511 | 27,708 (*) | 27,708 |
| — another Member State | 21,511 | 27,708 | 27,708 |

(*) Special aid.

(!) Subject, in cases of advance fixing for the 1990/91 marketing year, to application of maximum guaranteed quantity arrangements for that marketing year.

COMMISSION REGULATION (EEC) No 2384/90

of 14 August 1990

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 Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

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 (EEC) No 1069/89⁽²⁾, and in particular point (a) of the first subparagraph of Article 19 (4) thereof,

Having regard to the opinion of the Monetary Committee,

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 Council Regulation (EEC) No 766/68 of 18 June 1968 laying down general rules for granting export refunds on sugar⁽³⁾, as last amended by Regulation (EEC) No 1489/76⁽⁴⁾, 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 3 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⁽⁵⁾; whereas, furthermore, this refund should be fixed in accordance with Article 5 (2) of Regulation (EEC) No 766/68; whereas candy sugar is defined in Commission Regulation (EEC) No 394/70 of 2 March 1970 on detailed rules for granting export

refunds on sugar⁽⁶⁾, as last amended by Regulation (EEC) No 1714/88⁽⁷⁾; 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, if the refund system is to operate normally, refunds should be calculated on the following basis:

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last subparagraph of Article 3 (1) of Council Regulation (EEC) No 1676/85⁽⁸⁾, as last amended by Regulation (EEC) No 2205/90⁽⁹⁾,
- for other currencies, an exchange rate based on the arithmetic mean of the spot market rates of each of these currencies recorded over a given period in relation to the Community currencies referred to in the previous indent, and the aforesaid coefficient;

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, in view of the present circumstances in the German Democratic Republic and their effects on the market situation, no refund should be fixed for products to be exported to that destination;

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 114, 27. 4. 1989, p. 1.

⁽³⁾ OJ No L 143, 25. 6. 1968, p. 6.

⁽⁴⁾ OJ No L 167, 26. 6. 1976, p. 13.

⁽⁵⁾ OJ No L 89, 10. 4. 1968, p. 3.

⁽⁶⁾ OJ No L 50, 4. 3. 1970, p. 1.

⁽⁷⁾ OJ No L 152, 18. 6. 1988, p. 23.

⁽⁸⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁹⁾ OJ No L 203, 31. 7. 1990, p. 9.

HAS ADOPTED THIS REGULATION :

exported in their unaltered state shall be as set out in the Annex hereto.

Article 1

1. The export refunds on the products listed in Article 1 (1) (a) of Regulation (EEC) No 1785/81 undenatured and

2. The refund on export to the German Democratic Republic has not been fixed.

Article 2

This Regulation shall enter into force on 15 August 1990.

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

Done at Brussels, 14 August 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX

to the Commission Regulation of 14 August 1990 fixing the export refunds on white sugar and raw sugar exported in its unaltered state

(ECU)

| Product code | Amount of refund | |
|----------------|----------------------|---|
| | per 100 kg | per percentage point of sucrose content and per 100 kg net of the product in question |
| 1701 11 90 100 | 32,61 ⁽¹⁾ | |
| 1701 11 90 910 | 32,73 ⁽¹⁾ | |
| 1701 11 90 950 | ⁽²⁾ | |
| 1701 12 90 100 | 32,61 ⁽¹⁾ | |
| 1701 12 90 910 | 32,73 ⁽¹⁾ | |
| 1701 12 90 950 | ⁽²⁾ | |
| 1701 91 00 000 | | 0,3545 |
| 1701 99 10 100 | 35,45 | |
| 1701 99 10 910 | 36,53 | |
| 1701 99 10 950 | 36,53 | |
| 1701 99 90 100 | | 0,3545 |

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

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

COMMISSION REGULATION (EEC) No 2385/90

of 14 August 1990

fixing the maximum export refund for white sugar for the 16th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EEC) No 983/90

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

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 (EEC) No 1069/89⁽²⁾, and in particular the first subparagraph of Article 19 (4) (b) thereof,

Whereas Commission Regulation (EEC) No 983/90 of 19 April 1990 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 (EEC) No 983/90, 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 16th partial invitation to

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

Whereas, in view of the present circumstances in the German Democratic Republic and their effects on the market situation, no refund should be fixed for products to be exported to that destination;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. For the 16th partial invitation to tender for white sugar issued pursuant to Regulation (EEC) No 983/90 the maximum amount of the export refund is fixed at ECU 39,277 per 100 kilograms.

2. The refund on export to the German Democratic Republic has not been fixed.

Article 2

This Regulation shall enter into force on 15 August 1990.

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

Done at Brussels, 14 August 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 114, 27. 4. 1989, p. 1.

⁽³⁾ OJ No L 100, 20. 4. 1990, p. 9.

COMMISSION REGULATION (EEC) No 2386/90
of 14 August 1990
introducing a countervailing charge on table grapes originating in Turkey

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Regulation (EEC) No 1035/72 of the Council of 18 May 1972 on the common organization of the market in fruit and vegetables ⁽¹⁾, as last amended by Regulation (EEC) No 1193/90 ⁽²⁾, and in particular the second subparagraph of Article 27 (2) thereof,

Whereas Article 25 (1) of Regulation (EEC) No 1035/72 provides that, if the entry price of a product imported from a third country remains at least ECU 0,6 below the reference price for two consecutive market days, a countervailing charge must be introduced in respect of the exporting country concerned, save in exceptional circumstances; whereas this charge is equal to the difference between the reference price and the arithmetic mean of the last two entry prices available for that exporting country;

Whereas Commission Regulation (EEC) No 891/90 of 6 April 1990 fixing for the 1990 marketing year the reference prices for table grapes ⁽³⁾ fixed the reference price for products of class I at ECU 51,92 per 100 kilograms net for the period 20 July to 31 August 1990; whereas this price was adjusted by Commission Regulation (EEC) No 1484/90 ⁽⁴⁾;

Whereas the entry price for a given exporting country is equal to the lowest representative prices recorded for at least 30 % of the quantities from the exporting country concerned which are marketed on all representative markets for which prices are available less the duties and the charges indicated in Article 24 (3) of Regulation (EEC) No 1035/72; whereas the meaning of representative price is defined in Article 24 (2) of Regulation (EEC) No 1035/72;

Whereas, in accordance with Article 3 (1) of Regulation (EEC) No 2118/74 of the Commission ⁽⁵⁾, as last amended by Regulation (EEC) No 3811/85 ⁽⁶⁾, the prices to be taken into consideration must be recorded on the representative markets or, in certain circumstances, on other markets;

Whereas, for table grapes originating in Turkey the entry price calculated in this way has remained at least ECU 0,6 below the reference price for two consecutive market days; whereas a countervailing charge should therefore be introduced for these table grapes;

Whereas, if the system is to operate normally, the entry price should be calculated on the following basis:

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Council Regulation (EEC) No 1676/85 ⁽⁷⁾, as last amended by Regulation (EEC) No 2205/90 ⁽⁸⁾,
- for other currencies, an exchange rate based on the arithmetic mean of the spot market rates of each of these currencies recorded over a given period in relation to the Community currencies referred to in the previous indent, and the aforesaid coefficient,

HAS ADOPTED THIS REGULATION:

Article 1

A countervailing charge of ECU 9,08 per 100 kilograms net is applied to table grapes (CN codes 0806 10 15 and 0806 10 19) originating in Turkey.

Article 2

This Regulation shall enter into force on 16 August 1990.

⁽¹⁾ OJ No L 118, 20. 5. 1972, p. 1.

⁽²⁾ OJ No L 119, 11. 5. 1990, p. 43.

⁽³⁾ OJ No L 92, 7. 4. 1990, p. 33.

⁽⁴⁾ OJ No L 140, 1. 6. 1990, p. 90.

⁽⁵⁾ OJ No L 220, 10. 8. 1974, p. 20.

⁽⁶⁾ OJ No L 368, 31. 12. 1985, p. 1.

⁽⁷⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁸⁾ OJ No L 201, 31. 7. 1990, p. 9.

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

Done at Brussels, 14 August 1990.

For the Commission
Ray MAC SHARRY
Member of the Commission

COMMISSION REGULATION (EEC) No 2387/90
of 14 August 1990
fixing the import levies on white sugar and raw sugar

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

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 (EEC) No 1069/89 ⁽²⁾, and in particular Article 16 ⁽⁸⁾ thereof,

Whereas the import levies on white sugar and raw sugar were fixed by Commission Regulation (EEC) No 1812/90 ⁽³⁾, as last amended by Regulation (EEC) No 2371/90 ⁽⁴⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 1812/90 to the information known to the Commission that the levies at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies referred to in Article 16 (1) of Regulation (EEC) No 1785/81 shall be, in respect of white sugar and standard quality raw sugar, as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 15 August 1990.

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

Done at Brussels, 14 August 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 114, 27. 4. 1989, p. 1.

⁽³⁾ OJ No L 167, 30. 6. 1990, p. 41.

⁽⁴⁾ OJ No L 219, 14. 8. 1990, p. 34.

ANNEX**to the Commission Regulation of 14 August 1990 fixing the import levies on white sugar and raw sugar***(ECU/100 kg)*

| CN code | Levy |
|------------|----------------------|
| 1701 11 10 | 36,70 ⁽¹⁾ |
| 1701 11 90 | 36,70 ⁽¹⁾ |
| 1701 12 10 | 36,70 ⁽¹⁾ |
| 1701 12 90 | 36,70 ⁽¹⁾ |
| 1701 91 00 | 39,69 |
| 1701 99 10 | 39,69 |
| 1701 99 90 | 39,69 ⁽²⁾ |

⁽¹⁾ Applicable to raw sugar with a yield of 92 % ; if the yield is other than 92 %, the levy applicable is calculated in accordance with the provisions of Article 2 of Commission Regulation (EEC) No 837/68 (OJ No L 151, 30. 6. 1968, p. 42).

⁽²⁾ In accordance with Article 16 (2) of Regulation (EEC) No 1785/81 this amount is also applicable to sugar obtained from white and raw sugar containing added substances other than flavouring or colouring matter.

COMMISSION REGULATION (EEC) No 2388/90

of 14 August 1990

altering the import levies on products processed from cereals and rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 1340/90⁽²⁾, and in particular Article 14 (4) thereof,

Having regard to Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice⁽³⁾, as last amended by Regulation (EEC) No 1806/89⁽⁴⁾, and in particular Article 12 (4) thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy⁽⁵⁾, as last amended by Regulation (EEC) No 2205/90⁽⁶⁾, and in particular Article 3 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas the import levies on products processed from cereals and rice were fixed by Commission Regulation (EEC) No 2160/90⁽⁷⁾, as last amended by Regulation (EEC) No 2375/90⁽⁸⁾;

Whereas Council Regulation (EEC) No 1906/87⁽⁹⁾ amended Council Regulation (EEC) No 2744/75⁽¹⁰⁾ as regards products falling within CN codes 2302 10, 2302 20, 2302 30 and 2302 40;

Whereas, if the levy system is to operate normally, levies should be calculated on the following basis:

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 134, 28. 5. 1990, p. 1.

⁽³⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽⁴⁾ OJ No L 177, 24. 6. 1989, p. 1.

⁽⁵⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁶⁾ OJ No L 201, 31. 7. 1990, p. 9.

⁽⁷⁾ OJ No L 197, 27. 7. 1990, p. 36.

⁽⁸⁾ OJ No L 219, 14. 8. 1990, p. 47.

⁽⁹⁾ OJ No L 182, 3. 7. 1987, p. 49.

⁽¹⁰⁾ OJ No L 281, 1. 11. 1975, p. 65.

— in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Regulation (EEC) No 1676/85,

— for other currencies, an exchange rate based on the arithmetic mean of the spot market rates of each of these currencies recorded over a given period in relation to the Community currencies referred to in the previous indent, and the aforesaid coefficient;

Whereas these exchange rates being those recorded on 13 August 1990;

Whereas the aforesaid corrective factor affects the entire calculation basis for the levies, including the equivalence coefficients;

Whereas the levy on the basic product as last fixed differs from the average levy by more than ECU 3,02 per tonne of basic product; whereas, pursuant to Article 1 of Commission Regulation (EEC) No 1579/74⁽¹¹⁾, as last amended by Regulation (EEC) No 1740/78⁽¹²⁾, the levies at present in force must therefore be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies to be charged on products processed from cereals and rice covered by Regulation (EEC) No 2744/75 as fixed in the Annex to amended Regulation (EEC) No 2160/90 are hereby altered to the amounts set out in the Annex.

Article 2

This Regulation shall enter into force on 15 August 1990.

⁽¹¹⁾ OJ No L 168, 25. 6. 1974, p. 7.

⁽¹²⁾ OJ No L 202, 26. 7. 1978, p. 8.

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

Done at Brussels, 14 August 1990.

For the Commission
Ray MAC SHARRY
Member of the Commission.

ANNEX

to the Commission Regulation of 14 August 1990 altering the import levies on products processed from cereals and rice

(ECU/tonne)

| CN code | Import levies | | |
|------------|---------------|-----------------------|--|
| | Portugal | ACP or OCT | Third countries (other than ACP or OCT) |
| 1102 20 10 | 72,03 | 262,39 | 268,43 |
| 1102 20 90 | 40,41 | 148,69 | 151,71 |
| 1103 13 11 | 72,03 | 262,39 | 268,43 |
| 1103 13 19 | 72,03 | 262,39 | 268,43 |
| 1103 13 90 | 40,41 | 148,69 | 151,71 |
| 1103 29 40 | 72,03 | 262,39 | 268,43 |
| 1104 19 50 | 72,03 | 262,39 | 268,43 |
| 1104 23 10 | 61,68 | 233,23 | 236,25 |
| 1104 23 30 | 61,68 | 233,23 | 236,25 |
| 1104 23 90 | 40,41 | 148,69 | 151,71 |
| 1104 30 90 | 33,54 | 109,33 | 115,37 |
| 1106 20 91 | 79,57 | 231,06 ⁽³⁾ | 255,24 |
| 1106 20 99 | 79,57 | 231,06 ⁽³⁾ | 255,24 |
| 1108 12 00 | 79,57 | 234,69 | 255,24 |
| 1108 13 00 | 79,57 | 234,69 | 255,24 ⁽⁴⁾ |
| 1108 14 00 | 79,57 | 117,34 | 255,24 |
| 1108 19 90 | 79,57 | 117,34 ⁽³⁾ | 255,24 |
| 1702 30 51 | 173,71 | 306,12 | 402,84 |
| 1702 30 59 | 125,51 | 234,69 | 301,18 |
| 1702 30 91 | 173,71 | 306,12 | 402,84 |
| 1702 30 99 | 125,51 | 234,69 | 301,18 |
| 1702 40 90 | 125,51 | 234,69 | 301,18 |
| 1702 90 50 | 125,51 | 234,69 | 301,18 |
| 1702 90 75 | 177,37 | 320,69 | 417,41 |
| 1702 90 79 | 122,58 | 223,03 | 289,52 |
| 2106 90 55 | 125,51 | 234,69 | 301,18 |
| 2303 10 11 | 254,66 | 291,54 | 472,88 |

⁽³⁾ In accordance with Regulation (EEC) No 715/90 the levy shall not be charged on the following products originating in the African, Caribbean and Pacific States and in the overseas countries and territories:

- products falling within CN code ex 0714 10 91,
- products falling within CN code 0714 90 11 and arrow-root falling within CN code 0714 90 19,
- flours and meal of arrow-root falling within CN code 1106 20,
- arrow-root starch falling within CN code 1108 19 90.

⁽⁴⁾ Pursuant to Regulation (EEC) No 3899/89, the levy on importation into the Community of products of CN code 1108 13 00 is reduced by 50 % within the limit of a fixed amount of 5 000 tons.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 18 July 1990

relating to a proceeding under Article 65 of the ECSC Treaty concerning an agreement and concerted practices engaged in by European producers of cold-rolled stainless steel flat products

(Only the German, English, Spanish, French, Italian and Dutch texts are authentic)

(90/417/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 65 thereof,

Having regard to information received by the Commission and inspections carried out under Article 47 of the ECSC Treaty by officials of the Commission on 28 and 29 April 1988 in the offices of the seven ECSC producers of cold-rolled stainless steel flat products.

Having regard to the written and oral comments made under Article 36 of the Treaty in the name and on behalf of the parties,

Whereas :

The Commission has come to the view that the members of the so-called Sendzimir Club, which comprises ECSC and Finnish and Swedish makers of the products in question, have made and operated a quota and price agreement in 1986 which contravened Article 65 of the Treaty.

By its letter of 5 October 1988, the Commission, under Article 36 of the Treaty, gave the undertakings concerned the opportunity to submit their comments.

The undertakings submitted their written comments by 10 January 1989 and supplemented them by 20 March 1989. Authorized representatives of those concerned also

submitted oral comments on their behalf at a hearing held from 29 to 31 May 1989.

A. THE FACTS

I. General summary

1. The European producers of cold-rolled stainless steel flat products grouped together in the so-called Sendzimir Club have been involved during the period 1986 to 1988 in :

- quota arrangements,
- concerted pricing practices,
- bilateral interpenetration agreements.

2. Details of these agreements and concerted practices as well as of the Sendzimir Club itself are set out hereinafter.

II. The Sendzimir Club (Z Club)

1. The Z Club is a professional association of European steel producers of cold-rolled stainless steel flat products. This association gets its name from the specialized Sendzimir mills invented by Dr Sendzimir and operated by its members. Their output is mostly in the form of stainless cold-rolled sheet under 3 mm in thickness and over 500 mm in width.

2. The Z Club was already in existence in the early 1980s and at that stage included only Community producers. Later it was expanded to non-Community producers.

3. Since 1982 there has been a concentration process related to the overall restructuring of the steel industry that has led to closures and mergers in the cold-rolled stainless steel flat products sector. More specifically:

- Ilssa-Viola, SpA closed in February 1986,
- Usinor SA (Châtillon) acquired Peugeot-Loire in 1984,
- Ugine-Gueugnon SA and Usinor SA (Châtillon) merged on 1 July 1987 to form Ugine Aciers de Châtillon et Gueugnon,
- Terni Acciai Speciali SpA became operational on 1 July 1987 when it took over the 'Società per l'industria e l'elettricità SpA'. On 22 December 1987 the resulting company took over the production of 'Terninox SpA',
- and British Steel Corporation has changed its name after privatization to British Steel plc.

4. The current ECSC members of the Z Club are:

- Acerinox SA (Spain),
- ALZ NV (Belgium),
- British Steel plc (BS) (United Kingdom),
- Krupp Stahl AG (Germany),
- Terni Acciai Speciali, SpA (Italy),
- Thyssen Edelstahlwerke AG (Germany),
- Ugine Aciers de Châtillon et Gueugnon (France).

5. The non-ECSC members are:

- Outokumpu OY (Finland),
- Avesta AB (Sweden).

6. The Z Club has no fixed seat but a rotating secretariat. The meetings of the Z Club are, or were during the relevant years, generally of the following types:

- (a) Meetings of presidents or heads of delegations (i. e. the most important representatives of the companies concerned);
- (b) Meetings of commercial directors or similar ranking officers;
- (c) 'Experts' meetings, often export managers or other officials at a level below that of commercial director.

7. All these meetings were arranged either by the Z Club itself or within the framework of larger steel associations such as Eurofer or the Fine Steels Club.

8. Eurofer, the European Confederation of Iron and Steel Industries, was constituted at the end of 1976 by professional association and companies in the Community steel industry, as a successor to the 'Club des Sidérurgistes', a loose cooperation forum with a similar membership.

9. Eurofer's objectives include:

- (a) cooperation among the national associations, and also among Community steel undertakings, in order to represent their interests before the Commission of the European Communities and other international organizations;
- (b) the undertaking of studies and action to contribute to the harmonious development of the European steel industry.

10. Article 48 of the ECSC Treaty recognizes the right of undertakings to form associations. Their membership must remain open and they may engage in any activity which is not contrary to the provisions of the Treaty or to the decisions or recommendations of the Commission. Other Articles also provide for the Commission to consult associations, specially regarding the introduction of measures affecting prices and production (Articles 46, 58 and 61). Eurofer played an active role during the period of 'manifest crisis' (see section III below).

11. Eurofer has numerous committees and product groups such as the so-called CDAS (Comité de Direction Aciers Spéciaux) which groups the producers of special steels. Frequently, there were meetings of the Z Club on the occasion of meetings of the CDAS.

12. The Fine Steels Club is another association of special steel producers which predates Eurofer and which includes not only ECSC producers but other European producers (Swedish, Finnish, Austrian, etc.) Meetings of the Z Club also took place on the occasion of meetings of the Fine Steels Club.

III. The crisis in the steel industry

1. The European steel industry was affected by a drop in demand which created problems of excess supply and spare capacity and consequent low prices from the mid-1970s to 1986, with the normal variations between different steel products.

2. The Commission, on the basis of Article 57 of the Treaty, adopted the so-called 'Simonet Plan' on 1 January 1977 by which each company made unilateral voluntary commitments *vis-à-vis* the Commission to adjust its deliveries to the levels suggested by the Commission each quarter in its forward programme.

The plan stated: 'In any such crisis situation, the Commission expects that undertakings will display solidarity, and tailor their production or deliveries to these indicative tonnages, and that they will enter into individual undertakings with the Commission to this effect. When planning and implementing the measures outlined above, the Commission will consult the trade associations, and workers', consumers' and stockholders' organizations. The

Commission will make certain that any role given to these trade associations and organizations while these measures are in force is compatible with the ECSC Treaty in general and the competition rules in particular.

3. This system proved insufficient to stabilize the market and thus in 1978 the 'First Davignon Plan' came into effect. This new regime complemented the unilateral voluntary commitments with indicative and minimum prices as well as with external protection, i.e. the introduction of voluntary export restraints agreed with third countries, import reference prices and a more rigorous application of the ECSC anti-dumping measures. These external measures were in accordance with the burden-sharing consensus reached by the OECD Member States in 1977.

4. Despite all these measures, the situation in the steel market continued to deteriorate and on 31 October 1980 the Commission adopted Decision No 2794/80/ECSC⁽¹⁾, by which a state of 'manifest crisis' was declared in accordance with Article 58 of the ECSC Treaty. By virtue of this Decision, mandatory production quotas were imposed by the Commission but not for the products which are the subject of this Decision. These measures were extended by Decisions No 1831/81/ECSC⁽²⁾, No 1696/82/ECSC⁽³⁾, No 2177/83/ECSC⁽⁴⁾, No 234/84/ECSC⁽⁵⁾ and No 3485/85/ECSC⁽⁶⁾.

5. This anti-crisis regime imposed by the Commission can be summarized as follows: the Commission fixed a general objective of Community production for each quarter for different product categories and each undertaking was allotted a compulsory production quota for deliveries within the Community market, known as its share of 'Big I', i.e. the Community market.

6. The Commission also adopted Decision No 3483/82/ECSC⁽⁷⁾ establishing a so-called 'surveillance system' by which each undertaking was obliged to declare its deliveries by country to the Commission. In addition, Decision No 3717/83/ECSC⁽⁸⁾ was adopted, requiring production certificates and accompanying documents for each delivery.

7. The cold-rolled stainless steel flat product sector felt the effects of the general crisis of the steel industry.

However, this product, together with some other specific products, was never included in the product categories of the Article 58 regime.

8. Nevertheless, officials of the Commission held several meetings with the Community producers of cold-rolled stainless steel flat products between 1980 and 1982 in order to evaluate the situation for this product for which only the widths above 500 mm fall under the ECSC Treaty, and to try to find a solution to improve the conditions of the market.

IV. Historical Background (I) — 1983

1. To complete this summary of the background to the 1986 Agreement which is the subject of this Decision, it is necessary to refer to an agreement made in 1983 and to certain bilateral agreements. The contacts with the Commission officials, summarized above did not lead to any concrete results, but the Community producers continued to meet on their own.

2. However, it was not until 13 January 1983 that a formal 'Agreement on a voluntary system of delivery and production limitation for cold-rolled stainless steel flat products' was signed. The undertakings which signed the Agreement (Annex I to the Agreement) were:

ALZ NV,
British Steel Corporation,
Ilssa-Viola SpA,
Industria Acciai Inossidabili SpA,
Krupp Stahl AG,
Peugeot-Loire SA,
Terminoss SpA,
Thyssen Edelstahlwerke AG,
Ugine-Gueugnon SA,
Usinor SA.

3. On 17 January 1983 the Commissioners responsible for industrial affairs, Mr Davignon, and for competition policy, Mr Andriessen, co-signed a letter to Eurofer reminding the undertakings and Eurofer itself of their obligations under the Treaty. Specifically, these two Commissioners pointed out that the undertakings, or their associations, should not use the anti-crisis measures imposed by the Commission as an excuse to create cartels or to take decisions contrary to the Treaty and particularly contrary to Article 65.

4. A copy of the 1983 Agreement was handed over at the end of January 1983 to the Cabinet of Commissioner Davignon as well as to certain officials of the Commission. However, the signatories to the Agreement did not make an application for authorization of the Agreement under Article 65 (2) of the ECSC Treaty.

⁽¹⁾ OJ No L 291, 31. 10. 1980, p. 1.

⁽²⁾ OJ No L 180, 1. 7. 1981, p. 1.

⁽³⁾ OJ No L 191, 1. 7. 1982, p. 1.

⁽⁴⁾ OJ No L 208, 31. 7. 1983, p. 1.

⁽⁵⁾ OJ No L 29, 1. 2. 1984, p. 1.

⁽⁶⁾ OJ No L 340, 18. 12. 1985, p. 5.

⁽⁷⁾ OJ No L 370, 29. 12. 1982, p. 1.

⁽⁸⁾ OJ No L 373, 31. 12. 1983, p. 9.

5. Eurofer replied to the Commissioner's letter of 17 January 1983 on 8 February 1983, stating that the Commission would always be informed of their activities and it would be up to the Commission to evaluate if these activities were contrary to the Treaty.

6. The signatories to the Agreement contacted the two Swedish and Finnish undertakings, Avesta and Outokumpu, in an attempt to persuade them to join the Agreement. These two undertakings objected to the proposals made by the Community producers and Avesta was quoted by the Community companies as arguing that they could not agree to participate in such an agreement for 'legal reasons'.

7. The 1983 Agreement was formally terminated on 30 June 1983 after less than six months in operation.

V. Historical background (II) — 1984 to 1986

1. Despite the failure of the 1983 Agreement and the disagreements which occurred among producers, the Z Club continued its activities on a regular basis.

2. There was a meeting initiated by British Steel in Düsseldorf on 27 February 1984. British Steel proposed 'cooperation on prices' and, as a second step, a new tonnage agreement similar to the 1983 Agreement.

3. The market situation for steel in the Community continued to deteriorate during 1984 and 1985.

4. Despite the fact that most European producers were incurring losses on stainless flat product, for some time the Z Club experienced difficulty in reaching consensus. Meetings of the Z Club took place regularly and frequent attempts were made to raise prices during this period 1984 to 1985.

5. Given the deterioration of the market situation on the one hand and the difficulties in reaching a multilateral agreement on the other hand, the producers chose in 1985 to conclude 'interpenetration agreements' on a bilateral basis (country to country).

6. The Commission has evidence that eight bilateral agreements had been made by early 1986. Six of them were between Community producers and producers in Finland and Spain, and were known to the Commission officials dealing with those countries (see section V — point 12 below).

7. Under these bilateral interpenetration agreements the producers of each country in question agreed on a maximum yearly tonnage to be exported to the other country, and vice versa.

8. Spain became a member of the European Communities on 1 January 1986 but the Act of Accession of Spain and Portugal established a transitional arrangement lasting for three years (1986 to 1988) for the steel sector to allow restructuring which included a restriction of steel exports to the other Community countries. The total tonnage of steel products allowed into the rest of the Community from Spain was to be decided by the Council of Ministers for each of these years.

9. Finland and Sweden were at all relevant times subject to the Community's external steel policy. There has been an annual Exchange of Letters between each of these countries and the Community providing for export restrictions since 1978.

10. From 1978 and under the Act of Accession, the same principle applied to these three countries, Finland, Spain and Sweden: the maintenance of traditional trade flows, in practice meaning that their steel exports to the Community were to be maintained at previous levels and no variations were allowed in regional distribution, product-mix or timing (the so-called 'triple-clause').

11. During 1984 and 1985 Acerinox, Avesta and Outokumpu experienced abnormal delays in obtaining import licences in some of the Member States (especially in Germany, France and Italy) despite the fact that under GATT rules these licences must be given automatically. The Member States involved complained that the three companies in question were not respecting the 'triple clause' as established in the Exchanges of Letters between the Community and their respective governments.

12. The Commission officials responsible for relations with these countries brought up this issue in their conversations with the representatives of the governments involved (Finland, Spain and Sweden). Since those governments did not have the legal power to impose formal export quotas on their own undertakings, it was recommended that their respective undertakings should contact the companies in the Member States which had complained, in order to solve the problem within the framework of the Exchange of Letters.

13. Commission officials never suggested that either Acerinox, Avesta or Outokumpu should join any multilateral agreement.

VI. The 1986 Multilateral Agreement, the subject of this Decision

1. By the time the Z Club met in Paris on 15 April 1986, a new formal Agreement was in sight. There were only technical details to be worked out.

2. An 'Agreement on a voluntary system of delivery limitations for cold-rolled stainless steel flat products' was signed on 16 May 1986 in Düsseldorf.

3. The main provisions of this Agreement were :

(a) products subject to the Agreement :

- cold-rolled stainless steel flat products in coils and sheets cut from oil, plates and narrow strip without limitation of widths or thickness,
- prime and non-prime products,
- deliveries to rerollers,
- KBR was excluded (KBR = finished cold-rolled sheet or plate of width greater than 63" (1 600 mm), thickness from 3 to 7 mm);

(b) markets subject to delivery quotas :

- Austria,
- Belgium/Luxembourg,
- Denmark,
- Ireland,
- Finland,

(c) establishment of delivery quotas :

'Big C' % quota according to the following table :

| Participating companies | 'Big C' | Delivery quota |
|-------------------------|----------------|----------------|
| <i>Belgium</i> | 6,152 | |
| — ALZ | | 6,152 |
| <i>Finland</i> | 6,072 | |
| — Outokumpu | | 6,072 |
| <i>France</i> | 18,843 | |
| — Ugine Gueugnon | | 11,430 |
| — Usinor Châtillon | | 7,413 |
| <i>Germany</i> | 27,831 | |
| — Krupp Stahl | | 17,887 |
| — TEW | | 9,944 |
| <i>Italy</i> | 18,671 | |
| — IAI | | 9,3355 |
| — Terminoss | | 9,3355 |
| <i>Spain</i> | 7,329 | |
| — Acerinox | | 7,329 |
| <i>Sweden</i> | 6,820 | |
| — Avesta | | 6,820 |
| <i>United Kingdom</i> | 8,282 | |
| — BSC | | 8,282 |
| Total | 100,000 | 100,000 |

These 'Big C' percentage quotas were converted into 'Big C' quarterly tonnage quotas using the market demand estimates described above,

- 'small c': the quarterly quotas were determined by the respective quarterly market estimates and by the following matrix :

- France,
- Germany,
- Greece,
- Italy,
- Malta,
- Netherlands,
- Norway,
- Portugal,
- Spain,
- Sweden,
- Switzerland,
- United Kingdom.

These 17 markets considered together were referred to as 'big C'. The markets considered separately were referred to as 'small c';

(c) establishment of Z Club statistics and elaboration of quarterly estimates of the level of demand ;

(d) voting power of each member of the Z Club : 75 % of its market share in the market concerned plus 25 % of its relative position in the total territory covered by the Agreement ;

'Small c' Master table (Table 11 of 15 May 1986)

(tonnes)

| | Germany | Belgium/ Luxembourg | Spain | Finland | France | Italy | United Kingdom | Sweden | Total |
|---------------------------------|---------|------------------------|-------|---------|--------|--------|-------------------|--------|--------|
| Germany | 18 009 | 1 424 | 1 102 | 906 | 2 881 | 1 506 | 1 065 | 1 577 | 28 500 |
| Belgium/ Luxembourg | 448 | 563 | 25 | 136 | 462 | 425 | 130 | 80 | 2 269 |
| Spain | 551 | 271 | 3 515 | 100 | 391 | 33 | 36 | 70 | 4 967 |
| Finland | 176 | 96 | 87 | 1 454 | 108 | 6 | 32 | 268 | 2 207 |
| France | 956 | 765 | 501 | 212 | 8 781 | 903 | 531 | 159 | 12 808 |
| Italy | 1 410 | 1 249 | 501 | 522 | 1 954 | 12 622 | 394 | 408 | 19 060 |
| United-Kingdom | 1 106 | 465 | 73 | 204 | 1 133 | 339 | 5 158 | 434 | 8 939 |
| Sweden | 601 | 190 | 75 | 358 | 347 | 7 | 15 | 1 610 | 3 203 |
| Netherlands | 908 | 484 | 206 | 452 | 610 | 523 | 153 | 409 | 3 744 |
| Ireland/ Denemark/ Greece | 823 | 98 | 281 | 563 | 362 | 384 | 252 | 808 | 3 571 |
| Austria | 516 | — | 30 | 284 | 155 | 413 | — | 346 | 1 744 |
| Portugal | 90 | 215 | 287 | 46 | 150 | 131 | 169 | — | 1 088 |
| Malta | 40 | — | 31 | — | 33 | — | — | — | 104 |
| Norway | 219 | 27 | 70 | 183 | 78 | — | — | 189 | 766 |
| Switzerland | 1 019 | 100 | 322 | 449 | 769 | 756 | 44 | 234 | 3 693 |
| | 26 902 | 5 947 | 7 085 | 5 869 | 18 214 | 18 048 | 8 006 | 6 592 | 96 663 |

(f) the 'small c' shares were corrected in cases of previous tonnages bilaterally agreed ;

(g) implementation of a sophisticated system for compensation, carry-overs, exchanges and purchases of quotas ;

(h) establishment of a system of fines :

— for the first quarter of the Agreement a fine of 125 ECU per tonne was imposed on delivery to each 'small c' market in excess of 3 % or 40 tonnes per quarter whichever was greater (5 % or 65 tonnes per quarter for ALZ) over the agreed quotas. A fine of ECU 125 per tonne was imposed on excess deliveries to 'big C',

— from the second quarter onwards, the fines were increased to ECU 250 per tonne,

— a fine of ECU 250 per tonne on delivery tonnages not declared ;

(i) obligation of a deposit of a collateral in the form of promissory notes or bank guarantees ;

(j) the 'pricing aspect' was described in the Agreement as follows :

'The efficient application of this Agreement should permit the progressive price stabilization in the 'big C' market area. Decisions in this regard will be taken as appropriate by the Sendzimir Club members during their periodic meetings, and adherence to these decisions is regarded as essential to this agreement.'

In practice, the members set up a pricing committee for this purpose ;

(k) the administration of the Agreement was to be carried out by the Z Club secretariat 'in close collaboration' with Eurofer. A market forecast committee and a market arbitration committee were set up as well ;

(l) the Agreement was made for a period of 12 months, namely the fourth quarter of 1986 (transition period) and the first three quarters of 1987.

4. The undertakings which signed the Agreement were :

- ALZ NV,
- Outokumpu OY,
- Usinor Châtillon SA,
- British Steel Corporation,
- Industria Acciai Inox SpA,
- Krupp Stahl AG,
- Terninox-Acciai Inossidabili SpA,
- Acerinox SA,
- Avesta AB,
- Thyssen Edelstahlwerke AG,
- Ugine-Gueugnon SA.

5. At the next meeting of the Z Club in Paris on 3 July 1986, the application of the Agreement began : checking the deposit of collaterals, discussion of 'small c's' and collusion on prices (agreement to discuss minimum prices to become effective on 1 January 1987).

6. On 21 October 1986 the committee of experts of the Z Club met in Brussels to determine the method of calculation to be used for the fourth quarter of 1986 and the first quarter of 1987, the definition of cold-rolled material, how to account for indirect deliveries, and other technical matters.

7. On 1 October 1986, the day the Agreement came into effect, a price increase was implemented by all members and a further increase was announced for 1 January 1987.

8. The undertakings concerned did not request authorization of the Agreement under Article 65 (2) of the ECSC Treaty.

9. The companies have claimed that Eurofer's representatives gave a copy of the 1986 Agreement to the Commissioner responsible for industrial affairs and several officials of the Steel Directorate (Directorate General III). This statement has not been confirmed (see points 10 and 14 below).

10. A representative of Eurofer tried in June 1986 to give a copy of the Agreement to a high-ranking official in the Steel Directorate who refused to accept it and warned that the Commission could not tolerate any agreement among producers which would be contrary to Article 65.

11. Sir Robert Scholey, Chairman of British Steel (and then also President of Eurofer), sent a letter dated 29 May 1986 to Vice-President Narjes, in which he stated, 'You will recollect at our recent meeting in Düsseldorf that I reported the completion of an agreement between stainless producers.'

12. Vice-President Narjes replied in a telex message dated 17 June 1986 in which he did not refer to the Agreement but stated: '... At the end of 1984, a proposal had already been made to producers that problems in the sector and possible solutions to them be examined *together with the Commission*' (emphasis added).

13. Sir Robert Scholey sent another letter to Vice-President Narjes dated 15 October 1986, stating: 'Earlier this year I handed to you a copy of the Agreement ...'

14. Vice-President Narjes replied on 5 January 1987, saying:

'... I have no recollection of receiving from you a copy of an agreement relating to stainless steel. Your letter does not describe in any detail the agreement to which you refer, but I must draw your attention to the fact that the Commission cannot give its approval to any agreement between undertakings which is *contrary to the principles of Article 65* of the Treaty of Paris ...' (emphasis added).

15. British Steel claims that they never circulated this letter to the other members of the club because it was addressed to Sir Robert as Chairman of British Steel and not as President of Eurofer. Furthermore, British Steel argues that since Vice-President Narjes had written 'confidential' on the letter, they wanted to keep it so.

16. British Steel further argues that as a consequence of this letter, they brought the issue of the legality of the Agreement before the Z Club. The Chairman of the Z Club received the mandate from the members of the Z Club to check with the Commission on the issue of legality.

17. The undertakings subject to these proceedings have not provided any evidence to prove that the Agreement was the subject of any application to the Commission.

VII. Renewal of the 1986 Agreement

1. On 16 May 1987 the signatories to the 1986 Agreement (see section VI, point 4) signed an extension of the Agreement by which it was extended until 30 September 1989, but ALZ signed only for the period until 31 December 1988.

2. The members of the Z Club claim that they gave a copy of the extension to some officials in the Steel Directorate, in Directorate-General III. It has not been possible to confirm this statement. They did not mention it to the official mentioned in section VI, point 10, who had refused to accept the 1986 Agreement and had warned the Eurofer representative.

3. The market situation for cold-rolled stainless steel flat products improved considerably during 1987. Eurofer, on a report on special steels dated 6 November 1987, stated:

'The proper working of the Z Club, administered by Eurofer, is still being helped by a vigorous demand for cold-reduced material. The quantity forecasts made for the first half-year of 1988 do not show any weakening of the expected demand, compared to the "boom" observed in 1987.'

4. This Eurofer report also confirms the concerted pricing practices of the Z Club:

'As far as prices are concerned, the increases set for the fourth quarter of 1987 have been largely obtained. All members of the Sendzimir Club now report a very satisfactory response from the market regarding the price rise of 7% in austenitic grades and 5% in ferritic qualities decided for the deliveries in the first quarter of 1988.'

This good result has been secured mainly thanks to an improvement of the organized coordination and direct contacts between members of the pricing committee.

Additional price increases will, therefore, be necessary to offset the rise of alloying elements, the Z Club members are considering a further improvement of their prices by 4 to 5 % on 1 April 1988.'

5. A meeting of the Z Club took place in Milan on 16 September 1987 at which representatives of all signatories to the Agreement were present, as well as two of Eurofer's representatives. The main topics of discussion were:

— allocation of 'Big C' and 'small c' quotas for the fourth quarter of 1987 and the three first quarters of 1988,

— discussion on the future of the bilateral agreements: the Italian, Swedish, Finnish and Belgian groups expressed their intentions not to make bilateral agreements, the German group wished to set up bilateral agreements with British Steel and Acerinox. Acerinox wished to extend their bilateral agreements with British Steel and the German producers and the British group wanted to modify its agreements with Acerinox and the German producers and establish new ones with Avesta,

— a report of Eurofer on implementation of the Agreement and distribution of the following table of fines:

Qu. 4/86 + Qu. 1/87 Penalty payment — Distribution in national currencies

| | French francs | Pesetas | Swedish kronor |
|--------------|----------------|------------------|----------------|
| Acerinox | 60 007 | — | 101 352 |
| ALZ | 14 340 | 104 517 | 23 415 |
| Avesta | 8 155 | 115 853 | — |
| BSC | 12 862 | 140 694 | 57 696 |
| IAI | 10 482 | 158 593 | 20 788 |
| Krupp Stahl | 24 958 | 303 870 | 52 145 |
| Outokumpu | 8 537 | 103 148 | 16 694 |
| TEW | 13 213 | 168 921 | 27 923 |
| Terminoss | 12 721 | 158 594 | 21 906 |
| Ugine | 6 105 (*) | 320 100 | 63 778 |
| Total | 171 380 | 1 574 290 | 385 697 |

Remarks

- As yet, these amounts do not include additional interest on deposit made.
- Amounts in Swedish currency are blocked until 31 December 1987.
- Actual distribution will be made on net amounts between the French, Spanish and Swedish companies.
- (*) FF 6,105 = penalty to be paid by Ugine Gueugnon to Usinor Châtillon for QU. 4/86 = to be cancelled.

6. Another meeting of the Z Club took place on 3 November 1987 in Düsseldorf in order to discuss the implementation of the Agreement in the second and third quarters of 1987 and calculate the tonnage quotas for the first and second quarters of 1988.

7. The two German producers (Thyssen and Krupp), Acerinox and British Steel had bilateral agreements during the third quarter of 1987 as confirmed by Eurofer's letter to the members of the Z Club dated 17 July 1987.

8. The Z Club continued its regular meetings in 1988. Thus, at the meeting in Brussels on 3 February 1988 the members of the Z Club discussed the excess deliveries during the third quarter of 1987. British Steel requested the procedure of arbitration for a fine imposed for excess deliveries to a customer 'who otherwise would have been short of material and who could have, as a result, complained to Brussels' (emphasis added).

9. At this meeting, the quotas for the second quarter of 1988 were fixed and the exchanges of quotas counted by the secretariat for the fourth quarter of 1987 were confirmed. The chairman also informed the club of the

fact that the total amount collected from fines was equivalent to ECU 300 000.

10. The Commission was made aware of customers' complaints during 1987 both from articles in the British press and from the Portuguese Government which transmitted to the Commission in August 1987 a complaint received by its own Directorate-General for Competition put forward by an association of consumers.

11. At the time of the inspections carried out under Article 47 of the ECSC Treaty by officials of the Commission on 28 and 29 April 1988 in the offices of the seven ECSC producers, the 1986 Agreement was still in force.

12. After all the undertakings listed in section II, points 4 and 5 had received the statement of objections in October 1988, the Chairman of the Sendzimir Club sent a letter dated 24 October 1988 to the Commissioner responsible for competition stating:

'At the request of all the companies who are signatories to the agreement of 16 May 1986, I write to inform you formally that, in light of the position of the Commission as now set forth in its Statement of Objections in the above case, the parties have terminated the agreement.'

B. LEGAL ASSESSMENT

VIII. Article 65 (1)

1. Article 65 (1) of the ECSC Treaty prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices tending directly or indirectly to prevent, restrict or distort normal competition within the common market, particularly those tending:

- (a) to fix or determine prices;
- (b) to restrict or control production, technical development or investment;
- (c) to share markets, products, customers or sources of supply.

2. The European producers of cold-rolled stainless steel flat products mentioned in part A, section II, points 4 and 5, namely: Acerinox SA, ALZ NV, British Steel plc, Krupp Stahl AG, Terni Acciai Speciali SpA, Thyssen Edelstahlwerke AG, Ugine Aciers de Châtillon et Gueugnon, Outokumpu OY, Avesta AB, have, on the basis of the evidence detailed in sections VI and VII, made and carried out agreements and decisions and engaged in concerted practices forbidden by Article 65 (1). In particular:

- (a) all the undertakings named in part A, section II, points 4 and 5, signed an agreement in May 1986 which was valid for the fourth quarter of 1986 and the first three quarters of 1987. In March 1987 the same undertakings extended the Agreement until 30 September 1989 (ALZ only until 31 December 1988). This Agreement, which was in operation during the period October 1986 to April 1988, prevented, restricted and distorted normal competition in the common market by controlling production, by sharing markets and customers, and by providing the basis for concerted practices on prices.

- (b) all the undertakings named in part A, section II, points 4 and 5 engaged, during the period October 1986 to April 1988, in concerted pricing practices which tended to distort normal competition.

3. The 1986 Agreement, which covered almost all producers of cold-rolled stainless steel flat products selling in the Community and which applied to both production quotas and prices, inevitably had a significant effect on conditions on the Community market. The 1986 Agreement was followed by, and certainly contributed to, the substantial price increases which occurred during the period 1986 to 1988.

4. It was argued in various ways by several companies that because of the steel crisis Article 65 had in some way become inoperative until revived by the Commission. This argument cannot be accepted in any form. At no time during the crisis did the Commission ever say anything to suggest that Article 65 was inoperative. This would be incompatible with the common market as expressed in Article 4. Article 65 is part of the ECSC Treaty and cannot be set aside or made inapplicable, except in so far as the Commission authorizes agreements in accordance with Article 65 (2).

5. Article 58, which envisages a system of production quotas if there is a period of manifest crisis, and Article 61, which allows the Commission to fix prices, say nothing to limit the application of Article 65 beyond the measures envisaged in the quota and price regimes. Only the Commission itself, temporarily and exceptionally, may formally authorize or encourage companies to enter into specific agreements in relation to steels within the framework of a production quota regime and for the purpose of helping to solve difficulties existing during a manifest crisis. Companies are entitled to enter into agreements which would otherwise infringe Article 65 only to the extent that such agreements have been specifically and clearly authorized by the Commission.

6. Exceptions to basic Treaty rules must always be interpreted narrowly (see Case 154/78 Valsabbia. [1980] ECR 907 at paragraph 84). There is no legal or factual basis for arguing that statements made by the Commission encouraging companies unilaterally to limit production or to raise prices and to enter into commitments to the Commission as to the levels to be decided, in relation to ordinary steels, justified the companies, in subsequent years, in relation was needed to put Article 65 into operation again.

7. This conclusion is not affected by the references in Article 5 to limited intervention or in Article 57 to indirect means. These Articles govern the powers of the Commission: they do not give companies carte blanche to disregard the clear provisions of Article 65, which apply specifically to agreements between companies, or allow companies to cooperate with one another rather than with the Commission. Nor is this conclusion affected by references to the case law of the Court which shows that the Commission may choose, if necessary, to give weight to objectives other than competition: this allows the Commission to alter the emphasis between its objectives, but it does not allow the companies to enter into restrictive agreements merely on the grounds that they are said to promote objectives to which the Commission had previously and in different circumstances given weight.

8. If there could have been any doubt about this, the letter dated 17 January 1983 in which Commissioners Andriessen and Davignon stated that the Commission would not tolerate any agreements not in accordance with Article 65, would have put it beyond doubt (see section IV, point 3).

9. The subsequent reply from then President of Eurofer dated 8 February 1983 inviting the Commission to draw attention to any breaches could not be regarded as a legitimate or effective means of transferring to the Commission the responsibility which remains at all times with companies to take the normal steps, i.e. to notify their agreements and if necessary to request that these agreements are authorized to ensure that their actions remain within the law, (see section IV, point 5).

10. Other arguments were made to the effect that Article 65 did not apply because, it was said, 'normal' competition did not exist. These arguments cannot be accepted. The word 'normal' in Article 65 appears to mean 'competition unaffected by restrictive agreements'. Even if it means something more, it is for the Commission to decide when restrictive agreements are justified by abnormal circumstances, not for companies to behave as if they did not need to comply with Article 65 at all. It is also for the Commission, and not for the companies, to decide what measures, if any, need to be adopted from time to time to restore satisfactory economic conditions in the industry. There is nothing in Article 65 to suggest that it is inapplicable in 'abnormal' conditions. Any such interpretation, if it were accepted, would make Article 65 inapplicable when it might be most essential. The fact that subsidies were being given to steel companies, or that there was a quota regime for ordinary steels, certainly

does not mean that Article 65 was inapplicable. By 1986 the Commission was moving away from strict crisis measures and towards a more liberal regime. Therefore, it was particularly unjustifiable for the companies to make agreements having the opposite objective.

11. Various arguments were made about the principle of legitimate expectations. But the Community law principle protecting legitimate expectations cannot be relevant when

- (i) the companies concerned have not followed the only normal and correct procedure for companies acting in good faith to protect themselves against fines, that is, proper notification of their agreement and an application for authorization,
- (ii) no statement has been made by anyone in the Commission saying that the agreements in question were consistent with competition law, and
- (iii) no measure has been adopted and no policy has been altered with retroactive effect: the relevant rules of competition law have remained unchanged, and were clearly stated in the Treaty by Article 65, a Treaty provision which has been in force since 1953.

12. Even if, as argued by the companies, certain Commission officials were aware of the Agreement, this could not make the Agreement lawful: only a Commission decision based on a correct formal application for authorization could have done that. The companies remained responsible for their own actions and for ensuring that the correct precautions were taken to protect themselves from fines if there was a risk of fines, as there plainly was. The purpose of this Decision is to prevent a recurrence of this anti competitive behaviour and to indicate clearly that the Commission will not tolerate such practices in the future. The companies' argument is therefore relevant only to the question of fines (See section X below).

13. It has been argued by the undertakings subject to this Decision that the 1986 Agreement should be regarded as a voluntary or indirect measure under Article 57. But measures under Article 57 are measures to be taken by the Commission and this Article does not mention agreements between companies. There is a fundamental difference between agreements between companies made after consultation with the Commission and designed essentially to make measures taken by the Commission more effective and easier to supervise, on the one hand, and agreements made on the companies' own initiative, without consultation with the Commission (which was merely informed informally about them) and which were designed not to support existing restrictions

but to create new restrictions with additional economic effects, on the other. The 1986 Agreement was not designed to make existing restrictions work better (which would have had minimal economic effects) but to bring about economic results which the other measures in operation had not brought about and which the companies desired.

14. There were no consultations with the Commission with regard to the 1986 Agreement and no Commission official participated in any of the meetings which led to the 1986 Agreement. Nothing was ever said by any Commission official to suggest that the 1986 Agreement could be regarded as part of the measures under Article 58.

IX. Article 65 (2)

Under Article 65 (2) of the Commission shall authorize specialization agreements or joint-buying or joint-selling agreements or agreements which are strictly analogous in nature and effect if they satisfy certain specified conditions. In the present case the Agreements and concerted practices described in this Decision could never have qualified for authorization. They do not come within the types of agreements which can be authorized. On the contrary, they were designed to protect home markets, to share markets and to allow prices to be fixed, all of which activities are incompatible with the basic principles of the common market. Article 46 could not cause the inapplicability of Article 65 (2) because the Commission made clear from the beginning of the 'Simonet Plan' that all these crisis measures must be compatible with the Treaty and specially the competition rules (see section III, point 2 above).

X. Article 65 (5)

1. Under Article 65 (5) the Commission may impose fines or periodic penalty payments on any undertaking which entered into an agreement which is automatically void, or has enforced or attempted to enforce, by arbitration, penalty, boycott or any other means, an agreement or decision which is automatically void, or has engaged in practices prohibited by Article 65 (1).

2. The Commission may impose fines or periodic penalty payments not exceeding twice the turnover on the products which were the subject of the agreement, decision or practice prohibited by Article 65 (1); if however, the purpose of the agreement, decision or practice is to restrict production, technical development or investment, this maximum may be raised to 10 % of the annual turnover of the undertakings in question in the case of fines, and 20 % of the daily turnover in the case of periodic penalty payments.

3. The companies were aware, and had been reminded by the Commission of the distinction between :

- (i) unilateral voluntary decisions by each company to raise prices or to reduce production, communicated to the Commission, and
- (ii) decisions communicated by one company to another on a reciprocal basis. The fact that the Commission had encouraged the first kind of decisions does not alter the fact that decisions of the latter kind are unlawful unless formally notified to and approved, if possible, by the Commission.

4. At no time did any company make any application for the Agreement be authorized. Only an explicit request could have given any right to immunity from fines. The fact that no such application was made makes it clear that the companies were not acting in good faith.

5. Even if the companies had made such an application this agreement could not have been approved according to Article 65 and therefore the Commission would still be entitled to adopt this Decision declaring it unlawful. The Community companies had years of experience of legal controls under Community law and were well informed about Community competition law.

6. Companies cannot avoid fines by informally informing officials about agreements which are inconsistent with Community competition rules.

7. The Agreement concerned cold-rolled stainless steel flat products, for which there was no Community quota regime. No Community regime had ever authorized an agreement of this kind for stainless steel. The companies must have been aware of this.

8. The fact that competition has been limited by Community action in certain respects does not authorize companies to restrict it further or in other respects: indeed, it is especially important in such circumstances that the balance between competition and other considerations, when it has been decided on by the Community institutions, should not be altered. Cold-rolled stainless steel products were not subject to the Community production quota regime and the companies were not entitled to install their own regime through restrictive agreements.

9. The Agreements had no connection with restructuring the steel industry. No reductions in capacity were contemplated by the Agreements.

10. In considering what fines should be imposed, it is necessary to distinguish between the companies within the Community, the two Nordic companies and the particular situation of Acerinox. All of the companies acted deliberately, or at least negligently, and knew that they were restricting competition.

11. In deciding whether to impose fines, and if so, the amount of those fines on the enterprises within the Community (subject, in the case of Acerinox, to the comments made below), the following points are the most important :

- (a) the companies had been accustomed to a Community regime for other steel products, in the operation of which they had been requested by the Commission to enter into certain agreements to stabilize supply and prices ;
- (b) the companies informed some Commission officials, without ever requesting an authorization of the Agreement under Article 65 (2) of the ECSC Treaty ;
- (c) the evidence in the Commission's possession shows that the 1986 Agreement was made by the companies on their own initiative and without any encouragement or pressure of any kind from any Commission official, and was not related to any crisis measures adopted by the Commission ;
- (d) in this decision, fines are solely being imposed in respect of the 1986 Agreement.

Because of the facts set out above, it is clear that it would not be correct to impose, in these circumstances, the large fines which would otherwise be appropriate. Indeed, having regard to the possibility of a misunderstanding about the effects of Article 65 and to the fact that there had been 'manifest crisis' measures applicable to several other categories of products of the steel industry at various times it is considered that, in this exceptional case, the fines imposed on the Community producers should be very much reduced from the levels that would normally be applicable.

12. Regarding the Nordic companies Avesta and Outokumpu it must be said, in the first place, that the Exchange of Letters did not invite or authorize them to join any cartels, and did not exempt (indeed could not validly have exempted) them from Community competition law. Although it is sometimes unnecessary to enforce competition law when there is a commercial policy agreement in force, only the clearest possible words of a formal agreement made by the Commission could ever prevent the Commission from doing so, and even then only to a limited extent : not even the Council can set aside the provisions of the Treaty. Competition law creates private rights and the Commission could not set them aside or dispense companies from their duty to obey it. The Free

Trade Agreements with the EFTA countries make it clear that the Commission is entitled to apply Community competition law, and the Exchange of Letters could not be interpreted as taking away that right. In circumstances such as in this case, companies in non-Member States which are carrying out instructions from the Commission or their national authorities must go no further than they are instructed to go. Avesta and Outokumpu were never instructed to sign the 1986 Agreement. However, the following points must also be taken into consideration :

- (a) the freedom of Avesta and Outokumpu to sell in the Community at the prices and in the quantities they wished was clearly restricted by the exchange of letters between the Community and Sweden and Finland respectively. The Commission, on the instructions of the Council, had put pressure on the Swedish and Finnish authorities, who in turn put pressure on the two companies, to limit their exports to the Community substantially to levels reached in previous years. For this purpose, the Directorate-General for External Relations, which was responsible for the management of the Exchange of Letters, indirectly encouraged the Nordic companies to enter into certain bilateral agreements with enterprises within the Community.

In certain respects, these companies therefore acted as suggested by the authorities in their own countries. The companies could have communicated these agreements to the Commission, and would have been wise to do so,

- (b) Avesta and Outokumpu were efficient companies in 1986 and subsequently. The Agreement restricting the volume of their exports was contrary to their interests and they would not have entered into them except under pressure. By failing to inform the Directorate General for competition they undoubtedly acted contrary to their own interests ;
- (c) There may have been a false impression in the minds of the Nordic companies as to the effects of Article 65 regarding the 1986 Agreement, particularly as they sought and were given assurances by their Community partners that there were no problems in this respect.

13. The provisions in Protocol 10 to the Act of Accession of Spain and Portugal did not invite or authorize Acerinox or any other Spanish company to join any cartels, and did not exempt (indeed it could not validly have exempted) them from Community competition law. However, the following points must also be taken into consideration :

- (a) The freedom of Acerinox to sell in the Community in the quantities it wished, was clearly restricted by the quantitative export limits imposed during the transitional period (1986 to 1988). In order to implement the provisions of Article 52 and of Protocol 10 to the Act of Accession, the Spanish authorities allocated the yearly export tonnage between the various Spanish producers so as to reflect the historical pattern of trade between Spain and the other Member States. Therefore, in some respect at least, Acerinox was acting as suggested by its authorities to comply with the provisions of Protocol No 10 of the Act of Accession ;
- (b) Acerinox was an efficient company in 1986 and it was expanding its production capacity for the products subject to this Decision. Consequently, the arrangement restricting the volume of its exports was contrary to its interests and it would not have entered into them except under pressure. By failing to inform the Directorate-General for Competition, it undoubtedly acted contrary to its own interests ;
- (c) there may have been a false impression in the minds of Acerinox as to the effects of Article 65 regarding the 1986 Agreement, particularly as they too sought and were given assurances by their Community partners that there were no problems in this respect.

14. For the reasons given in section X, points 12 and 13, it is considered that no fines should be imposed on the two Nordic companies, Avesta and Outokumpu, and the Spanish company Acerinox,

HAS ADOPTED THIS DECISION :

Article 1

The undertakings Acerinox SA, ALZ NV, British Steel plc, Krupp Stahl AG, Terni Acciai Speciali SpA, Thyssen Edelstahlwerke Ag, Ugine Aciers de Châtillon et Gueugnon, Outokumpu OY and Avesta AB have, during the years 1986, 1987 and 1988 (January to April), infringed Article 65 (1) of the ECSC Treaty by entering into the Agreement dated 15 April 1986 concerning quotas and prices which prevented, restricted and distorted normal competition in the common market by controlling production and by sharing markets and customers.

Article 2

For the infringements described in Article 1, the following fines are hereby imposed :

| | |
|---------------------------------------|--------------|
| ALZ NV | ECU 25 000, |
| British Steel Plc | ECU 50 000, |
| Krupp Stahl AG | ECU 100 000, |
| Terni Acciai Speciali | ECU 100 000, |
| Thyssen Edelstahlwerke AG | ECU 50 000, |
| Ugine Aciers de-Chatillon et Gueugnon | ECU 100 000. |

Article 3

The fines imposed under Article 2 shall be paid within three months of the date of notification of this Decision to the following bank accounts :

| Address | Account number for | |
|---|-----------------------------|--------------------------------|
| | National currency | ECU |
| <i>Germany</i> Dresner Bank AG (BLZ 300 800 00) D-4000 Düsseldorf | 2 114 628 | 2 114 628 00 |
| <i>Belgium</i> Générale de Banque SA B-1000 Brussels | 210-0000107-62 | 210-0000107-62 |
| <i>France</i> Société générale Agence Centrale F-75794 Paris Cedex 16 | 30003-03010- 00067030000 | 30003-03010- 00077001001/73 |
| <i>Italy</i> Banca Commerciale Italiana I-20121 Milano Banco di Napoli Filiale di Brescia | 961794/02/89 55/10 | 961294/49/56 |
| <i>United Kingdom</i> Lloyds Bank Uk-London SE1 2HA Barclays Bank Int. Ltd Uk-London SW1X 7LW | 50350974 | 59010501 |

On the expiry of that period, interest shall automatically be payable at the rate charged by the European Monetary Cooperation Fund on its ecu operations on the first working day of the month in which this Decision was adopted, plus 3,5 percentage points, i.e. 13,75 %.

Should payment be made in the national currency of the Member State in which the bank nominated for payment is situated, the exchange rate applicable shall be that prevailing on the day preceding payment.

Article 4

The undertakings mentioned in Article 1 shall forthwith bring to an end the infringements referred to in Article 1 to the extent that they have not already done so. To this end, these undertakings shall refrain from repeating or continuing any of the acts or behaviour specified in Article 1 and shall refrain from adopting any measures having an equivalent effect.

Article 5

This Decision is addressed to:

- (a) Acerinox SA,
Dr Fleming 51,
E-28036 Madrid;
- (b) ALZ NV,
Klein Langerlo,
B-3600 GENK;
- (c) British Steel Plc,
9 Albert Embankment,
UK-London SE1 7 SN;

- (d) Krupp Stahl AG,
Alleestraße 165,
D-4630 Bochum;
- (e) Terni Acciai Speciali Spa,
Viale B. Brin 218,
I-05100 Terni;
- (f) Thyssen Edelstahlwerke AG,
Oberschlesienstraße 16,
D-4150 Krefeld;
- (g) Ugine Aciers de Chatillon et Gueugnon,
Immeuble Ile de France,
Cédex 33,
F-92070 Paris-la Défense;
- (h) Avesta Ab,
Box 1000,
S-77401 Avesta;
- (i) Outokumpu OY,
Head Office,
Box 280,
SF-00101 Helsinki.

In accordance with Article 92 of the Treaty, this Decision is enforceable.

Done at Brussels, 18 July 1990.

For the Commission

Leon BRITTAN

Vice-President

COMMISSION DECISION

of 1 August 1990

determining the amount of VAT own resources payable by the Federal Republic of Germany for 1988 in respect of transactions covered by the 20th Council Directive 85/361/EEC of 16 July 1985 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: derogations in connection with the special aids granted to certain farmers to compensate for the dismantlement of monetary compensatory amounts applying to certain agricultural products

(Only the German text is authentic)

(90/418/EEC)

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

Having regard to the 20th Council Directive 85/361/EEC of 16 July 1985 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: derogations in connection with the special aids granted to certain farmers to compensate for the dismantlement of monetary compensatory amounts applying to certain agricultural products⁽¹⁾, and in particular Article 5 thereof,

Whereas Directive 85/361/EEC authorizes the Federal Republic of Germany to use value added tax to grant a special aid to farmers provided that own resources accruing from VAT are not affected;

Whereas, for the 1988 financial year, the net VAT revenue to be taken into account under Article 6 of Council Regulation (EEC, Euratom, ECSC) No 2892/77 of 19 December 1977 implementing, in respect of own resources accruing from value added tax, the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities own resources⁽²⁾ as last amended by Regulation (ECSC, EEC, Euratom) No 3735/85⁽³⁾ should be increased by DM 2 481 million;

Whereas, the average weighted rate referred to in the said Article is 12,6527 % for 1988 but may be changed again;

Whereas the rate of VAT own resources payable by the Federal Republic of Germany for 1988 is 1,2661 %.

Whereas the Advisory Committee on Own Resources has been consulted,

HAS ADOPTED THIS DECISION:

Article 1

VAT own resources payable by the Federal Republic of Germany for 1988 according to Article 5 of Directive 85/361/EEC amount to DM 248 260 000.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 1 August 1990.

For the Commission

Peter SCHMIDHUBER

Member of the Commission

⁽¹⁾ OJ No L 192, 24. 7. 1985, p. 18.

⁽²⁾ OJ No L 336, 27. 12. 1977, p. 8.

⁽³⁾ OJ No L 356, 31. 12. 1985, p. 1.

COMMISSION DECISION

of 14 August 1990

amending, for the fourth time, Decision 90/161/EEC concerning certain protection measures relating to classical swine fever in Belgium

(90/419/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Directive 64/432/EEC of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine⁽¹⁾, as last amended by Directive 89/662/EEC⁽²⁾, and in particular Article 9 thereof,

Having regard to Council Directive 72/461/EEC of 12 December 1972 on health problems affecting intra-Community trade in fresh meat⁽³⁾, as last amended by Directive 89/662/EEC, and in particular Article 8 thereof,

Having regard to Council Directive 80/215/EEC of 22 January 1980 on health problems affecting intra-Community trade in meat products⁽⁴⁾, as last amended by Directive 89/662/EEC, and in particular Article 7 thereof,

Whereas several outbreaks of classical swine fever have occurred in parts of Belgium with a high density of pigs; whereas, as a result of this epizootic of classical swine fever, the Commission adopted Decision 90/161/EEC of 30 March 1990 concerning certain protective measures relating to classical swine fever in Belgium⁽⁵⁾, as last amended by Decision 90/353/EEC⁽⁶⁾;

Whereas the outbreaks are restricted to certain geographical areas; whereas the Belgian authorities have taken adequate steps to prevent the spread of the disease outside the areas; whereas, in so far as it is possible to identify the geographically limited areas which present a particular risk, the restrictions on trade may be applied on a regional basis;

Whereas no outbreak of classical swine fever has been reported in the areas defined in Annex III to Decision 90/161/EEC, excluding these geographically limited areas, within the past 30 days; whereas no serological test has proved positive; whereas controls on movements have been reinforced in all the restricted areas;

Whereas the Belgian authorities have undertaken to examine clinically all pigs intended for slaughter; whereas the pigs will undergo random serological tests; whereas the pigs will be slaughtered in a designated abattoir;

Whereas the scope of the restrictive measures should be adjusted to take account of the favourable development of the situation;

Whereas the Belgian authorities have undertaken to adopt the national measures necessary to guarantee the efficient implementation of this Decision;

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

HAS ADOPTED THIS DECISION:

Article 1

Decision 90/161/EEC is hereby amended as follows:

1. The following paragraph is added to Article 1:

'4. However, notwithstanding paragraphs 1 and 3, Belgium is authorized to dispatch in a sealed means of transport to the other Member States, with effect from 21 August 1990, fresh pigmeat and products based on pigmeat obtained from pigs:

- (a) slaughtered after the 16 August 1990;
- (b) coming from that part of the territory described in Annex IV;
- (c) which have been submitted to a health examination at the herd of origin by a veterinarian designated by the competent veterinary authorities and found to have presented no sign of disease; this examination must have taken place within 24 hours of slaughter;
- (d) originating from a herd where a random blood test has been carried out and the result of the test is negative;
- (e) which have been transported directly in a sealed means of transport from the herd of origin to the designated abattoir, the means of transport utilized must be cleaned and disinfected before and after each journey.'

⁽¹⁾ OJ No 121, 29. 7. 1964, p. 1977/64.

⁽²⁾ OJ No L 395, 30. 12. 1989, p. 13.

⁽³⁾ OJ No L 302, 31. 12. 1972, p. 24.

⁽⁴⁾ OJ No L 47, 21. 2. 1980, p. 4.

⁽⁵⁾ OJ No L 90, 5. 4. 1990, p. 26.

⁽⁶⁾ OJ No L 173, 6. 7. 1990, p. 50.

2. In Article 2 (1), (2) and (3), '90/327/EEC' is replaced by '90/419/EEC'.

3. The following Annex is added:

ANNEX IV

All those parts of the territory of Belgium referred to in Annex III with the exception of the following four zones:

(a) Zone A:

1. that part of the commune of Damme situated to the east of the Bruges-Sluis canal;
2. the commune of Beernem;
3. that part of the communes of Bruges, Oostkamp, Torhout and Lichtervelde situated to the east of the A 17 motorway;
4. the communes of Aardooie, Wingene and Pittem;
5. that part of the commune of Ruiselede situated to the west of the N 37 trunk road;
6. that part of the commune of Tielt situated to the west of the N 37 and N 399 trunk roads;
7. that part of the commune of Meulebeke situated to the west of the N 399 trunk road;

(b) Zone B:

1. that part of the commune of Turnhout to the west of the N 12 and north of the Campine canal;
2. that part of the commune of Beerse north of the Campine canal;
3. the commune of Merksplas;
4. that part of the commune of Rijkevorsel north of the Campine canal and east of the trunk road N 104 to the point of intersection with the trunk road N 14 and from this point to the east of the trunk road N 14;
5. that part of the commune of Hoogstraten situated to the east of the N 14 to the bridge over the Mark, and south of the Mark to the Netherlands border;

(c) Zone C:

1. the A 14 motorway from the R 4 trunk road to junction 12 with the N 47 trunk road;
2. the N 47 trunk road to the Schelde bridge at Dendermonde;
3. the Schelde at Dendermonde to the R 4 trunk road bridge;
4. the R 4 trunk road from the Schelde bridge to the junction with the A 14 motorway.

(d) Zone D:

1. the French border from its intersection at Wervik with the N 303 trunk road to its intersection with the N 336 trunk road at Warneton;
2. the N 336 trunk road from the French border to the junction with the N 8 trunk road at Ypres;
3. the N 8 trunk road from Ypres to the junction with the N 303 trunk road at Geluvelde;
4. the N 303 from Geluvelde to the French border at Wervik.

Article 2

The Member States shall amend the measures which they apply to trade to comply with this Decision. They shall immediately inform the Commission thereof.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 14 August 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission