

Official Journal

of the European Communities

ISSN 0378-6978

L 330

Volume 33

29 November 1990

English edition

Legislation

Contents

I *Acts whose publication is obligatory*

- * Council Regulation (EEC) No 3414/90 of 20 November 1990 opening and providing for the administration of Community tariff quotas for some products originating in the Canary Islands (1991) 1
- * Council Regulation (EEC) No 3415/90 of 27 November 1990 fixing, for the 1990/91 marketing year, the representative market price and the threshold price for olive oil and the percentages of consumption aid to be retained in accordance with Article 11 (5) and (6) of Regulation No 136/66/EEC 5
- * Council Regulation (EEC) No 3416/90 of 27 November 1990 on the introduction of Community aid for the consumption of olive oil in Spain and Portugal 6
- Commission Regulation (EEC) No 3417/90 of 28 November 1990 fixing the import levies on cereals and on wheat or rye flour, groats and meal 8
- Commission Regulation (EEC) No 3418/90 of 28 November 1990 fixing the premiums to be added to the import levies on cereals, flour and malt 10
- * Commission Regulation (EEC) No 3419/90 of 26 November 1990 amending the list annexed to Regulation (EEC) No 55/87 establishing the list of vessels exceeding eight metres length overall permitted to use beam trawls within certain areas of the Community 12
- * Commission Regulation (EEC) No 3420/90 of 26 November 1990 amending the list annexed to Regulation (EEC) No 3699/89 establishing for 1990 the list of vessels exceeding eight metres length overall permitted to fish for sole in certain of the Community areas using beam trawls whose aggregate length exceeds nine metres 14
- * Commission Regulation (EEC) No 3421/90 of 26 November 1990 imposing a provisional anti-dumping duty on imports of aspartame originating in Japan and the United States of America 16

* Commission Regulation (EEC) No 3422/90 of 27 November 1990 concerning the stopping of fishing for common sole by vessels flying the flag of Belgium	23
* Commission Regulation (EEC) No 3423/90 of 27 November 1990 concerning the stopping of fishing for mackerel by vessels flying the flag of Denmark	24
* Commission Regulation (EEC) No 3424/90 of 27 November 1990 concerning the stopping of fishing for mackerel by vessels flying the flag of Denmark	25
* Commission Regulation (EEC) No 3425/90 of 27 November 1990 re-establishing the levying of the customs duties applicable to products of category No 15 (order No 40.0150) originating in Pakistan, Thailand and Indonesia, to which the preferential tariff arrangements of Council Regulation (EEC) No 3897/89 apply	26
* Commission Regulation (EEC) No 3426/90 of 27 November 1990 re-establishing the levying of the customs duties applicable to the products of category No 16 (order No 40.0160) originating in India, to which the preferential tariff arrangements of Council Regulation (EEC) No 3897/89 apply	28
* Commission Regulation (EEC) No 3427/90 of 27 November 1990 re-establishing the levying of the customs duties applicable to the products of category No 23 (order No 40.0230) originating in Hungary, to which the preferential tariff arrangements of Council Regulation (EEC) No 3897/89 apply	29
* Commission Regulation (EEC) No 3428/90 of 27 November 1990 re-establishing the levying of the customs duties applicable to the products of category No 37 (order No 40.0370) originating in Pakistan, to which the preferential tariff arrangements of Council Regulation (EEC) No 3897/89 apply	30
* Commission Regulation (EEC) No 3429/90 of 27 November 1990 re-establishing the levying of the customs duties applicable to products of category No 37 (order No 40.0370) and the products of category No 75 (order No 40.0750) originating in Thailand, to which the preferential tariff arrangements of Council Regulation (EEC) No 3897/89 apply	32
* Commission Regulation (EEC) No 3430/90 of 27 November 1990 re-establishing the levying of the customs duties applicable to products of category No 22 (order No 40.0220) and the products of category No 127 a (order No 42.1271) originating in India, to which the preferential tariff arrangements of Council Regulation (EEC) No 3897/89 apply	34
* Commission Regulation (EEC) No 3431/90 of 27 November 1990 re-establishing the levying of the customs duties applicable to products of category No 146 A (order No 42.1461) originating in Mexico, to which the preferential tariff arrangements of Council Regulation (EEC) No 3897/89 apply	36
Commission Regulation (EEC) No 3432/90 of 28 November 1990 fixing the maximum export refund for white sugar for the 31st partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EEC) No 983/90	37
Commission Regulation (EEC) No 3433/90 of 28 November 1990 fixing the amount of the subsidy on oil seeds	38
Commission Regulation (EEC) No 3434/90 of 28 November 1990 altering the export refunds on white sugar and raw sugar exported in the natural state	42

II *Acts whose publication is not obligatory*

Council

90/618/EEC :

- * **Council Directive of 8 November 1990 amending, particularly as regards motor vehicle liability insurance, Directive 73/239/EEC and Directive 88/357/EEC which concern the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance 44**

90/619/EEC :

- * **Council Directive of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC 50**

Commission

90/620/EEC :

- Commission Decision of 16 November 1990 on import licences in respect of beef and veal products originating in Botswana, Kenya, Madagascar, Swaziland and Zimbabwe 62**

I

*(Acts whose publication is obligatory)***COUNCIL REGULATION (EEC) No 3414/90****of 20 November 1990****opening and providing for the administration of Community tariff quotas for some products originating in the Canary Islands (1991)**

THE COUNCIL 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, and in particular Articles 2 and 4 of Protocol 2 annexed thereto,

Having regard to Council Regulation (EEC) No 1391/87 of 18 May 1987 concerning certain adjustments to the arrangements applied to the Canary Islands⁽¹⁾, and in particular Articles 2, 5 and 10 thereof,

Having regard to the proposal from the Commission,

Whereas by virtue of Articles 2 and 4 of Protocol 2 to the Act of Accession and Articles 2 and 5 of Council Regulation (EEC) No 1391/87, certain products falling within chapters 6, 7, 8 and 24 of the combined nomenclature and originating in the Canary Islands qualify on import into the customs territory of the Community for reduced duties within the limits of annual Community tariff quotas; whereas, concerning manufactured tobacco, this (duty-free) tariff preference applies to products of which there have been imports in the last five years and quota volumes calculated on the basis of Article 2 of the abovementioned Protocol; whereas the quota volumes amount to:

- 4 700 tonnes for certain live plants falling within Chapter 6 of the combined nomenclature,
- 87 500 000 pieces for fresh roses, carnations, orchids, gladioli and chrysanthemums, falling within CN codes 0603 10 11 to 0603 10 25 and within CN codes 0603 10 51 to 0603 10 65,
- 597 tonnes for other fresh flowers falling within CN codes 0603 10 29 and 0603 10 69,
- 6 642 tonnes for new potatoes falling within CN codes 0701 90 51 and 0701 90 59 for the period 1 January to 30 June,
- 173 000 tonnes of tomatoes falling within CN codes 0702 00 10 or 0702 00 90,
- 8 000 tonnes for onions falling within CN codes 0703 10 11 or 0703 10 19,
- 28 663 tonnes of cucumbers falling within CN codes 0707 00 11 or 0707 00 19,

- 1 300 tonnes for beans falling within CN codes 0708 20 10 or 0708 20 90,
- 3 819 tonnes of aubergines falling within CN code 0709 30 00,
- 16 605 tonnes for sweet peppers falling within CN code 0709 60 10,
- 100 tonnes of fresh table grapes falling within CN code ex 0806 10 15 (for the period 1 January to 31 March),
- 317,673 million units for cigars, cheroots and cigarrillos falling within CN code 2402 10 00 and manufactured in the Canary Islands, and
- 17 524 million units for cigarettes falling within CN code 2402 20 00 and manufactured in the Canary Islands;

Whereas for 1991, the duties applicable within the limits of those tariff quotas, but excluding the quotas for manufactured tobacco are calculated in accordance with the provisions of Article 75 of the Act of Accession; whereas, however, the products concerned qualify for exemption from import duties on import into that part of Spain which is included in the customs territory of the Community; whereas, where the said products are imported into Portugal, the quota duties applicable are to be calculated in accordance with the relevant provisions of the Act of Accession; whereas, where the said products are released for free circulation in the remainder of the customs territory of the Community, they qualify for the progressive reduction of customs duties according to the same timetable and under the same conditions as those provided for in Article 75 of the Act of Accession, for tomatoes, cucumbers, aubergines and fresh table grapes provided that the reference price system is complied with; whereas, to qualify for the tariff quotas, the products in question have to comply with certain marking and labelling conditions designed to prove their origin;

Whereas equal and continuous access to the quotas should be ensured for all Community importers and the rates laid down for the quotas should be applied consistently to all imports of the products in question into all Member States until the quotas are exhausted; whereas the necessary measures should be taken to ensure efficient Community management of the tariff quotas, while allowing Member States to draw on the quota volume the necessary quantities which correspond to importations

⁽¹⁾ OJ No L 133, 22. 5. 1987, p. 5.

actually made ; whereas this type of management requires close cooperation between the Member States and the Commission ;

HAS ADOPTED THIS REGULATION :

Article 1

Whereas, since the Kingdom of Belgium, the Kingdom of the Netherlands and the Grand Duchy of Luxembourg are united within and jointly represented by the Benelux Economic Union, any operation relating to the administration of the tariff quotas may be carried out by any of its members,

1. (a) The customs duties applicable to imports into the Community for the following products originating in the Canary Islands shall be suspended during the periods and at the levels indicated and within the limits of Community tariff quotas as follows :

Order No	CN code	Description	Period	Amount of tariff quotas	Rate of duty (in %)
(1)	(2)	(3)	(4)	(5)	(6)
09.0429	0601 10 90	Other bulbs, tubers, tuberous roots, corms, crowns and rhizomes, dormant :	1.1 – 31.12.1991	4 700 tonnes	0
	0602 10 90	— — Other unrooted cuttings and slips			
		— Roses, whether or not budded or grafted :			
		— — Roses neither budded nor grafted :			3,2
	0602 40 11	— — — With stock of a diameter not exceeding 10 mm			
	0602 40 19	— — — Other			3,2
		— — Other :			3,2
	0602 99 45	— — — — — Rooted cuttings and young plants			
	0602 99 49	— — — — — Other			3,2
		— — — — — Other outdoor plants :			3,2
	0602 99 51	— — — — — Perennial plants			
	0602 99 59	— — — — — Other			3,2
	0602 99 70	— — — — — Indoor plants :			3,2
		— — — — — Rooted cuttings and young plants, excluding plants, excluding cacti :			
	0602 99 99	— — — — — Other			3,2
09.0431	0603 10 11	Roses, carnations, orchids, gladioli and chrysanthemums, fresh	1.1 – 31.12.1991	87 500 000 pieces	From 1 January to 31 May : 4,2 From 1 June to 1 October : 6 From 1 November to 31 December : 4,2
	0603 10 13				
	0603 10 15				
	0603 10 21				
	0603 10 25				
	0603 10 51				
	0603 10 53				
	0603 10 55				
	0603 10 61				
	0603 10 65				
09.0433	0603 10 29 0603 10 69	Other flowers		597 tonnes	
09.0413	0701 90 51 0701 90 59	New potatoes	1.1 – 30.6.1990	6 642 tonnes	— From 1 January to 15 May : 3,7 — from 16 May to 30 June : 5,2

Order No	CN code	Description	Period	Amount of tariff quotas	Rate of duty (in %)
(1)	(2)	(3)	(4)	(5)	(6)
09.0417	0702 00 10 0702 00 90	Tomatoes, fresh or chilled	1.1 – 31.12.1991	173 000 tonnes	— from 1 January to 28 February: ECU 0,2/100 kg net ⁽²⁾ — from 1 March to 14 May: 2,2, min. ECU 0,4/100 kg net — from 15 May to 31 October: 3,6, min. ECU 0,7/100 kg net — from 1 November to 31 December: 2,2, min. ECU 0,4/100 kg net
09.0425	0703 10 11 0703 10 19	Onions, fresh or chilled	1.1 – 31.12.1991	8 000 tonnes	5,4
09.0419	0707 00 11 0707 00 19	Cucumbers	1.1 – 31.12.1991	28 663 tonnes	— from 1 January to 15 May: 3,2 — from 16 May to 31 October: 4 — from 1 November to 31 December: 3,2
09.0423	0708 20 10 0708 20 90	— Beans (<i>Phaseolus</i> spp): — — from 1 October to 30 June — — from 1 July to 30 September	1.1 – 31.12.1991	1 300 tonnes	— from 1 January to 30 June: 5,9, min. ECU 0,9/100 kg net — from 1 July to 30 September: 7,7, min. ECU 0,9/100 kg net — from 1 October to 31 December: 5,9, min. ECU 0,9/100 kg net
09.0421	0709 30 00	Aubergines	1.1 – 31.12.1991	3 819 tonnes	3,2
09.0427	0709 60 10	— — Sweet peppers	1.1 – 31.12.1991	16 605 tonnes	2,8
09.0435	ex 0806 10 15	Fresh table grapes ⁽¹⁾	1.1 – 31.3.1991	100 tonnes	0
09.0403	2402 10 00	Cigars, cheroots and cigarillos manufactured in the Canary Islands	1.1 – 31.12.1991	317,673 million units	Free
09.0401	2402 20 00	Cigarettes, manufactured in the Canary Islands	1.1 – 31.12.1991	17 524 million units	Free

(1) Taric codes: 0806 10 15*40
0806 10 15*50

(2) This specific customs duty is only levied when the value exceeds 2 % *ad valorem*.

- (b) Within the limits of these tariff quotas, the said products shall be exempt from customs duties on import into that part of Spain which is included in the customs territory of the Community and are not subject to compliance with the reference prices.
- (c) Within the limits of these tariff quotas, the Portuguese Republic shall apply customs duties calculated according to the relevant provisions of the Act of Accession and the Regulations relating thereto.

2. On import into the Community except for that part of Spain which is included in the customs territory of the Community, fresh or chilled tomatoes, cucumbers and aubergines shall be subject to compliance with the system of reference prices. The provisions of Article 152 (2) (c) and (d) of the Act of Accession shall apply to these products.

3. Without prejudice to the other provisions applicable as regards quality standards, products covered by this Regulation cannot qualify under the tariff quotas unless, when they are presented to the authorities responsible for the import formalities for the purposes of release into free circulation in the customs territory of the Community, they are presented in packaging which bears the words 'Canary Islands', or the equivalent thereof in another official Community language, in a clearly visible and perfectly legible form.

However, like plants and flowers originating in the Canary Islands shall be identified by means of the documents to be supplied by the importer to the above-mentioned authorities.

Article 2

The tariff quotas referred to in Article 1 shall be administered by the Commission, which may take any appropriate measure with a view to ensuring the efficient administration thereof.

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

Done at Brussels, 20 November 1990.

Article 3

If an importer presents in a Member State a declaration of entry into free circulation, including a request for preferential benefit for a product covered by this Regulation, and if this request is accepted by the customs authorities, the Member State concerned shall draw, from the tariff quota, by means of notification to the Commission, a quantity corresponding to these needs.

The requests for drawing, with the indication of the date of acceptance of the said declarations, must be communicated to the Commission without delay.

The drawings are granted by the Commission on the basis of the date of acceptance of the declaration of entry into free circulation by the customs authorities of the Member State concerned, to the extent that the available balance so permits.

If a Member State does not use the quantities drawn, it shall return them as soon as possible to the tariff quota.

If the quantities requested are greater than the available balance of the tariff quota, allocation shall be made on a pro rata basis with respect to the requests. Member States shall be informed by the Commission of the drawings made.

Article 4

Each Member State shall ensure that importers of the products concerned have free access to the quotas for such times as the balance of the tariff quota so permits.

Article 5

The Member States and the Commission shall cooperate closely to ensure that this Regulation is complied with.

Article 6

This Regulation shall enter into force on 1 January 1991.

For the Council

The President

C. VIZZINI

COUNCIL REGULATION (EEC) No 3415/90

of 27 November 1990

fixing, for the 1990/91 marketing year, the representative market price and the threshold price for olive oil and the percentages of consumption aid to be retained in accordance with Article 11 (5) and (6) of Regulation No 136/66/EEC

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by Regulation (EEC) No 2902/89⁽²⁾, and in particular the second subparagraph of Article 4 (4) and Article 11 (6) thereof,

Having regard to the proposal from the Commission,

Whereas the representative market price must be fixed according to the criteria laid down in Article 7 of Regulation No 136/66/EEC;

Whereas the threshold price must be fixed in such a way that the selling price for the imported product at the frontier crossing point determined in accordance with Article 9 of Regulation No 136/66/EEC is the same as the representative market price, account being taken of the effect of the measures referred to in Article 11 (6) of the said Regulation;

Whereas the application of the above criteria results in fixing the representative market price and the threshold price at the levels shown in Article 1 of this Regulation;

Whereas, pursuant to Article 11 (5) and (6) of Regulation No 136/66/EEC, a certain percentage of the consumption aid during each olive oil marketing year is to be used, on the one hand, to finance the recognized trade organiza-

tions referred to in paragraph 3 of the abovementioned Article and, on the other hand, to finance measures to promote olive oil consumption in the Community; whereas the said percentages for the 1990/91 marketing year should be fixed,

HAS ADOPTED THIS REGULATION:

Article 1

For the 1990/91 marketing year the representative market price and the threshold price for olive oil shall be as follows:

- representative market price: ECU 190,61 per 100 kilograms,
- threshold price: ECU 189,43 per 100 kilograms.

Article 2

1. For the 1990/91 marketing year the percentage of consumption aid referred to in Article 11 (5) of Regulation No 136/66/EEC shall be 1,4 %.
2. For the 1990/91 marketing year the percentage of consumption aid to be allocated to the measures referred to in Article 11 (6) of Regulation No 136/66/EEC shall be 4 %.

Article 3

This Regulation shall enter into force on 1 December 1990.

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

Done at Brussels, 27 November 1990.

For the Council

The President

V. SACCOMANDI

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

⁽²⁾ OJ No L 280, 29. 9. 1989, p. 2.

COUNCIL REGULATION (EEC) No 3416/90

of 27 November 1990

on the introduction of Community aid for the consumption of olive oil in Spain and Portugal

THE COUNCIL 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, and in particular Articles 89 (1) and 234 (2) thereof,

Having regard to the proposal from the Commission,

Whereas Articles 95 (1) and 293 (1) of the Act of Accession provide that Community aid for the consumption of olive oil hereinafter called 'aid' is to be introduced in Spain and Portugal from 1 January 1991, according to a timetable to be determined, to the extent necessary to reach the common level at the end of the period of application of the transitional measures; whereas it is therefore necessary to fix the amount of the aid applicable in Spain and Portugal from 1 January 1991 and the timetable for bringing this amount into line with the common level of aid; whereas transitional measures may, however, prove necessary for a limited period, to avoid major upheavals on the olive oil market in the two Member States concerned and to take account of transitional measures adopted for sunflower seed;

Whereas, to avoid a fall in olive oil consumption in Spain and Portugal following the end of the standstill period, it is necessary to introduce the aid in these two Member States at a level allowing the price ratio between olive oil and competing oils to be adjusted gradually;

Whereas Article 4 of Council Regulation No 136/66/EEC of the Council of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by Regulation (EEC) No 2902/89⁽²⁾, provides that the representative market price may be adjusted under certain circumstances during the marketing year, thereby entailing an adjustment of aid; whereas, in this case, the aid levels applicable in Spain and Portugal must be adapted to take account of this price adjustment;

Whereas the alignment of the intervention price in Spain and Portugal on the common price is to be completed from the 1994/95 marketing year; whereas, therefore, the

common level of aid must be applied in these two Member States from that date, so that the same price is paid by consumers throughout the Community,

HAS ADOPTED THIS REGULATION:

Article 1

Community aid for the consumption of olive oil shall be introduced in Spain and Portugal from 1 January 1991, save for transitional measures taken under Articles 90 and 257 of the Act of Accession.

The amount of the aid shall be ECU 43 per 100 kilograms in Spain and ECU 48 per 100 kilograms in Portugal. Subject to the transitional provisions referred to in the first paragraph, these amounts shall apply from 1 January to 31 October 1991.

Article 2

1. At the beginning of the 1991/92, 1992/93 and 1993/94 marketing years, the amount of the aid applicable in Spain and Portugal shall be aligned on the common aid level applicable for the marketing year in question in stages, by one-quarter, one-third and one-half of the difference between each of these amounts and the common aid level.

2. The common aid level shall be fully applied in Spain and Portugal from the 1994/95 marketing year.

Article 3

Where the representative market price is adjusted during the marketing year, the amount of aid applicable in Spain and Portugal shall be adapted in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC, to take account of the adjustment to the said price.

Article 4

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

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

⁽²⁾ OJ No L 280, 29. 9. 1989, p. 2.

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

Done at Brussels, 27 November 1990.

For the Council

The President

V. SACCOMANDI

COMMISSION REGULATION (EEC) No 3417/90

of 28 November 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 the other currencies, an exchange rate based on an average of the ecu rates published in the *Official Journal of the European Communities*, C series, over a period to be determined, multiplied by the coefficient referred to in the preceding indent;

Whereas these exchange rates being those recorded on 27 November 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 29 November 1990.

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

Done at Brussels, 28 November 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 28 November 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	28,53	143,64 ⁽²⁾ ⁽³⁾
0712 90 19	28,53	143,64 ⁽²⁾ ⁽³⁾
1001 10 10	22,76	196,78 ⁽¹⁾ ⁽⁵⁾
1001 10 90	22,76	196,78 ⁽¹⁾ ⁽⁵⁾
1001 90 91	29,00	168,20
1001 90 99	29,00	168,20
1002 00 00	53,97	155,14 ⁽⁶⁾
1003 00 10	45,30	148,84
1003 00 90	45,30	148,84
1004 00 10	36,94	144,87
1004 00 90	36,94	144,87
1005 10 90	28,53	143,64 ⁽²⁾ ⁽³⁾
1005 90 00	28,53	143,64 ⁽²⁾ ⁽³⁾
1007 00 90	45,30	146,33 ⁽⁴⁾
1008 10 00	45,30	61,00
1008 20 00	45,30	131,38 ⁽⁴⁾
1008 30 00	45,30	72,30 ⁽⁵⁾
1008 90 10	⁽⁷⁾	⁽⁷⁾
1008 90 90	45,30	72,30
1101 00 00	53,48	248,50
1102 10 00	89,24	230,88
1103 11 10	48,54	317,34
1103 11 90	57,03	267,65

⁽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 3418/90
of 28 November 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 the other currencies, an exchange rate based on an average of the ecu rates published in the *Official Journal of the European Communities*, C series, over a period to be determined, multiplied by the coefficient referred to in the preceding indent;

Whereas these exchange rates being those recorded on 27 November 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 29 November 1990.

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

Done at Brussels, 28 November 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 28 November 1990 fixing the premiums to be added to the import levies on cereals, flour and malt

A. Cereals and flour

CN code	(ECU/tonne)			
	Current 11	1st period 12	2nd period 1	3rd period 2
0709 90 60	0	0	0	0
0712 90 19	0	0	0	0
1001 10 10	0	0	0	0
1001 10 90	0	0	0	0
1001 90 91	0	0	0	21,87
1001 90 99	0	0	0	21,87
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	0	0
1004 00 90	0	0	0	0
1005 10 90	0	0	0	0
1005 90 00	0	0	0	0
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	0	0	0
1008 90 90	0	0	0	0
1101 00 00	0	0	0	30,62

B. Malt

CN code	(ECU/tonne)				
	Current 11	1st period 12	2nd period 1	3rd period 2	4th period 3
1107 10 11	0	0,00	0,00	38,93	38,93
1107 10 19	0	0,00	0,00	29,09	29,09
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 3419/90

of 26 November 1990

amending the list annexed to Regulation (EEC) No 55/87 establishing the list of vessels exceeding eight metres length overall permitted to use beam trawls within certain areas of the Community

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

Having regard to Council Regulation (EEC) No 3094/86 of 7 October 1986 laying down certain technical measures for the conservation of fishery resources⁽¹⁾, as last amended by Regulation (EEC) No 4056/89⁽²⁾,

Having regard to Commission Regulation (EEC) No 55/87 of 30 December 1986 establishing the list of vessels exceeding eight metres length overall permitted to use beam trawls within certain areas of the Community⁽³⁾, as last amended by Regulation (EEC) No 2986/90⁽⁴⁾, and in particular Article 3 thereof;

Whereas the German authorities have requested replacement in the list annexed to Regulation (EEC) No 55/87 of one vessel that no longer meets the requirements laid down in Article 1 (2) of that Regulation; whereas the national authorities have provided all the information in

support of the request required under Article 3 of Regulation (EEC) No 55/87; whereas scrutiny of this information shows that the requirements of the Regulation are met; whereas the vessel in question should be replaced in the list,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EEC) No 55/87 is amended as indicated in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 26 November 1990.

For the Commission

Manuel MARÍN

Vice-President

⁽¹⁾ OJ No L 288, 11. 10. 1986, p. 1.

⁽²⁾ OJ No L 389, 30. 12. 1989, p. 75.

⁽³⁾ OJ No L 8, 10. 1. 1987, p. 1.

⁽⁴⁾ OJ No L 285, 17. 10. 1990, p. 5.

ANNEX

The Annex to Regulation (EEC) No 55/87 is amended as follows :

Vessel to be replaced :

External identification letters + numbers	Name of vessel	Radio call sign	Port of registry	Engine power (kW)
GERMANY ZX 2				

Vessel replacing the abovementioned vessel :

External identification letters + numbers	Name of vessel	Radio call sign	Port of registry	Engine power (kW)
GERMANY SU 9	Stella Mare	DLWN	Husum	184

COMMISSION REGULATION (EEC) No 3420/90

of 26 November 1990

amending the list annexed to Regulation (EEC) No 3699/89 establishing for 1990 the list of vessels exceeding eight metres length overall permitted to fish for sole in certain of the Community areas using beam trawls whose aggregate length exceeds nine metres

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3094/86 of 7 October 1986 laying down certain technical measures for the conservation of fishery resources⁽¹⁾, as last amended by Regulation (EEC) No 4056/89⁽²⁾,

Having regard to Regulation (EEC) No 3699/89 of 11 December 1989 establishing for 1990 the list of vessels exceeding eight metres length overall authorized to fish for sole in certain Community zones using beam trawls of aggregate length exceeding nine metres⁽³⁾, as last amended by Regulation (EEC) No 1720/90⁽⁴⁾, and in particular Article 2 thereof;

Whereas the German authorities have requested replacement in the list annexed to Regulation (EEC) No 3699/89 of one vessel that no longer meets the requirements laid down in Article 1 (2) of that Regulation; whereas the

national authorities have provided all the information in support of the request required under Article 2 of Regulation (EEC) No 3699/89; whereas scrutiny of this information shows that the requirements of the Regulation are met; whereas the vessel in question should be replaced in the list,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EEC) No 3699/89 is amended as indicated in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 26 November 1990.

For the Commission

Manuel MARÍN

Vice-President

⁽¹⁾ OJ No L 288, 11. 10. 1986, p. 1.

⁽²⁾ OJ No L 389, 30. 12. 1989, p. 75.

⁽³⁾ OJ No L 362, 12. 12. 1989, p. 19.

⁽⁴⁾ OJ No L 160, 26. 6. 1990, p. 14.

ANNEX

The Annex to Regulation (EEC) No 3699/89 is amended as follows :

Vessel to be replaced :

External identification letters + numbers	Name of vessel	Radio call sign	Port of registry	Engine power (kW)
GERMANY ZX 2				

Vessel replacing the abovementioned vessel :

External identification letters + numbers	Name of vessel	Radio call sign	Port of registry	Engine power (kW)
GERMANY SU 9	Stella Mare	DLWN	Husum	184

COMMISSION REGULATION (EEC) No 3421/90

of 26 November 1990

imposing a provisional anti-dumping duty on imports of aspartame originating in Japan and the United States of America

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community⁽¹⁾, and in particular Article 11 thereof,

After consultations within the Advisory Committee as provided for in the above Regulation,

Whereas :

A. PROCEDURE

- (1) The Commission received a complaint lodged by the Holland Sweetener Company Vof (hereafter referred to as HSC), the sole producer of aspartame in the Community. The complaint contained evidence of dumping of this product originating in Japan and the United States of America and of material injury resulting therefrom, which was considered sufficient to justify the initiation of proceeding.
- (2) The Commission accordingly announced, by a notice published in the *Official Journal of the European Communities*⁽²⁾, the initiation of an anti-dumping proceeding concerning imports into the Community of aspartame (hereafter referred to as APM) falling within CN code ex 2924 29 90, originating in Japan and the United States of America and commenced an investigation.
- (3) The Commission officially advised the exporters and importers known to be concerned, the representatives of the exporting country and the complainant and gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.
- (4) All exporters, some importers and the Community producer made their views known in writing.

Submissions were also made by associations representing consumers of APM.

- (5) The investigation of dumping covered the period from 1 January until 31 December 1989.
- (6) The Commission sought and verified all the information it deemed to be necessary for the purpose of a preliminary determination and carried out investigations at the premises of the following:
 - (a) *Community producer*:
Holland Sweetener Company Vof, Maastricht, The Netherlands
 - (b) *Japanese producer/exporter*:
Ajinomoto Co. Ltd Tokyo, Japan
 - (c) *US producer/exporter*:
The NutraSweet Company, Deerfield, USA
 - (d) *Importer related to the Japanese producer/exporter*:
Deutsche Ajinomoto, GmbH, Hamburg, Germany
- (7) The Commission requested and received detailed written and oral submissions from the Community producer, the exporters and a number of importers, and verified the information provided to the extent considered necessary.

B. PRODUCT UNDER CONSIDERATION

- (8) APM is a sweetening ingredient with a taste profile similar to sugar but a smaller caloric value.
- (9) The main applications for APM are in the soft drink, food and dairy industries. APM is also used in the table top market i.e. the low calorie tablets and powder used to sweeten coffee and tea.
- (10) Although APM is produced worldwide under different technologies the product is uniform and there are no major differences in physical or chemical characteristics.
- (11) APM produced by the US exporter was sold, domestically as well as for export to the Community, under the brand name of NutraSweet. The Japanese product was exported to the Community under the same NutraSweet brand name, whereas for domestic sales the brand name of Pal was used.

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.⁽²⁾ OJ No C 52, 3. 3. 1990, p. 12.

C. DUMPING

(a) The United States of America

I. Normal value

- (12) To determine whether domestic sales may be considered sufficiently representative as a basis for normal value the Commission found that on the US domestic market, by far the largest market for APM in the world, domestic sales exceeded export sales to the Community and consequently were made in a sufficient quantity to constitute a viable market and serve as a basis for the establishment of normal value.
- (13) The Commission also examined whether these sales were made in the ordinary course of trade. For this purpose, a comparison was made between the average cost of production during the investigation period and the prices for all domestic sales made during that period at ex-factory level. This comparison revealed that all domestic sales were made at prices which permitted during the investigation period recovery of all costs reasonably allocated.
- (14) In view of the fact that prices varied, the Commission has calculated normal value on the basis of the weighted average price of all domestic sales in accordance with Article 2 (13) of Council Regulation (EEC) No 2423/88 (hereafter referred to as the Regulation).
- (15) The US exporter and NutraSweet AG (hereafter referred to as NSAG), the related company, argued that there were differences in the price-elasticity of aspartame between the US and Community markets because of a higher degree of health awareness, and therefore preference for APM in the US. In addition the Community market for APM developed later than the US market and the product would therefore be less known by Community consumers. Consequently domestic prices in the US would not permit a proper comparison and should not be used to establish normal value. Normal value should instead be established on the basis of constructed value.
- (16) The Commission accepts that, in general, there must be a difference in price elasticity between the US and the Community market since a difference in price could not otherwise exist. Such difference in price elasticity is indeed a prerequisite for price differentiation and if adjustments had to be made for it dumping could never be sanctioned.
- (17) The exporter also claimed that, since it sold under patent on the US market, while on the Community

market the patents had lapsed, no protective measures should be taken on the basis of a normal value based on domestic prices, since these prices would not allow a proper comparison.

- (18) The Commission cannot accept this claim as justified. Injurious price discrimination is condemned by the Community and international law irrespective of the reasons and motives underlying such discrimination. The patent in the US does not as such determine the domestic price level. If the exporter uses its position as patent holder to practise higher prices domestically than for export sales, such a practice results from his free commercial decision. There is no reason why this price differentiation, to the extent that it leads to material injury to the Community industry, should escape from the application of anti-dumping rules.
- (19) The Commission accordingly established normal value on the basis of the weighted average domestic price, net of all discounts, in accordance with Article 2 (3) (a) of the Regulation, i.e. on the basis of the price actually paid in the ordinary course of trade for the like product intended for consumption in the USA.

II. Export price

- (20) Export prices were established on the basis of sales made by the US exporter directly to independent customers. These sales, which represented the majority of US exports to the Community, were made either directly to the customers in the Community or to customers in the USA for subsequent export to the Community. Export prices were therefore determined on the basis of the price actually paid or payable for the product sold for export to the Community in accordance with Article 2 (8) (a) of the Regulation.
- (21) The exporter claimed that some of its sales which were made in the USA but were subsequently exported to the Community should not be included as export sales.
- (22) The Commission did not consider that these sales should be excluded from the exports to the Community especially since the producer was aware of the final destination of the product. These sales were consequently included as export sales to the Community.
- (23) The US producer also exported to the Community through NSAG, the related company located in Switzerland. For the purpose of the preliminary determination of dumping the Commission did not take into account the prices of the export sales

through NSAG. In any case their inclusion would not have affected the level of the provisional duty (see recital 66).

(b) Japan

- (24) During the on-the-spot investigation in Japan, the Japanese exporter did not provide the information requested by the Commission and deemed necessary to establish normal value. In particular, the Commission was not in a position to verify the company's domestic sales. The information made available by the company only allowed verification of less than 1% of domestic sales. The Commission was also not in a position to verify costs of production since the company refused to provide evidence relating to a substantial part of the investigation period.
- (25) The Commission therefore concluded that the company in question, despite specific requests by the Commission prior to the investigation, refused access to essential information and has significantly impeded the investigation. Such behaviour justifies the use of available information, in accordance with the provisions of Article 7 (7) (b) of the Regulation.
- (26) All of Ajinomoto's export sales to the Community were made via NSAG in Switzerland. The Commission, in accordance with Article 7 (2) (b) of the Regulation, proposed to both the company and the country in question to carry out an on-the-spot investigation at the premises of the company. The Swiss authorities however raised objections to the Commission's proposal and no adequate on-the-spot investigation could consequently take place at the premises of the company.
- (27) The Commission decided that, in view of the refusal by the exporter to provide the necessary information and taking into account the fact that it was not possible to verify the export prices it appeared reasonable to apply the findings on dumping for the US exporter to the exporter in Japan as most reliable information available to the Commission.

D. COMPARISON

- (28) For the purpose of a fair comparison between normal value and export price, due allowance in the form of adjustments was made in accordance with Article 2 (9) and (10) of the Regulation, to both the export price and the normal value for the differences affecting price comparability.
- (29) In this context the Commission granted allowances for salesmen's salaries, transportation, insurance, handling, storage, credit terms and commissions.

E. DUMPING MARGIN

- (30) Normal value was compared with the export prices on a transaction by transaction basis. The prelimi-

nary examination of the facts shows the existence of dumping in respect of APM originating in the United States of America, the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export to the Community.

- (31) The weighted average margin of dumping exceeded 100 %.
- (32) For the reasons set out under recitals 24 to 27 the same dumping margin is applied to the Japanese exporter.

F. INJURY

I. The Community market for APM

- (33) Until 1986/87 the US and Japanese exporters benefited from patent protection in the Community and were the only meaningful suppliers to the Community market. When the patents expired, Holland Sweetener Co. started operating. Today, these three companies account for practically 100 % of sales and consumption in the Community.
- (34) On this basis the Commission has established that the Community market increased from (...) kilos in 1986 to (...) kilos in 1989 i.e. by 215 % (¹).

II. Volume and market share of dumped imports

- (35) The US exporter claimed that the APM exports of US and Japanese origin to the Community should not be cumulated as the US exports represented less than (...) of the total APM sales of Nutra-Sweet AG to the Community and were consequently too small to cause injury to the Community industry.
- (36) Independently of whether this figure is correct — it does not correspond to the findings made in the investigation — the Commission is of the opinion that the imports from both Japan and the USA should be considered globally rather than individually as suggested by the US exporter. In both cases, the product imported is identical and sold under the same brand name and identical conditions. Significant quantities of the imports are channelled through the same related company, NSAG, a joint venture of the two exporters set up for the sole purpose of selling both the Japanese and US origin product under the same brand name to the Community. Imports of US and Japanese origin can easily substitute each other on the Community market. Under these conditions, the cumulation appears justified even if in the investigation period sales of APM originating in the US were relatively limited.

(¹) In accordance with Article 8 of the Regulation which deals with the non-disclosure of business secrets, certain figures have been omitted from the published version of this Regulation.

- (37) Even though the appearance of Holland Sweetener Co., on the Community market led to the US and Japanese Imports losing market share which dropped from (...) in 1986 to (...) during the investigation period, the imports of APM from the US and Japan increased in absolute terms from (...) kilos in 1986 to (...) kilos in 1987, to (...) kilos in 1988 and increased further to (...) kilos during the investigation period.

III. *Volume and market share of the Community producer*

- (38) The Community producer's sales in the Community increased from (...) kilo in 1987 to (...) kilos in 1988 and further to (...) kilos during the investigation period. The Community producers' share of the EC market increased from (...) in 1987 to (...) in 1988 and further to (...) in 1989.

IV. *Prices*

- (39) As regards the prices of Japanese and US APM, it was found that these prices were already significantly below the Community producer's prices in 1988 and decreased, despite this difference, by a further 23,8 % from 1988 to the investigation period to levels which did not allow them to be profitable.
- (40) As regards the Community producer, it was found that its prices fell by 7,6 % between 1988 and the investigation period. Notwithstanding this decrease, prices for US and Japanese products undercut the prices of the Community producer by an average margin of 6 % during the investigation period. This price situation made it impossible for the Community producer to reach break-even, let alone to ensure profitability for its operation.

V. *Conclusions*

- (41) To determine whether the Community industry concerned suffered material injury the Commission took account of the following factors:

— The Community producer began selling in 1988 and obtained a small part of the Community market which is still almost totally held by the US and Japanese exporters. In its first years of production the Community producer did not only have to cope with the expected costs and problems involved in setting up a production facility but also with a dramatic price drop by its US and Japanese competitors which continued to hold the largest part of the Community market.

— The depression of prices resulted in considerable losses for the Community industry and prevented it from increasing its utilization of production capacity which would have allowed it to benefit from economies of scale. At the end of the investigation period the losses had reached a dimension which is directly threatening the viability of the industry.

- (42) The abovementioned factors led the Commission to the conclusion that, for the purpose of its preliminary findings, the Community industry suffered material injury within the meaning of Article 4 (1) of the Regulation.

- (43) NSAG claimed that the Community industry could not have suffered material injury because their market share increased and because of favourable future business prospects once the US market is open to other suppliers in 1993, including the complainant.

- (44) The Commission considers that the gain in market share by the Community producer is the necessary consequence of its appearance on the market which before 1987 was almost totally in the hands of NSAG. The acquisition of a still relatively small market share must be viewed against the heavy losses incurred by the Community producer following the drop in prices for APM. The resulting threat for the continuation of its commercial activity can by no means be negated because of the possibility of positive business prospects in the medium term on the US market.

G. CAUSATION

- (45) In its examination of the extent to which the material injury suffered by the Community APM industry was caused by the effects of the dumping described above, the Commission found that the lowering of the export prices by NSAG coincided with the appearance of the complainant on the Community market. The drop in prices exerted a continuous downward pressure on prices of APM in the Community, while at the same time, the volume of US and Japanese exports increased substantially. This led the Community producer to sell at price levels well below its cost of production, prevented the industry from increasing its capacity utilization to an adequate extent and consequently led to increased costs and considerable losses.

- (46) NSAG claimed that the drop in prices in the Community was not related to the appearance of the complainant on the market, but was caused by market forces. More particularly prices of other sweeteners, were held responsible for the decrease in APM prices.

- (47) While there might have been competition between APM and various other sweeteners, the Commission is of the opinion that this competition was also present, arguably to a different degree because of differences in consumer behaviour, on the US market where prices for APM remained stable. Given the evolution of the Community APM market which expanded by considerable margins, there was no obvious reason for NSAG, which even after 1987 remained by far the most important supplier of APM to the Community market, to drop its prices to levels which did not cover costs.
- (48) NSAG also claimed that the losses made by the Community producer were normal and in line with what is to be expected for a product like APM during the first four years of production. They also pointed out that difficulties in the production process were responsible for high start up costs and delays and that these costs should be borne by the shareholders of HSC.
- (49) The Commission accepts that the Community producer was faced with considerable start-up costs. However, the Community producer was not only confronted with the usual difficulties a new industry encounters when starting operations, but with substantial price depression caused by the market leader for APM. The decision to drop prices to loss-making levels clearly lies in the sphere of responsibility of NSAG and the US and Japanese exporters, and the effects of such pricing policy cannot be attributed to difficulties in HSC's production process.
- (50) The investigation revealed no factors other than dumped imports which might have contributed to the injury suffered by the Community industry. The dumped imports taken in isolation have consequently to be considered as causing material injury to the Community industry.
- (52) The imposition of anti-dumping duties will make APM in the Community more expensive but only to the extent required to eliminate the injury caused. The demand for APM in the Community largely exceeds the existing production capacity in the Community. There will consequently be a continued demand for imports from third countries. It can therefore not be expected that the re-establishment of fair market conditions will have the consequence of excluding foreign competition from the market.
- (53) The US exporter claimed that taking anti-dumping measures would negate its position as original patent holder, the recognition of which would constitute a principle of public policy.
- (54) The Commission points out that the US exporter benefited in full from the patent protection in the Community until the patents expired between 1986 and 1988. Until that time, the US exporter held, together with the Japanese exporter with which it cooperates, a 100 % share in an expanding market and was thus able to obtain compensation for its intellectual and financial efforts relating to the invention of the product and the marketing thereof. It is normal and, in fact, an intended consequence of limiting the duration of patents that, with their expiry, competition emerges in the formerly protected market. To shield such legitimate competition from the effects of dumping, even by the former patent holder, is by no means contrary to public policy objectives.

H. COMMUNITY INTEREST

I. General considerations

- (51) The purpose of the imposition of anti-dumping duties is to eliminate dumping practices which cause injury to an industry in the Community and to re-establish a situation of fair competition on the Community market. This is all the more necessary where unfair trade practices threaten the very existence of the Community industry. Leaving effectively only one supplier in the Community market could not be in the general interest of the Community.

II. Interests of the Community industry

- (55) The dramatic losses incurred by the Community producer lead to the conclusion that the viability of the industry is at risk if measures are not taken to protect this industry from the effects of dumped imports. The closure of Community production would not only make the Community market entirely dependent on imports from the US and Japan, but would also lead to the loss of several hundred jobs. The Commission consequently considered it necessary and in the interest of the Community industry to impose protective measures on the imports of APM.

III. Interests of other parties

- (56) The Commission received a number of submissions from end-users of APM in the Community which are mainly the producers of low calorie soft drinks and other low-calorie food products. The end-users claimed that a duty on the imports of APM would increase their costs, have the effect of removing competition and slow down the expected growth of the APM market.

- (57) The Commission did not receive any substantiating evidence justifying the increase in costs for the end-users and the effect of possible increases on the prices of their products.
- (58) The Commission is of the opinion that the interests of the end-users are not served by the elimination of the sole Community producer, since this would restrict competition to effectively one source of supply, much of the exports from Japan and the United States of America being exported through their joint venture company in Switzerland.
- (59) If fair trading is ensured, prices are likely to increase but can be expected to remain at levels well below the prices applicable in the United States of America. In this connection, it should be stressed that the level of prices for APM in the US did not prevent the American APM market from growing impressively.
- (60) The Commission is consequently of the opinion that the interest of the end-users would not be negatively affected, but indeed in the longer term would be best served by protective measures which would contribute to prices remaining at competitive levels, while not creating an obstacle to further growth of the APM-market.

IV. Conclusion

- (61) Having considered the various arguments of the exporters, the Commission concludes that it is in the Community's general interest to eliminate the injurious effects of the dumped imports and that the benefits of such protection clearly outweigh any short term effects, particularly on price.

I. DUTY

- (62) In order to eliminate the injury suffered by the Community industry, and to guarantee its survival, it is considered necessary that the measures taken allow the industry concerned to obtain a normal profit which it has been deprived of through the effects of imports at dumped prices.
- (63) Consequently, it is essential that the provisional duties to be imposed should cover the difference between prices of Japanese and US APM and the price level required for the Community industry to cover its costs and to make a reasonable profit.
- (64) The Community industry argued that a responsible profit margin, for what is considered an infant industry, should be a 25 % return on investment

(ROI). It claimed that a 25 % ROI was used as a standard rate within DSM Chemicals BV, one of the main shareholders of Holland Sweetener Company VoF, and that Monsanto, the company which owns NutraSweet, also considered a 20 % return on equity (ROE) to be the overall company target.

- (65) The Commission accepts that a reasonable margin for profit should include an element for return on investment and return on equity. It appears doubtful, however, that the ROI/ROE figures quoted are an appropriate benchmark for the specific situation in which the Community producer operates. Under these conditions, the Commission considers that for the purpose of provisional determination, an adequate annual return, allowing a balanced long term development should be 8 % on turnover before tax. On this basis, the Commission established a reference price with which the weighted average import prices were compared.
- (66) To determine the level of the duty, price differences thus established have been expressed as an amount in ECU per kilo/AMP. The result of this calculation leads to the following provisional anti-dumping duties to be imposed in order to eliminate the injury suffered:

Ajinomoto Co Ltd :	ECU 29,95 per kilo,
NutraSweet Co Ltd :	ECU 27,55 per kilo.

- (67) Since the dumping margins found for all the exporters concerned exceed the injury level the above duties will be imposed in accordance with Article 13 (3) of the Regulation.
- (68) For those companies which did not make themselves known, the Commission considered it appropriate to impose duties at the same level i.e. ECU 29,95 per kilo for APM originating in Japan and ECU 27,55 per kilo for APM originating in the USA.
- (69) Indeed, it would constitute a bonus for non-cooperation to hold that the duties for these producer/exporters were any lower than the anti-dumping duty determined.
- (70) A period should be fixed within which the parties concerned may make their views known and request a hearing. Furthermore, it should be stated that all findings made for the purpose of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty which the Commission may propose.

HAS ADOPTED THIS REGULATION:

subject to the provision of a security, equivalent to the amount of the provisional duty.

Article 1

1. A provisional anti-dumping duty of ECU 27,55 per kilogram (net weight) is hereby imposed on imports of aspartame corresponding to CN code ex 2924 29 90 (Taric code: 2924 29 90 * 50) originating in the United States of America.

2. A provisional anti-dumping duty of ECU 29,95 per kilogram (net weight) is hereby imposed on imports of aspartame corresponding to CN code ex 2924 29 90 (Taric code: 2924 29 90 * 50) originating in Japan.

3. The provisions in force concerning customs duties shall apply.

4. The release for free circulation in the Community of the products referred to in paragraphs 1 and 2 shall be

Article 2

Without prejudice to Article 7 (4) (b) of Regulation (EEC) No 2423/88, the parties concerned may make known their views in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

Article 3

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

Subject to Articles 11, 12 and 13 of Regulation (EEC) No 2324/88, Article 1 of this Regulation shall apply for a period of four months, unless the Council adopts definitive measures before the expiry of that period.

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

Done at Brussels, 26 November 1990.

For the Commission

Frans ANDRIESEN

Vice-President

COMMISSION REGULATION (EEC) No 3422/90
of 27 November 1990
concerning the stopping of fishing for common sole by vessels flying the flag of Belgium

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

Having regard to Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities ⁽¹⁾, as last amended by Regulation (EEC) No 3483/88 ⁽²⁾, and in particular Article 11 (3) thereof,

Whereas Council Regulation (EEC) No 4047/89 of 19 December 1989 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1990 and certain conditions under which they may be fished ⁽³⁾, as last amended by Regulation (EEC) No 1887/90 ⁽⁴⁾, provides for common sole quotas for 1990;

Whereas, in order to ensure compliance with the provisions relating to the quantitative limitations on catches of stocks subject to quotas, it is necessary for the Commission to fix the date by which catches made by vessels flying the flag of a Member State are deemed to have exhausted the quota allocated;

Whereas, according to the information communicated to the Commission, catches of common sole in the waters of ICES divisions II, IV by vessels flying the flag of Belgium or registered in Belgium have reached the quota allocated for 1990; whereas Belgium has prohibited fishing for this

stock as from 16 November 1990; whereas it is therefore necessary to abide by that date,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of common sole in the waters of ICES divisions II, IV by vessels flying the flag of Belgium or registered in Belgium are deemed to have exhausted the quota allocated to Belgium for 1990.

Fishing for common sole in the waters of ICES divisions II, IV by vessels flying the flag of Belgium or registered in Belgium is prohibited, as well as the retention on board, the transshipment and the landing of such stock captured by the abovementioned vessels after the date of application of this Regulation.

Article 2

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

It shall apply with effect from 16 November 1990.

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

Done at Brussels, 27 November 1990.

For the Commission

Manuel MARÍN

Vice-President

⁽¹⁾ OJ No L 207, 29. 7. 1987, p. 1.

⁽²⁾ OJ No L 306, 11. 11. 1988, p. 2.

⁽³⁾ OJ No L 389, 30. 12. 1989, p. 1.

⁽⁴⁾ OJ No L 172, 5. 7. 1990, p. 1.

COMMISSION REGULATION (EEC) No 3423/90

of 27 November 1990

concerning the stopping of fishing for mackerel by vessels flying the flag of Denmark

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

Having regard to Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities ⁽¹⁾, as last amended by Regulation (EEC) No 3483/88 ⁽²⁾, and in particular Article 11 (3) thereof,

Whereas Council Regulation (EEC) No 4047/89 of 19 December 1989 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1990 and certain conditions under which they may be fished ⁽³⁾, as last amended by Regulation (EEC) No 1887/90 ⁽⁴⁾, provides for mackerel quotas for 1990;

Whereas, in order to ensure compliance with the provisions relating to the quantitative limitations on catches of stocks subject to quotas, it is necessary for the Commission to fix the date by which catches made by vessels flying the flag of a Member State are deemed to have exhausted the quota allocated;

Whereas, according to the information communicated to the Commission, catches of mackerel in the waters of ICES divisions II a (EC zone), III a; III b, c, d (EC-zone), IV by vessels flying the flag of Denmark or registered in Denmark have reached the quota allocated for 1990; whereas Denmark has prohibited fishing for this stock as

from 31 October 1990; whereas it is therefore necessary to abide by that date,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of mackerel in the waters of ICES divisions II a (EC zone), III a; III b, c, d (EC-zone), IV by vessels flying the flag of Denmark or registered in Denmark are deemed to have exhausted the quota allocated to Denmark for 1990.

Fishing for mackerel in the waters of ICES divisions II a (EC zone), III a; III b, c, d (EC-zone), IV by vessels flying the flag of Denmark or registered in Denmark is prohibited, as well as the retention on board, the transshipment and the landing of such stock captured by the abovementioned vessels after the date of application of this Regulation.

Article 2

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

It shall apply with effect from 31 October 1990.

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

Done at Brussels, 27 November 1990.

For the Commission

Manuel MARÍN

Vice-President

⁽¹⁾ OJ No L 207, 29. 7. 1987, p. 1.

⁽²⁾ OJ No L 306, 11. 11. 1988, p. 2.

⁽³⁾ OJ No L 389, 30. 12. 1989, p. 1.

⁽⁴⁾ OJ No L 172, 5. 7. 1990, p. 1.

COMMISSION REGULATION (EEC) No 3424/90

of 27 November 1990

concerning the stopping of fishing for mackerel by vessels flying the flag of Denmark

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities ⁽¹⁾, as last amended by Regulation (EEC) No 3483/88 ⁽²⁾, and in particular Article 11 (3) thereof,Whereas Council Regulation (EEC) No 4049/89 of 19 December 1989 allocating, for 1990, certain catch quotas between Member States for vessels fishing in the Norwegian exclusive economic zone and the fishing zone around Jan Mayen ⁽³⁾, provides for mackerel quotas for 1990;

Whereas, in order to ensure compliance with the provisions relating to the quantitative limitations on catches of stocks subject to quotas, it is necessary for the Commission to fix the date by which catches made by vessels flying the flag of a Member State are deemed to have exhausted the quota allocated;

Whereas, according to the information communicated to the Commission, catches of mackerel in the waters of ICES division II a (Norwegian waters north of 62° N) by vessels flying the flag of Denmark or registered in Denmark have reached the quota allocated for 1990; whereas Denmark has prohibited fishing for this stock as

from 31 October 1990; whereas it is therefore necessary to abide by that date,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of mackerel in the waters of ICES division II a (Norwegian waters north of 62° N) by vessels flying the flag of Denmark or registered in Denmark are deemed to have exhausted the quota allocated to Denmark for 1990.

Fishing for mackerel in the waters of ICES division II a (Norwegian waters north of 62° N) by vessels flying the flag of Denmark or registered in Denmark is prohibited, as well as the retention on board, the transshipment and the landing of such stock captured by the abovementioned vessels after the date of application of this Regulation.

Article 2

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

It shall apply with effect from 31 October 1990.

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

Done at Brussels, 27 November 1990.

For the Commission

Manuel MARÍN

Vice-President

⁽¹⁾ OJ No L 207, 29. 7. 1987, p. 1.

⁽²⁾ OJ No L 306, 11. 11. 1988, p. 2.

⁽³⁾ OJ No L 389, 30. 12. 1989, p. 44.

COMMISSION REGULATION (EEC) No 3425/90
of 27 November 1990

re-establishing the levying of the customs duties applicable to products of category No 15 (order No 40.0150) originating in Pakistan, Thailand and Indonesia, to which the preferential tariff arrangements of Council Regulation (EEC) No 3897/89 apply

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3897/89 of 18 December 1989 applying generalized tariff preferences for 1990 in respect of textile products originating in developing countries⁽¹⁾, and in particular Article 12 thereof,

Whereas pursuant to Article 10 of Regulation (EEC) No 3897/89, preferential tariff treatment shall be accorded for each category of products subjected in Annexes I and II to individual ceilings within the limits of the quantities specified in column 8 of its Annex I and column 7 of its Annex II, in respect of certain or each of the countries or territories of origin specified in column 5 of the same Annexes; whereas Article 11 of that Regulation provides that the levying of customs duties may be re-established at any time in respect of imports of the products in question as soon as the relevant individual ceilings are reached at Community level;

Whereas, in respect of the products of category No 15 (order No 40.0150) originating in Pakistan, Thailand and

Indonesia, the relevant ceiling amounts to 216 000 pieces; whereas that ceiling was reached on 30 August 1990 by charges of imports into the Community of the products in question originating in Pakistan, Thailand and Indonesia, a country covered by preferential tariff arrangements, reached and were charged against that ceiling;

Whereas it is appropriate to re-establish the levying of customs duties for the products in question with regard to Pakistan, Thailand and Indonesia,

HAS ADOPTED THIS REGULATION:

Article 1

As from 2 December 1990 the levying of customs duties, suspended pursuant to Regulation (EEC) No 3897/89, shall be re-established on imports into the Community of the following products, originating in Pakistan, Thailand and Indonesia:

Order No	Category (unit)	CN code	Description
40.0150	15 (1 000 pieces)	6202 11 00	Women's or girls' woven overcoats, raincoats and other coats, cloaks and capes: jackets and blazers, of wool, of cotton or of man-made textile fibres (other than parkas) (of category 21)
		ex 6202 12 10	
		ex 6202 12 90	
		ex 6202 13 10	
		ex 6202 13 90	
		6204 31 00	
		6204 32 90	
		6204 33 90	
		6204 39 19	
		6210 30 00	

Article 2

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

⁽¹⁾ OJ No L 383, 30. 12. 1989, p. 45.

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

Done at Brussels, 27 November 1990.

For the Commission

Christiane SCRIVENER

Member of the Commission

COMMISSION REGULATION (EEC) No 3426/90

of 27 November 1990

re-establishing the levying of the customs duties applicable to the products of category No 16 (order No 40.0160) originating in India, to which the preferential tariff arrangements of Council Regulation (EEC) No 3897/89 apply

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

Having regard to Council Regulation (EEC) No 3897/89 of 18 December 1989 applying generalized tariff preferences for 1990 in respect of textile products originating in developing countries⁽¹⁾, and in particular Article 12 thereof,

Whereas pursuant to Article 10 of Regulation (EEC) No 3897/89, preferential tariff treatment shall be accorded for each category of products subjected in Annexes I and II to individual ceilings within the limits of the quantities specified in column 8 of its Annex I and column 7 of its Annex II, in respect of certain or each of the countries or territories of origin specified in column 5 of the same Annexes; whereas Article 11 of that Regulation provides that the levying of customs duties may be reintroduced at any time in respect of imports of the products in question as soon as the relevant individual ceilings are reached at Community level;

Whereas, in respect of the products of category No 16 (order No 40.0160) originating in India, the relevant ceiling amounts to 94 000 pieces; whereas that ceiling was reached on 15 March 1990 by charges of imports into the Community of the products in question originating in India, a country covered by preferential tariff arrangements, reached and were charged against that ceiling;

Whereas it is appropriate to re-establish the levying of customs duties for the products in question with regard to India,

HAS ADOPTED THIS REGULATION:

Article 1

As from 2 December 1990 the levying of customs duties, suspended pursuant to Regulation (EEC) No 3897/89, shall be re-established on imports into the Community of the following products, originating in India:

Order No	Category (unit)	CN code	Description
40.0160	16 (1 000 pieces)	6203 11 00 6203 12 00 6203 19 10 6203 19 30 6203 21 00 6203 22 90 6203 23 90 6203 29 19	Men's or boys' suits and ensembles, other than knitted or crocheted, of wool, of cotton or of man-made fibres, excluding ski suits

Article 2

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

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

Done at Brussels, 27 November 1990.

For the Commission

Christiane SCRIVENER

Member of the Commission

⁽¹⁾ OJ No L 383, 30. 12. 1989, p. 45.

COMMISSION REGULATION (EEC) No 3427/90

of 27 November 1990

re-establishing the levying of the customs duties applicable to the products of category No 23 (order No 40.0230) originating in Hungary, to which the preferential tariff arrangements of Council Regulation (EEC) No 3897/89 apply

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

Having regard to Council Regulation (EEC) No 3897/89 of 18 December 1989 applying generalized tariff preferences for 1990 in respect of textile products originating in developing countries⁽¹⁾, and in particular Article 12 thereof,

Whereas pursuant to Article 10 of Regulation (EEC) No 3897/89, preferential tariff treatment shall be accorded for each category of products subjected in Annexes I and II to individual ceilings within the limits of the quantities specified in column 8 of its Annex I and column 7 of its Annex II, in respect of certain or each of the countries or territories of origin specified in column 5 of the same Annexes; whereas Article 11 of that Regulation provides that the levying of customs duties may be reintroduced at any time in respect of imports of the products in question as soon as the relevant individual ceilings are reached at Community level;

Whereas, in respect of the products of category No 23 (order No 40.0230) originating in Hungary, the relevant ceiling amounts to 146 tonnes; whereas that ceiling was reached on 15 June 1990 by charges of imports into the Community of the products in question originating in Hungary, a country covered by preferential tariff arrangements, reached and were charged against that ceiling;

Whereas it is appropriate to re-establish the levying of customs duties for the products in question with regard to Hungary,

HAS ADOPTED THIS REGULATION:

Article 1

As from 2 December 1990 the levying of customs duties, suspended pursuant to Regulation (EEC) No 3897/89, shall be re-established on imports into the Community of the following products, originating in Hungary:

Order No	Category (unit)	CN code	Description
40.0230	23 (tonnes)	5508 20 10	Yarn of staple or waste artificial fibres, not put up for retail sale
		5510 11 00	
		5510 12 10	
		5510 20 00	
		5510 30 00	
		5510 90 00	

Article 2

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

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

Done at Brussels, 27 November 1990.

For the Commission

Christiane SCRIVENER

Member of the Commission

⁽¹⁾ OJ No L 383, 30. 12. 1989, p. 45.

COMMISSION REGULATION (EEC) No 3428/90

of 27 November 1990

re-establishing the levying of the customs duties applicable to the products of category No 37 (order No 40.0370) originating in Pakistan, to which the preferential tariff arrangements of Council Regulation (EEC) No 3897/89 apply

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3897/89 of 18 December 1989 applying generalized tariff preferences for 1990 in respect of textile products originating in developing countries⁽¹⁾, and in particular Article 12 thereof,

Whereas pursuant to Article 10 of Regulation (EEC) No 3897/89, preferential tariff treatment shall be accorded for each category of products subjected in Annexes I and II to individual ceilings within the limits of the quantities specified in column 8 of its Annex I and column 7 of its Annex II, in respect of certain or each of the countries or territories of origin specified in column 5 of the same Annexes; whereas Article 11 of that Regulation provides that the levying of customs duties may be reintroduced at any time in respect of imports of the products in question as soon as the relevant individual ceilings are reached at Community level;

Whereas, in respect of the products of category No 37 (order No 40.0370) originating in Pakistan, the relevant ceiling amounts to 368 tonnes; whereas that ceiling was reached on 30 August 1990 by charges of imports into the Community of the products in question originating in Pakistan, a country covered by preferential tariff arrangements, reached and were charged against that ceiling;

Whereas it is appropriate to re-establish the levying of customs duties for the products in question with regard to Pakistan,

HAS ADOPTED THIS REGULATION:

Article 1

As from 2 December 1990 the levying of customs duties, suspended pursuant to Regulation (EEC) No 3897/89, shall be re-established on imports into the Community of the following products, originating in Pakistan:

Order No	Category (unit)	CN code	Description
40.0370	37 (tonnes)	5516 11 00	Woven fabrics of artificial staple fibres
		5516 12 00	
		5516 13 00	
		5516 14 00	
		5516 21 00	
		5516 22 00	
		5516 23 10	
		5516 23 90	
		5516 24 00	
		5516 31 00	
		5516 32 00	
		5516 33 00	
		5516 34 00	
		5516 41 00	
		5516 42 00	
		5516 43 00	
		5516 44 00	
		5516 91 00	
		5516 92 00	
		5516 93 00	
		5516 94 00	
		5803 90 50	
		ex 5905 00 70	

⁽¹⁾ OJ No L 383, 30. 12. 1989, p. 45.

Article 2

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

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

Done at Brussels, 27 November 1990.

For the Commission

Christiane SCRIVENER

Member of the Commission

COMMISSION REGULATION (EEC) No 3429/90

of 27 November 1990

re-establishing the levying of the customs duties applicable to products of category No 37 (order No 40.0370) and the products of category No 75 (order No 40.0750) originating in Thailand, to which the preferential tariff arrangements of Council Regulation (EEC) No 3897/89 apply

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3897/89 of 18 December 1989 applying generalized tariff preferences for 1990 in respect of textile products originating in developing countries⁽¹⁾, and in particular Article 12 thereof,

Whereas pursuant to Article 10 of Regulation (EEC) No 3897/89, preferential tariff treatment shall be accorded for each category of products subjected in Annexes I and II to individual ceilings within the limits of the quantities specified in column 8 of its Annex I and column 7 of its Annex II, in respect of certain or each of the countries or territories of origin specified in column 5 of the same Annexes; whereas Article 11 of that Regulation provides that the levying of customs duties may be reintroduced at any time in respect of imports of the products in question as soon as the relevant individual ceilings are reached at Community level;

Whereas, in respect of the products of category No 37 (order No 40.0370) and No 75 (order No 40.0750) origina-

ting in Thailand, the relevant ceiling amounts respectively to 368 tonnes and 9 000 pieces; whereas that ceiling was reached on 20 March 1990 by charges of imports into the Community of the products in question originating in Thailand, a country covered by preferential tariff arrangements, reached and were charged against that ceiling;

Whereas it is appropriate to re-establish the levying of customs duties for the products in question with regard to Thailand,

HAS ADOPTED THIS REGULATION:

Article 1

As from 2 December 1990 the levying of customs duties, suspended pursuant to Regulation (EEC) No 3897/89, shall be re-established on imports into the Community of the following products, originating in Thailand:

Order No	Category (unit)	CN code	Description
40.0370	37 (tonnes)	5516 11 00	Woven fabrics of artificial staple fibres
		5516 12 00	
		5516 13 00	
		5516 14 00	
		5516 21 00	
		5516 22 00	
		5516 23 10	
		5516 23 90	
		5516 24 00	
		5516 31 00	
		5516 32 00	
		5516 33 00	
		5516 34 00	
		5516 41 00	
		5516 42 00	
		5516 43 00	
		5516 44 00	
		5516 91 00	
		5516 92 00	
		5516 93 00	
		5516 94 00	
		5803 90 50	
		ex 5905 00 70	

⁽¹⁾ OJ No L 383, 30. 12. 1989, p. 45.

Order No	Category (unit)	CN code	Description
40.0750	75 (1 000 pieces)	6103 11 00 6103 12 00 6103 19 00 6103 21 00 6103 22 00 6103 23 00 6103 29 00	Men's or boys' knitted or crocheted suits and ensembles, of wool, of cotton or of man-made fibres, excluding ski suits

Article 2

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

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

Done at Brussels, 27 November 1990.

For the Commission

Christiane SCRIVENER

Member of the Commission

COMMISSION REGULATION (EEC) No 3430/90
of 27 November 1990

re-establishing the levying of the customs duties applicable to products of category No 22 (order No 40.0220) and the products of category No 127 a (order No 42.1271) originating in India, to which the preferential tariff arrangements of Council Regulation (EEC) No 3897/89 apply

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

Having regard to Council Regulation (EEC) No 3897/89 of 18 December 1989 applying generalized tariff preferences for 1990 in respect of textile products originating in developing countries⁽¹⁾, and in particular Article 12 thereof,

Whereas pursuant to Article 10 of Regulation (EEC) No 3897/89, preferential tariff treatment shall be accorded for each category of products subjected in Annexes I and II to individual ceilings within the limits of the quantities specified in column 8 of its Annex I and column 7 of its Annex II, in respect of certain or each of the countries or territories of origin specified in column 5 of the same Annexes; whereas Article 11 of that Regulation provides that the levying of customs duties may be reintroduced at any time in respect of imports of the products in question as soon as the relevant individual ceilings are reached at Community level;

Whereas, in respect of the products of categories No 22 (order No 40.0220) and No 127 a (order No 42.1271) originating in India, the relevant ceiling amounts respectively to 618 and 134 tonnes, whereas that ceiling was reached respectively on 15 March and 15 June 1990 by charges of imports into the Community of the products in question originating in India, a country covered by preferential tariff arrangements, reached and were charged against that ceiling;

Whereas it is appropriate to re-establish the levying of customs duties for the products in question with regard to India,

HAS ADOPTED THIS REGULATION:

Article 1

As from 2 December 1990 the levying of customs duties, suspended pursuant to Regulation (EEC) No 3897/89, shall be re-established on imports into the Community of the following products, originating in India:

Order No	Category (unit)	CN code	Description
40.0220	22 (tonnes)	5508 10 11	Yarn of staple or waste synthetic, fibres not put up for retail sale
		5508 10 19	
		5509 11 00	
		5509 12 00	
		5509 21 10	
		5509 21 90	
		5509 22 10	
		5509 22 90	
		5509 31 10	
		5509 31 90	
		5509 32 10	
		5509 32 90	
		5509 41 10	
		5509 41 90	
		5509 42 10	
		5509 42 90	
		5509 51 00	
		5509 52 10	
		5509 52 90	
		5509 53 00	
		5509 59 00	
		5509 61 10	
		5509 61 90	
		5509 62 00	
		5509 69 00	
		5509 91 10	
		5509 91 90	
		5509 92 00	
		5509 99 00	

⁽¹⁾ OJ No L 383, 30. 12. 1989, p. 45.

Order No	Category (unit)	CN code	Description
42.1271	127 A (tonnes)	5403 31 00 ex 5403 32 00 5403 33 10	Yarn of artificial filaments (continuous) not put up for retail sale : other than yarn of category 42

Article 2

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

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

Done at Brussels, 27 November 1990.

For the Commission

Christiane SCRIVENER

Member of the Commission

COMMISSION REGULATION (EEC) No 3431/90

of 27 November 1990

re-establishing the levying of the customs duties applicable to products of category No 146 A (order No 42.1461) originating in Mexico, to which the preferential tariff arrangements of Council Regulation (EEC) No 3897/89 apply

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3897/89 of 18 December 1989 applying generalized tariff preferences for 1990 in respect of textile products originating in developing countries⁽¹⁾, and in particular Article 12 thereof,

Whereas pursuant to Article 10 of Regulation (EEC) No 3897/89, preferential tariff treatment shall be accorded for each category of products subjected in Annexes I and II to individual ceilings within the limits of the quantities specified in column 8 of its Annex I and column 7 of its Annex II, in respect of certain or each of the countries or territories of origin specified in column 5 of the same Annexes; whereas Article 11 of that Regulation provides that the levying of customs duties may be reintroduced at any time in respect of imports of the products in question as soon as the relevant individual ceilings are reached at Community level;

Whereas, in respect of the products of category No 146 A (order No 42.1461) originating in Mexico, the relevant ceiling amounts to 234 tonnes; whereas that ceiling was reached on 30 August 1990 by charges of imports into the Community of the products in question originating in Mexico, a country covered by preferential tariff arrangements, reached and were charged against that ceiling;

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

HAS ADOPTED THIS REGULATION:

Article 1

As from 2 December 1990 the levying of customs duties, suspended pursuant to Regulation (EEC) No 3897/89, shall be re-established on imports into the Community of the following products, originating in Mexico:

Order No	Category (unit)	CN code	Description
42.1461	146 A (tonnes)	ex 5607 21 00	Twine, cordage, ropes and cables, plaited or not — Binder and baler twine for agricultural machines, of sisal and other fibres of the Agave family

Article 2

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

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

Done at Brussels, 27 November 1990.

For the Commission

Christiane SCRIVENER

Member of the Commission

⁽¹⁾ OJ No L 383, 30. 12. 1989, p. 45.

COMMISSION REGULATION (EEC) No 3432/90

of 28 November 1990

fixing the maximum export refund for white sugar for the 31st 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 31st partial invitation to tender, the provisions set out in Article 1 should be adopted;

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 31st 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 40,580 per 100 kilograms.

Article 2

This Regulation shall enter into force on 29 November 1990.

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

Done at Brussels, 28 November 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 3433/90
of 28 November 1990
fixing the amount of the subsidy on oil seeds

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 No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by Regulation (EEC) No 2902/89⁽²⁾, and in particular Article 27 (4) thereof,

Having regard to Council Regulation (EEC) No 1678/85 of 11 June 1985 fixing the conversion rates to be applied in agriculture⁽³⁾, as last amended by Regulation (EEC) No 3300/90⁽⁴⁾,

Having regard to Council Regulation (EEC) No 1569/72 of 20 July 1972 laying down special measures for colza, rape and sunflower seed⁽⁵⁾, as last amended by Regulation (EEC) No 2206/90⁽⁶⁾, and in particular Article 2 (3) thereof,

Having regard to the opinion of the Monetary Committee,
Whereas the amount of the subsidy referred to in Article 27 of Regulation No 136/66/EEC was fixed by Commission Regulation (EEC) No 2828/90⁽⁷⁾, as last amended by Regulation (EEC) No 3398/90⁽⁸⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 2828/90 to the infor-

mation known to the Commission that the amount of the subsidy at present in force should be altered to the amount set out in the Annexes hereto,

HAS ADOPTED THIS REGULATION:

Article 1

1. The amount of the subsidy and the exchange rate referred to in Article 33 (2) and (3) of Commission Regulation (EEC) No 2681/83⁽⁹⁾ are as set out in the Annexes hereto.

2. The amount of the compensatory aid referred to in Article 14 of Council Regulation (EEC) No 475/86⁽¹⁰⁾ is as set out in Annex III for sunflower seed harvested in Spain.

3. The amount of the special subsidy provided for by Council Regulation (EEC) No 1920/87⁽¹¹⁾, for sunflower seed harvested and processed in Portugal is as set out in Annex III.

Article 2

This Regulation shall enter into force on 29 November 1990.

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

Done at Brussels, 28 November 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

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

⁽²⁾ OJ No L 280, 29. 9. 1989, p. 2.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 11.

⁽⁴⁾ OJ No L 317, 16. 11. 1990, p. 23.

⁽⁵⁾ OJ No L 167, 25. 7. 1972, p. 9.

⁽⁶⁾ OJ No L 201, 31. 7. 1990, p. 11.

⁽⁷⁾ OJ No L 268, 29. 9. 1990, p. 76.

⁽⁸⁾ OJ No L 327, 27. 11. 1990, p. 39.

⁽⁹⁾ OJ No L 266, 28. 9. 1983, p. 1.

⁽¹⁰⁾ OJ No L 53, 1. 3. 1986, p. 47.

⁽¹¹⁾ OJ No L 183, 3. 7. 1987, p. 18.

ANNEX I

Aids to colza and rape seed other than 'double zero'

(amounts per 100 kg)

	Current 11	1st period 12	2nd period 1	3rd period 2	4th period 3	5th period 4
1. Gross aids (ECU):						
— Spain	0,000	0,000	0,000	0,000	0,000	0,000
— Portugal	0,000	0,000	28,335	28,392	28,670	28,948
— Other Member States	21,948	21,968	21,365	21,422	21,700	21,978
2. Final aids:						
(a) Seed harvested and processed in:						
— Federal Republic of Germany (DM)	51,67	51,72	50,30	50,43	51,09	51,79
— Netherlands (Fl)	58,22	58,27	56,67	56,82	57,56	58,37
— BLEU (Bfrs/Lfrs)	1 065,71	1 066,68	1 037,41	1 040,17	1 053,67	1 067,74
— France (FF)	173,29	173,45	168,69	169,14	171,34	173,53
— Denmark (Dkr)	197,09	197,27	191,86	192,37	194,86	197,36
— Ireland (£ Irl)	19,287	19,305	18,775	18,825	19,069	19,314
— United Kingdom (£)	16,862	16,873	16,384	16,407	16,624	16,805
— Italy (Lit)	38 660	38 696	37 633	37 734	38 223	38 651
— Greece (Dr)	4 691,46	4 673,05	4 488,71	4 466,52	4 529,37	4 490,15
(b) Seed harvested in Spain and processed:						
— in Spain (Pta)	0,00	0,00	0,00	0,00	0,00	11,91
— in another Member State (Pta)	33,00	37,15	0,00	0,00	0,00	11,91
(c) Seed harvested in Portugal and processed:						
— in Portugal (Esc)	0,00	0,00	5 909,26	5 909,68	5 967,73	5 993,57
— in another Member State (Esc)	6 040,83	6 045,14	5 909,26	5 909,68	5 967,73	5 993,57

ANNEX II

Aids to colza and rape seed 'double zero'

(amounts per 100 kg)

	Current 11	1st period 12	2nd period 1	3rd period 2	4th period 3	5th period 4
1. Gross aids (ECU):						
— Spain	0,000	0,000	1,675	1,732	2,010	2,288
— Portugal	1,030	1,030	30,835	30,892	31,170	31,448
— Other Member States	24,448	24,468	23,865	23,922	24,200	24,478
2. Final aids:						
(a) Seed harvested and processed in:						
— Federal Republic of Germany (DM)	57,55	57,60	56,18	56,32	56,97	57,68
— Netherlands (Fl)	64,85	64,90	63,30	63,45	64,19	65,00
— BLEU (Bfrs/Lfrs)	1 187,10	1 188,08	1 158,80	1 161,56	1 175,06	1 189,13
— France (FF)	193,03	193,19	188,43	188,88	191,07	193,27
— Denmark (Dkr)	219,54	219,72	214,31	214,82	217,31	219,81
— Ireland (£ Irl)	21,484	21,502	20,972	21,022	21,266	21,511
— United Kingdom (£)	18,811	18,822	18,333	18,356	18,573	18,754
— Italy (Lit)	43 064	43 099	42 037	42 137	42 627	43 055
— Greece (Dr)	5 248,72	5 230,31	5 045,97	5 023,78	5 086,64	5 047,41
(b) Seed harvested in Spain and processed:						
— in Spain (Pta)	0,00	0,00	326,99	329,13	371,48	394,15
— in another Member State (Pta)	415,24	419,39	326,99	329,13	371,48	394,15
(c) Seed harvested in Portugal and processed:						
— in Portugal (Esc)	214,94	214,94	6 430,95	6 431,37	6 489,42	6 515,26
— in another Member State (Esc)	6 562,52	6 566,83	6 430,95	6 431,37	6 489,42	6 515,26

ANNEX III

Aids to sunflower seed

	(amounts per 100 kg)				
	Current 11	1st period 12	2nd period 1	3rd period 2	4th period 3
1. Gross aids (ECU):					
— Spain	8,600	8,600	28,840	29,368	29,699
— Portugal	0,000	0,000	37,858	38,382	38,713
— Other Member States	26,421	26,552	25,618	26,142	26,473
2. Final aids:					
(a) Seed harvested and processed in (1):					
— Federal Republic of Germany (DM)	62,20	62,51	60,31	61,54	62,32
— Netherlands (Fl)	70,08	70,43	67,95	69,34	70,22
— BLEU (Bfrs/Lfrs)	1 282,91	1 289,27	1 243,92	1 269,36	1 285,43
— France (FF)	208,61	209,64	202,27	206,41	209,02
— Denmark (Dkr)	237,26	238,43	230,05	234,75	237,72
— Ireland (£ Irl)	23,218	23,333	22,512	22,973	23,264
— United Kingdom (£)	20,293	20,392	19,637	20,029	20,288
— Italy (Lit)	46 539	46 770	45 125	46 048	46 631
— Greece (Dr)	5 642,98	5 646,36	5 373,14	5 458,31	5 533,15
(b) Seed harvested in Spain and processed:					
— in Spain (Pta)	1 314,91	1 314,91	4 480,40	4 552,83	4 603,26
— in another Member State (Pta)	4 671,45	4 692,25	4 551,24	4 623,26	4 673,69
(c) Seed harvested in Portugal and processed:					
— in Portugal (Esc)	0,00	0,00	7 895,79	7 992,06	8 061,19
— in Spain (Esc)	8 255,54	8 283,59	8 072,22	8 170,64	8 241,32
— in another Member State (Esc)	8 075,10	8 102,54	7 895,79	7 992,06	8 061,19
3. Compensatory aids:					
— in Spain (Pta)	4 645,79	4 666,60	—	—	—
4. Special aid:					
— in Portugal (Esc)	8 075,10	8 102,54	—	—	—

(1) For seed harvested in the Community as constituted at 31 December 1985 and processed in Spain, the amounts shown in 2 (a) to be multiplied by 1,0223450.

ANNEX IV

Exchange rate of the ecu to be used for converting final aids into the currency of the processing country when the latter is a country other than the country of production

	(value of ECU 1)					
	Current 11	1st period 12	2nd period 1	3rd period 2	4th period 3	5th period 4
DM	2,052020	2,048500	2,046440	2,044010	2,044010	2,038070
Fl	2,314160	2,310630	2,307620	2,304830	2,304830	2,297560
Bfrs/Lfrs	42,380500	42,327500	42,267400	42,230400	42,230400	42,129100
FF	6,920350	6,916700	6,911190	6,908790	6,908790	6,903190
Dkr	7,873250	7,872170	7,871710	7,871970	7,871970	7,876640
£Irl	0,767506	0,767971	0,767933	0,768264	0,768264	0,769125
£	0,702253	0,704331	0,705786	0,707043	0,707043	0,709682
Lit	1 540,03	1 543,02	1 545,47	1 547,34	1 547,34	1 552,08
Dr	210,56800	213,16900	215,72700	218,04100	218,04100	225,75100
Esc	180,30100	181,17800	181,99700	182,84200	182,84200	185,24200
Pta	130,04900	130,51100	130,94200	131,35100	131,35100	132,43900

COMMISSION REGULATION (EEC) No 3434/90

of 28 November 1990

altering the export refunds on white sugar and raw sugar exported in the natural state

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European 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 second subparagraph of Article 19 ⁽⁴⁾ thereof,

Whereas the refunds on white sugar and raw sugar exported in the natural state were fixed by Commission Regulation (EEC) No 3337/90 ⁽³⁾, as amended by Regulation (EEC) No 3378/90 ⁽⁴⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 3337/90 to the information known to the Commission that the export refunds

at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 (1) (a) of Regulation (EEC) No 1785/81, undenatured and exported in the natural state, as fixed in the Annex to amended Regulation (EEC) No 3337/90 are hereby altered to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 29 November 1990.

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

Done at Brussels, 28 November 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 321, 21. 11. 1990, p. 15.

⁽⁴⁾ OJ No L 326, 24. 11. 1990, p. 54.

ANNEX

to the Commission Regulation of 28 November 1990 altering the export refunds on white sugar and raw sugar exported in the natural 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	34,81 ⁽¹⁾	
1701 11 90 910	34,46 ⁽¹⁾	
1701 11 90 950	⁽²⁾	
1701 12 90 100	34,81 ⁽¹⁾	
1701 12 90 910	34,46 ⁽¹⁾	
1701 12 90 950	⁽²⁾	
1701 91 00 000		0,3784
1701 99 10 100	37,84	
1701 99 10 910	37,80	
1701 99 10 950	37,80	
1701 99 90 100		0,3784

⁽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).

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 8 November 1990

amending, particularly as regards motor vehicle liability insurance, Directive 73/239/EEC and Directive 88/357/EEC which concern the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance

(90/618/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 57 (2) and 66 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

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

Whereas in order to develop the internal insurance market, the Council adopted on 24 July 1973 Directive 73/239/EEC on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance ⁽⁴⁾ (also referred to as the 'First Directive') and on 22 June 1988 Directive 88/357/EEC on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise

of freedom to provide services and amending Directive 73/239/EEC ⁽⁵⁾ (also referred to as the 'Second Directive');

Whereas Directive 88/357/EEC made it easier for insurance undertakings having their head office in the Community to provide services in the Member States, thus making it possible for policyholders to have recourse not only to insurers established in their own country, but also to insurers who have their head office in the Community and are established in other Member States;

Whereas the scope of the provisions of Directive 88/357/EEC specifically concerning freedom to provide services excluded certain risks, the application to which of the said provisions was rendered inappropriate at that stage by the specific rules adopted by the Member States' authorities, owing to the nature and social implications of such provisions; whereas those exclusions were to be re-examined after that Directive had been implemented for a certain period;

Whereas one of the exclusions concerned motor vehicle liability insurance, other than carrier's liability;

Whereas, however, when the abovementioned Directive was adopted the Commission gave an undertaking to present to the Council as soon as possible a proposal concerning freedom to provide services in the area of insurance against civil liability in respect of the use of motor vehicles (other than carrier's liability);

Whereas, subject to the provisions of the said Directive concerning compulsory insurance, it is appropriate to provide for the possibility of large risk treatment, within

⁽¹⁾ OJ No C 65, 15. 3. 1989, p. 6, and OJ No C 180, 20. 7. 1990, p. 6.

⁽²⁾ OJ No C 68, 19. 3. 1990, p. 85, and Decision of 10 October 1990 (not yet published in the Official Journal).

⁽³⁾ OJ No C 194, 31. 7. 1989, p. 3.

⁽⁴⁾ OJ No L 228, 16. 8. 1973, p. 3.

⁽⁵⁾ OJ No L 172, 4. 7. 1988, p. 1.

the meaning of Article 5 of the said Directive, for the said insurance class of motor vehicle liability;

Whereas large risk treatment should also be envisaged for insurance covering damage to or loss of land motor vehicles and land vehicles other than motor vehicles;

Whereas Directive 88/357/EEC laid down that the risks which may be covered by way of Community co-insurance within the meaning of Council Directive 78/473/EEC of 30 May 1978 on the coordination of laws, regulations and administrative provisions relating to Community co-insurance⁽¹⁾ were to be large risks as defined in Directive 88/357/EEC whereas the inclusion by the present Directive of the motor insurance classes in the large risks definition of Directive 88/357/EEC will have the effect of including those classes in the list of classes which may be covered by way of Community co-insurance;

Whereas Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability⁽²⁾, as last amended by Directive 90/232/EEC⁽³⁾, built on the green card system and the agreements between the national motor insurers' bureaux in order to enable green card checks to be abolished;

Whereas it is desirable, however, to grant Member States transitional arrangements for the gradual application of the specific provisions of this Directive relating to large risk treatment for the said insurance classes, including where risks are covered by co-insurance;

Whereas to ensure the continued proper functioning of the green card system and the agreements between the national motor insurers' bureaux it is appropriate to require insurance undertakings providing motor liability insurance in a Member State by way of provision of services to join and participate in the financing of the bureau of that Member State;

Whereas Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles⁽⁴⁾, as last amended by Directive 90/232/EEC, required the Member States to set up or authorize a body (guarantee fund) with the task of provi-

ding compensation to victims of accidents caused by uninsured or unidentified vehicles;

Whereas it is also appropriate to require insurance undertakings providing motor liability insurance in a Member State by way of provision of services to join and participate in the financing of the guarantee fund set up in that Member State;

Whereas the rules in force in some Member States concerning the cover of aggravated risks apply to all undertakings covering risks through an establishment situated there; whereas the purpose of those rules is to ensure that the compulsory nature of motor liability insurance is balanced by the possibility for motorists to obtain such insurance; whereas Member States should be permitted to apply those rules to undertakings providing services in their territories to the extent that the rules are justified in the public interest and do not exceed what is necessary to achieve the abovementioned purpose;

Whereas in the field of motor liability insurance the protection of the interests of persons suffering damage who could pursue claims in fact concerns each and everyone and that it is therefore advisable to ensure that these persons are not prejudiced or put to greater inconvenience where the motor liability insurer is operating by way of provision of services rather than by way of establishment; whereas for this purpose, and insofar as the interests of these persons are not sufficiently safeguarded by the rules applying to the supplier of services in the Member State in which it is established, it should be provided that the Member State of provision of services shall require the undertaking to appoint a representative resident or established in its territory to collect all necessary information in relation to claims and shall possess sufficient powers to represent the undertaking in relation to persons suffering damage who could pursue claims, including the payment of such claims, and to represent it or, where necessary, to have it represented before the courts and authorities of that Member State in relation to these claims;

Whereas this representative may also be required to represent the undertaking before the competent authorities of the Member State of provision of services in relation to the control of the existence and validity of motor vehicle liability insurance policies;

Whereas provision should be made for a flexible procedure to make it possible to assess reciprocity with third countries on a Community basis; whereas the aim of this procedure is not to close the Community's financial markets but rather, as the Community intends to keep its financial markets open to the rest of the world, to improve the liberalization of the global financial markets

⁽¹⁾ OJ No L 151, 7. 6. 1978, p. 25.

⁽²⁾ OJ No L 103, 2. 5. 1972, p. 1.

⁽³⁾ OJ No L 129, 19. 5. 1990, p. 33.

⁽⁴⁾ OJ No L 8, 11. 1. 1984, p. 17.

in third countries; whereas, to that end, this Directive provided for procedures for negotiating with third countries and, as a last resort, for the possibility of taking measures involving the suspension of new applications for authorization or the restriction of new authorizations,

HAS ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive:

- (a) 'vehicle' means a vehicle as defined in Article 1 (1) of Directive 72/166/EEC;
- (b) 'bureau' means a national insurers' bureau as defined in Article 1 (3) of Directive 72/166/EEC;
- (c) 'guarantee fund' means the body referred to in Article 1 (4) of Directive 84/5/EEC;
- (d) 'parent undertaking' means a parent undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC⁽¹⁾;
- (e) 'subsidiary' means a subsidiary undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC; any subsidiary undertaking of a subsidiary undertaking shall also be regarded as a subsidiary of the parent undertaking which is at the head of those undertakings.

Article 2

In Article 5 (d) of Directive 73/239/EEC, 'risks classified under classes 8, 9, 13 and 16 of point A of the Annex' in the first paragraph of point (iii) is hereby replaced by the following:

'risks classified under classes 3, 8, 9, 10, 13 and 16 of point A of the Annex'.

Article 3

1. The heading of Title III of Directive 73/239/EEC is hereby replaced by the following:

TITLE III A

Rules applicable to agencies or branches established within the Community and belonging to undertakings whose head offices are outside the Community'

2. The following heading is placed after Article 29 of Directive 73/239/EEC:

TITLE III B

Rules applicable to subsidiaries of parent undertakings governed by the laws of a third country and to acquisitions of holdings by such parent undertakings'.

Article 4

The following Articles 29a and 29b shall be added to Title III B of Directive 73/239/EEC.

Article 29a

The competent authorities of the Member States shall inform the Commission:

- (a) of any authorization of a direct or indirect subsidiary, one or more parent undertakings of which are governed by the laws of a third country. The Commission shall inform the Insurance Committee to be established by the Council on proposal by the Commission;
- (b) whenever such a parent undertaking acquires a holding in a Community insurance undertaking which would turn the latter into its subsidiary. The Commission shall inform the Insurance Committee to be established by the Council on proposal by the Commission accordingly.

When authorization is granted to the direct or indirect subsidiary of one or more parent undertakings governed by the law of third countries, the structure of the group shall be specified in the notification which the competent authorities shall address to the Commission.

Article 29b

1. Member States shall inform the Commission of any general difficulties encountered by their insurance undertakings in establishing themselves or carrying on their activities in a third country.

2. Initially not later than six months before the application of this Directive, and thereafter periodically, the Commission shall draw up a report examining the treatment accorded to Community insurance undertakings in third countries, in the terms referred to in paragraphs 3 and 4, as regards establishment and the carrying on of insurance activities, and the acquisition of holdings in third-country insurance undertakings. The Commission shall submit those reports to the Council, together with any appropriate proposals.

3. Whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 2 or on the basis of other information, that a third country is not granting Community insurance undertakings effective market access comparable to that granted by the Community to insurance undertakings from that third country, the Commission may submit proposals to the Council for the appropriate mandate

⁽¹⁾ OJ No L 193, 18. 7. 1983, p. 1.

for negotiation with a view to obtaining comparable competitive opportunities for Community insurance undertakings. The Council shall decide by a qualified majority.

4. Whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 2 or on the basis of other information, that Community insurance undertakings in a third country are not receiving national treatment offering the same competitive opportunities as are available to domestic insurance undertakings and that the conditions of effective market access are not being fulfilled, the Commission may initiate negotiations in order to remedy the situation.

In the circumstances described in the first subparagraph, it may also be decided at any time, and in addition to initiating negotiations, in accordance with the procedure laid down in the Act establishing the Insurance Committee referred to in Article 29a, that the competent authorities of the Member States must limit or suspend their decisions:

- regarding requests pending at the moment of the decision or future requests for authorizations, and
- regarding the acquisition of holdings by direct or indirect parent undertakings governed by the laws of the third country in question.

The duration of the measures referred to may not exceed three months.

Before the end of that three-month period, and in the light of the results of the negotiations, the Council may, acting on a proposal from the Commission, decide by a qualified majority that the measures shall be continued.

Such limitations or suspension may not apply to the setting up of subsidiaries by insurance undertakings or their subsidiaries duly authorized in the Community, or to the acquisition of holdings in Community insurance undertakings by such undertakings or subsidiaries.

5. Whenever it appears to the Commission that one of the situations described in paragraphs 3 and 4 has arisen, the Member States shall inform it at its request:

- (a) of any request for the authorization of a direct or indirect subsidiary, one or more parent undertakings of which are governed by the laws of the third country in question;
- (b) of any plans for such an undertaking to acquire a holding in a Community insurance undertaking such that the latter would become the subsidiary of the former.

This obligation to provide information shall lapse once an agreement is concluded with the third country referred to in paragraph 3 or 4 or when the measures

referred to in the second and third subparagraphs of paragraph 4 cease to apply.

6. Measures taken under this Article shall comply with the Community's obligations under any international agreements, bilateral or multilateral, governing the taking-up and pursuit of the business of insurance undertakings.

Article 5

The second and third indents in the second paragraph of Article 12 (2) of Directive 88/357/EEC are hereby deleted.

Article 6

The following Article is hereby inserted in Title III of Directive 88/357/EEC:

'Article 12a

1. This Article shall apply where an undertaking, through an establishment situated in a Member State, covers a risk, other than carrier's liability, classified under class 10 of point A of the Annex to Directive 73/239/EEC which is situated in another Member State.

2. The Member State of provision of services shall require the undertaking to become a member of and participate in the financing of its national bureau and its national guarantee fund.

The undertaking shall not, however, be required to make any payment or contribution to the bureau and fund of the Member State of provision of services in respect of risks covered by way of provision of services other than one calculated on the same basis as for undertakings covering risks, other than carrier's liability, in class 10 through an establishment situated in that Member State, by reference to its premium income from that class in that Member State or the number of risks in that class covered there.

3. This Directive shall not prevent an insurance undertaking providing services from being required to comply with the rules in the Member State of provision of services concerning the cover of aggravated risks, insofar as they apply to established undertakings.

4. The Member State of provision of services shall require the undertaking to ensure that persons pursuing claims arising out of events occurring in its territory are not placed in a less favourable situation as a result of the fact that the undertaking is covering a risk, other than carrier's liability, in class 10 by way of provision of services rather than through an establishment situated in that State.

For this purpose, the Member State of provision of services shall require the undertaking to appoint a representative resident or established in its territory who shall collect all necessary information in relation to claims, and shall possess sufficient powers to repre-

sent the undertaking in relation to persons suffering damage who could pursue claims, including the payment of such claims, and to represent it or, where necessary, to have it represented before the courts and authorities of that Member State in relation to these claims.

The representative may also be required to represent the undertaking before the competent authorities of the State of provision of services with regard to checking the existence and validity of motor vehicle liability insurance policies.

The Member State of provision of services may not require that appointee to undertake activities on behalf of the undertaking which appointed him other than those set out in the second and third subparagraphs. The appointee shall not take up the business of direct insurance on behalf of the said undertaking.

The appointment of the representative shall not in itself constitute the opening of a branch or agency for the purpose of Article 6 (2) (b) of Directive 73/239/EEC and the representative shall not be an establishment within the meaning of Article 2 (c) of this Directive.'

Article 7

1. The following subparagraph is hereby added to Article 15 (1) and to Article 16 (1) of Directive 88/357/EEC:

'Each Member State within the territory of which an undertaking intends to provide services covering risks in class 10, other than carrier's liability, may require that the undertaking:

- notify the name and address of the claims representative referred to in Article 12a (4);
- produce a declaration that the undertaking has become a member of the national bureau and the national guarantee fund of the Member State of provision of services.'

Article 8

The following subparagraph is hereby added to Article 21 (2) of Directive 88/357/EEC:

'Each Member State may require that the name and address of the representative of the insurance undertaking also appear in the abovementioned documents.'

Article 9

Article 22 (1) of Directive 88/357/EEC is hereby replaced by the following:

'1. Every establishment must inform its supervisory authority in respect of operations effected by way of

provision of services of the amount of the premiums, without deduction of reinsurance, receivable by Member State and by group of classes. The groups of classes shall be defined as follows:

- accident and sickness (1 and 2),
- motor insurance (3, 7 and 10, the figures relating to class 10, excluding carrier's liability, being specified),
- fire and other damage to property (8 and 9),
- aviation, marine and transport (4, 5, 6, 7, 11 and 12),
- general liability (13),
- credit and suretyship (14 and 15),
- other classes (16, 17 and 18).

The supervisory authority of each Member State shall forward this information to the supervisory authorities of each of the Member States of provision of services.'

Article 10

The last subparagraph of Article 27 (1) of Directive 88/357/EEC is hereby replaced by the following:

'The derogation allowed from 1 January 1995 shall only apply to contracts covering risks classified under classes 3, 8, 9, 10, 13 and 16 situated exclusively in one of the four Member States benefiting from the transitional arrangements.'

Article 11

Notwithstanding Article 23 (2) of Directive 88/357/EEC, in the case of a large risk within the meaning of Article 5 (d) of Directive 73/239/EEC, classified under class 10, other than carrier's liability, the Member State of provision of services may provide that:

- the amount of the technical reserves relating to the contract concerned shall be determined, under the supervision of the authorities of that Member State, in accordance with its rules or, failing such rules, in accordance with established practice in that Member State, until the date by which the Member States must comply with a Directive coordinating the annual accounts of insurance undertakings,
- the covering of these reserves by equivalent and matching assets shall be under the supervision of the authorities of that Member State in accordance with its rules or practice, until the notification of a Third Directive on non-life insurance,

- the localization of the assets referred to in the second indent shall be under the supervision of the authorities of that Member State in accordance with its rules or practice until the date by which the Member States must comply with a Third Directive on non-life insurance.

Article 12

Member States shall amend their national provisions to comply with this Directive within 18 months of the date of its notification⁽¹⁾ and shall forthwith inform the Commission thereof.

The provisions amended pursuant to the first subparagraph shall be applied within 24 months of the date of the notification of this Directive.

Article 13

This Directive is addressed to the Member States.

Done at Brussels, 8 November 1990.

For the Council

The President

P. ROMITA

⁽¹⁾ This Directive was notified to the Member States on 20 November 1990.

COUNCIL DIRECTIVE

of 8 November 1990

on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC

(90/619/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 57 (2) and 66 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

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

Whereas it is necessary to develop the internal market in life assurance and in the operations referred to in First Council Directive 79/267/EEC of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct life assurance ⁽⁴⁾, hereinafter called the 'First Directive' as last amended by the Act of Accession of Spain and Portugal; whereas, in order to achieve that objective, it is desirable to make it easier for assurance undertakings having their head office in the Community to provide services in the Member States, thus making it possible for policy-holders to have recourse not only to assurers established in their own country, but also to assurers which have their head office in the Community and are established in other Member States;

Whereas, under the Treaty, any discrimination with regard to freedom to provide services based on the fact that an undertaking is not established in the Member State in which the services are provided has been prohibited since the end of the transitional period; whereas that prohibition applies to services provided from any establishment in the Community, whether it be the head office of an undertaking or an agency or branch;

Whereas, for practical reasons, it is desirable to define provision of services taking into account both the insurer's establishment and the place where the commitment is to be covered; whereas, therefore, commitment should

also be defined; whereas, moreover, it is desirable to distinguish between activities pursued by way of establishment and activities pursued by way of freedom to provide services;

Whereas it is desirable to supplement the First Council Directive in order in particular to clarify the powers and means of supervision vested in the supervisory authorities; whereas it is also desirable to lay down specific provisions regarding the taking-up, pursuit and supervision of activity by way of freedom to provide services;

Whereas policy-holders who, by virtue of the fact that they take the initiative in entering into a commitment in another State and thus place themselves under the protection of the legal system of that other State, do not require special protection in the State of the commitment, should be granted complete freedom to avail themselves of the widest possible market in life assurance and in the operations referred to in the First Directive; whereas other policy-holders should also be afforded adequate protection;

Whereas in the management of some group pension funds, the multiplicity and complexity of the various schemes and their close connection with social security schemes call for careful study; whereas they should therefore be excluded from the scope of the provisions specific to freedom to provide services contained in this Directive; whereas they will form the subject matter of another Directive;

Whereas the provisions in force in the Member States regarding contract law applicable to the activities referred to in the First Directive continue to differ; whereas the freedom to choose, as the law applicable to the contract, a law other than that of the State of the commitment may be granted in certain cases, in accordance with rules which take into account specific circumstances;

Whereas the First Directive's provisions on transfer of portfolio should be reinforced and supplemented by provisions specifically concerning the transfer to another undertaking of the portfolio of contracts concluded by way of freedom to provide services;

Whereas, in the interests of protecting policy-holders, Member States should, at the present stage of the coordination process, be given the option of limiting the simul-

⁽¹⁾ OJ No C 38 of 15. 2. 1989, p. 7 and

OJ No C 72 of 22. 3. 1990, p. 5.

⁽²⁾ OJ No C 175, 16. 7. 1990, p. 107, and Decision of 24 October 1990 (not yet published in the Official Journal).

⁽³⁾ OJ No C 298, 27. 11. 1989, p. 2.

⁽⁴⁾ OJ No L 63, 13. 3. 1979, p. 1.

taneous pursuit of activity by way of freedom to provide services and activity by way of establishment ; whereas no such limitation can be provided for where policy-holders do not require such protection ;

Whereas the taking-up and pursuit of activity by way of freedom to provide services should be subject to procedures guaranteeing the assurance undertaking's compliance with provisions regarding financial guarantees, conditions of assurance and premium rates ; whereas those procedures may be relaxed where the activity pursued by way of freedom to provide services covers policy-holders who, by virtue of the characteristics of the commitment they propose to enter into, do not require special protection in the State of the commitment ;

Whereas for life assurance contracts entered into by way of the free provision of services the policy-holder should be given the opportunity of cancelling the contract within a period of between 14 and 30 days ;

Whereas the First Directive adopted the principle of prohibiting the simultaneous pursuit of the activities covered by Directive 73/239/EEC⁽¹⁾ (called the First Directive on the coordination of non-life insurance) as last amended by Directive 88/357/EEC⁽²⁾ and those covered by the First Directive ; whereas, while it authorized the continued existence of existing composite undertakings, it stated that they may not set up agencies or branches for life assurance ; whereas the specific nature of the commitments entered into in the insurance field under the freedom of services regime nevertheless justifies, at least on a transitional basis as from notification of this Directive to Member States, the introduction of a degree of flexibility in the application of the above principle ;

Whereas nothing in this Directive would prevent a composite undertaking from dividing itself into two undertakings, one active in the field of life assurance, the other in non-life insurance ; whereas in order to allow such division to take place under the best possible conditions, it is desirable to permit Member States, in accordance with Community rules of competition law, to provide for appropriate tax arrangements, in particular with regard to the capital gains such division could entail ;

Whereas it is necessary to make provision for special cooperation in the sphere of freedom to provide services between the competent supervisory authorities of the Member States and between those authorities and the Commission ; whereas provision should also be made for

a system of penalties to apply where the undertaking providing the service fails to comply with the provisions of the Member State in which the service is provided ;

Whereas the technical reserves, including mathematical reserves, should be subject to the rules of and supervision by the Member State in which the service is provided where the provision of services involves commitments in respect of which the State in which the service is received wishes to provide special protection for policy-holders ; whereas, however, if such concern to protect policy-holders is unjustified, the technical reserves, including mathematical reserves, should remain subject to the rules of and supervision by the Member State in which the undertaking is established ;

Whereas some Member States do not subject life assurance contracts and the other operations covered by the First Directive to any form of indirect taxation, while others apply special taxes ; whereas the structure and rate of those taxes vary considerably between the Member States in which they are applied ; whereas it is desirable to avoid a situation where those differences lead to distortions of competition between undertakings in the various Member States ; whereas, pending further harmonization, the application of the tax arrangements provided for by the Member State in which the commitment is entered into is a means of remedying such mischief ; whereas it is for the Member States to establish a method of ensuring that such taxes are collected ;

Whereas the First Directive makes express provision for specific rules concerning the authorization of agencies and branches of undertakings whose head offices are outside the Community ;

Whereas provision should be made for a flexible procedure to make it possible to assess reciprocity with third countries on a Community basis ; whereas the aim of this procedure is not to close the Community's financial markets but rather, as the Community intends to keep its financial markets open to the rest of the world, to improve the liberalization of the global financial markets in other third countries ; whereas, to that end, this Directive provides for procedures for negotiating with third countries and, as a last resort, for the possibility of taking measures involving the suspension of new applications for authorization or the restriction of new authorizations ;

Whereas it is desirable to take into account, within the meaning of Article 8c of the Treaty, the extent of the effort which needs to be made by certain economies showing differences in development ; whereas, therefore, it is desirable to grant certain Member States transitional arrangements for the gradual application of the specific provisions of this Directive relating to freedom to provide services ;

⁽¹⁾ OJ No L 228, 16. 8. 1973, p. 3.

⁽²⁾ OJ No L 172, 4. 7. 1988, p. 1.

Whereas, in view of the differences in the national legislations, it is also appropriate to grant to those Member States which so wish transitional arrangements enabling them to adapt their legislation before applying in their entirety, as regards group insurance contracts linked to a contract of employment or the intervention of a broker, the provisions of this Directive relating to the case where the policy-holder takes the initiative to conclude a contract by way of provision of services;

Whereas it will be particularly important to allow those Member States who so wish a sufficiently long period to be able to adopt the appropriate provisions in order to ensure the professional qualification and independence of insurance brokers; whereas taking into account the growing role such brokers play in advising those buying insurance and facing an increasing range of products as a result of the freedom to provide services, their professional qualification and independence will become essential elements for protection of the consumer,

HAS ADOPTED THIS DIRECTIVE:

TITLE I

General provisions

Article 1

The object of this Directive is to:

- (a) supplement Directive 79/267/EEC;
- (b) lay down specific provisions relating to freedom to provide services in respect of the activities referred to in the said Directive, such provisions being set forth in Title III of this Directive.

Article 2

For the purposes of this Directive:

- (a) 'First Directive': means Directive 79/267/EEC;
- (b) 'undertaking':
 - for the purposes of Titles I and II, means any undertaking which has received official authorization under Article 6 or Article 27 of the First Directive,
 - for the purposes of Titles III and IV, means any undertaking which has received official authorization under Article 6 of the First Directive;
- (c) 'establishment':

means the head office, an agency or a branch of an undertaking, having regard to Article 3;
- (d) 'commitment':

means a commitment represented by one of the kinds of insurance or operation referred to in Article 1 of the First Directive;

- (e) 'Member State of the commitment':

means the Member State where the policy-holder has his habitual residence or, if the policy-holder is a legal person, the Member State where the latter's establishment, to which the contract relates is situated;

- (f) 'Member State of establishment':

means the Member State in which the establishment covering the commitment is situated;

- (g) 'Member State of provision of services':

means the Member State of the commitment where the commitment is covered by an establishment situated in another Member State;

- (h) 'parent undertaking':

means a parent undertaking within the meaning of Articles 1 and 2 of Directive 83/349/EEC⁽¹⁾;

- (i) 'subsidiary':

means a subsidiary undertaking within the meaning of Articles 1 and 2 of Directive 83/349/EEC; any subsidiary undertaking of a subsidiary undertaking shall also be regarded as a subsidiary of the parent undertaking which is at the head of those undertakings.

Article 3

For the purposes of the First Directive and of this Directive, any permanent presence of an undertaking in the territory of a Member State shall be treated in the same way as an agency or branch, even if that presence does not take the form of a branch or agency, but consists merely of an office managed by the undertaking's own staff or by a person who is independent but has permanent authority to act for the undertaking as an agency would.

TITLE II

Provisions supplementary to the First Directive

Article 4

1. The law applicable to contracts relating to the activities referred to in the First Directive shall be the law of the Member State of the commitment. However, where the law of that State so allows, the parties may choose the law of another country.
2. Where the policy-holder is a natural person and has his habitual residence in a Member State other than that of which he is a national, the parties may choose the law of the Member State of which he is a national.
3. Where a State includes several territorial units, each of which has its own rules of law concerning contractual obligations, each unit shall be considered a country for the purposes of identifying the law applicable under this Directive.

⁽¹⁾ OJ No L 193, 18. 7. 1983, p. 1.

A Member State in which various territorial units have their own rules of law concerning contractual obligations shall not be bound to apply the provisions of this Directive to conflicts which arise between the laws of those units.

4. Nothing in this Article shall restrict the application of the rules of the law of the forum in a situation where they are mandatory, irrespective of the law otherwise applicable to the contract.

If the law of a Member State so stipulates, the mandatory rules of the law of the Member State of the commitment may be applied if and in so far as, under the law of that Member State, those rules must be applied whatever the law applicable to the contract.

5. Subject to the preceding paragraphs, the Member States shall apply to the assurance contracts referred to in this Directive their general rules of private international law concerning contractual obligations.

Article 5

The following paragraph is added to Article 23 of the First Directive :

'3. Each Member State shall take all steps necessary to ensure that the authorities responsible for supervising assurance undertakings have the powers and means necessary for supervision of the activities of assurance undertakings established within their territory, including activities engaged in outside that territory, in accordance with the Council Directives governing those activities and for the purpose of ensuring that they are implemented.

Those powers and means must, in particular, enable the supervisory authorities to :

- make detailed inquiries about the undertaking's situation and the whole of its business, *inter alia* by :
 - gathering information or requiring the submission of documents concerning assurance business,
 - carrying out on-the-spot investigations at the undertaking's premises,
- take any measures, with regard to the undertaking, which are appropriate and necessary to ensure that the activities of the undertaking remain in conformity with the laws, regulations and administrative provisions with which the undertaking has to comply in each Member State and in particular with the scheme of operations insofar as it remains mandatory, and to prevent or remove any

irregularities prejudicial to the interests of policy-holders,

- ensure that measures required by the supervisory authorities are carried out, if need be by enforcement, where appropriate through judicial channels.

Member States may also make provision for the supervisory authorities to obtain any information regarding contracts which is held by intermediaries.'

Article 6

1. Article 25 of the First Directive is hereby deleted.
2. Each Member State shall, under the conditions laid down by national law, authorize undertakings which are established within its territory to transfer all or part of their portfolios of contracts for which that State is the State of the commitment, to an accepting office establishing in that same Member State if the supervisory authorities of the Member State in which the head office of the accepting office is situated certify that the latter possesses the necessary margin of solvency after taking the transfer into account.
3. Each Member State shall, under the conditions laid down by national law, authorize undertakings established within its territory to transfer all or part of their portfolios of contracts concluded in the circumstances referred to in Article 10 (1) to an accepting office established in the Member State of provision of services if the supervisory authorities of the Member State in which the head office of the accepting office is situated certify that the latter possesses the necessary margin of solvency after taking the transfer into account.
4. Each Member State shall, under the conditions laid down by national law, authorize undertakings established within its territory to transfer all or part of their portfolios of contracts concluded in the circumstances referred to in Article 10 (1) to an accepting office established in the same Member State if the supervisory authorities of the Member State in which the head office of the accepting office is situated certify that the accepting office possesses the necessary margin of solvency after taking the transfer into account and if it fulfils the conditions set out in Articles 11, 12, 14 and 16 in the Member State of provision of services.
5. In the cases referred to in paragraphs 3 and 4, the supervisory authorities of the Member State in which the transferring undertaking is established shall authorize the transfer after obtaining the agreement of the supervisory authorities of the Member State of provision of services.
6. If a Member State, under the conditions laid down by national law, authorizes undertakings established within its territory to transfer all or part of their portfolios of contracts to an accepting office established in another

Member State which is not the Member State of provision of services, it shall ensure that the following conditions are fulfilled :

- the supervisory authorities of the Member State in which the head office of the accepting office is situated certify that the latter possesses the necessary margin of solvency after taking the transfer into account,
- the Member State in which the accepting office is established agrees,
- the accepting office fulfils the conditions set out in Articles 11, 12, 14 and 16 in the Member State of provision of services, the law of that Member State provides for the possibility of such a transfer and that Member State agrees to the transfer.

7. A transfer authorized in accordance with this Article shall be published, under the conditions laid down by national law, in the Member State of the commitment. Such transfer shall be automatically valid against policy-holders, assured persons and any other person having rights or obligations arising out of the contracts transferred.

This provision shall not affect the right of Member States to provide that policy-holders may cancel the contract within a given period after the transfer.

Article 7

Article 22 (2) of the First Directive is replaced by the following :

- '2. The Italian Republic shall take all steps to ensure that the requirement that undertakings established in its territory cede part of their underwriting to the "Istituto Nazionale di Assicurazioni" is abolished no later than 20 November 1994.'

Article 8

1. The heading of Title III of the First Directive is replaced by the following :

TITLE III A

Rules applicable to agencies or branches established within the Community and belonging to undertakings whose head offices are outside the Community'

2. The following heading is placed after Article 32 of the First Directive :

TITLE III B

Rules applicable to subsidiaries of parent undertakings governed by the laws of a third country and to acquisitions of holdings by such parent undertakings'.

Article 9

The following Articles are added to Title III B of the First Directive :

Article 32a

The competent authorities of the Member States shall inform the Commission :

- (a) of any authorization of a direct or indirect subsidiary one or more parent undertakings of which are governed by the laws of a third country. The Commission shall inform the Committee referred to in Article 32b (6) accordingly ;
- (b) whenever such a parent undertaking acquires a holding in a Community insurance undertaking which would turn the latter into its subsidiary. The Commission shall inform the Committee referred to in Article 32b (6) accordingly.

When authorization is granted to the direct or indirect subsidiary of one or more parent undertakings governed by the law of third countries, the structure of the groupe shall be specified in the notification which the competent authorities shall address to the Commission.

Article 32b

1. The Member States shall inform the Commission of any general difficulties encountered by their insurance undertakings in establishing themselves or carrying on their activities in a third country.

2. Initially no later than six months before the date referred to in the second paragraph of Article 30 of Directive 90/619/EEC⁽¹⁾, and thereafter periodically, the Commission shall draw up a report examining the treatment accorded to Community insurance undertakings in third countries, in the terms referred to in paragraphs 3 and 4, as regards establishment and the carrying on of insurance activities, and the acquisition of holdings in third-country insurance undertakings. The Commission shall submit those reports to the Council, together with any appropriate proposals.

3. Whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 2 or on the basis of other information, that a third country is not granting Community insurance undertakings effective market access comparable to that granting Community to insurance undertakings effective market access comparable to that granted by the Community to insurance undertakings from that third country, the Commission may submit proposals to the Council for the appropriate mandate for negotiation with a view to obtaining comparable competitive opportunities for Community insurance undertakings. The Council shall decide by a qualified majority.

4. Whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 2 or on the basis of other information, that Community insurance undertakings in a third country are not

receiving national treatment offering the same competitive opportunities as are available to domestic insurance undertakings and that the conditions of effective market access are not being fulfilled, the Commission may initiate negotiations in order to remedy the situation.

In the circumstances described in the first subparagraph, it may also be decided at any time, and in addition to initiating negotiations, in accordance with the procedure laid down in Article 32b (6), that the competent authorities of the Member States must limit or suspend their decisions:

- regarding requests pending at the moment of the decision or future requests for authorizations, and
- regarding the acquisition of holdings by direct or indirect parent undertakings governed by the laws of the third country in question.

The duration of the measures referred to may not exceed three months.

Before the end of that three-month period, and in the light of the results of the negotiations, the Council may, acting on a proposal from the Commission, decide by a qualified majority whether the measures shall be continued.

Such limitations or suspension may not apply to the setting up of subsidiaries by insurance undertakings or their subsidiaries duly authorized in the Community, or to the acquisition of holdings in Community insurance undertakings by such undertakings or subsidiaries.

5. Whenever it appears to the Commission that one of the situations described in paragraphs 3 and 4 has arisen, the Member States shall inform it at its request:

- (a) of any request for the authorization of a direct or indirect subsidiary one or more parent undertakings of which are governed by the laws of the third country in question;
- (b) of any plans for such an undertaking to acquire a holding in a Community insurance undertaking such that the latter would become the subsidiary of the former.

This obligation to provide information shall lapse whenever an agreement is reached with the third country referred to in paragraph 3 or 4 when the measures referred to in the second and third subparagraphs of paragraph 4 cease to apply.

6. The Commission shall be assisted by a committee composed of the representatives of the

Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period to be laid down in each act to be adopted by the Council under this paragraph but which may in no case exceed three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission, save where the Council has decided against the said measures by a simple majority.

7. Measures taken under this Article shall comply with the Community's obligations under any international agreements, bilateral or multilateral, governing the taking-up and pursuit of the business of insurance undertakings.

(¹) OJ No L 330, 29. 11. 1990, p. 50.

TITLE III

Provisions relating specifically to the freedom to provide services

Article 10

1. This Title shall apply where an undertaking, through an establishment situated in a Member State, covers a commitment in another Member State.

2. This Title shall apply to:

- the types of insurance referred to in Article 1 (1) of the First Directive,
- the operations referred to in Article 1 (2) (a) and (b) of the First Directive.

3. This Title shall not apply to the operations and bodies referred to in Article 1 (2) (c), (d) and (e), Article 1 (3) and Articles 2, 3 and 4 of the First Directive.

4. An undertaking shall not cover a commitment in another Member State unless it is authorized under Article 6 of the First Directive to cover such a commitment in its Member State of establishment.

Article 11

Any undertaking which intends to provide services shall first inform the competent authorities of the head office Member State, and, where appropriate, of the Member State of the establishment concerned, indicating the Member State or Member States within whose territory it intends to provide services and the nature of the commitments it proposes to cover.

Article 12

1. Subject to Article 13, each Member State within whose territory an undertaking intends, by way of freedom to provide services, to cover commitments within the meaning of Article 10 may make the taking-up of such activity conditional on official authorization insofar as the commitments are not entered into in accordance with the arrangements referred to in Article 13; to that end, it may require that the undertaking:

- (a) produce a certificate issued by the competent authorities of the head office Member State certifying that it possesses for its activities as a whole the minimum solvency margin calculated in accordance with Article 19 of the First Directive and that, in accordance with Article 6 (1) of the said Directive, the authorization enables the undertaking to operate outside the Member State of establishment;
- (b) produce a certificate issued by the competent authorities of the Member State of establishment indicating the classes in respect of which the undertaking is authorized to transact business and certifying that those authorities do not object to the undertaking's transacting business by way of freedom to provide services;
- (c) submit a scheme of operations concerning the following particulars:
 - the nature of the commitments which the undertaking proposes to cover in the Member State of provision of services,
 - the general and special conditions of the assurance policies which it proposes to use there,
 - the premium rates which the undertaking envisages applying and the technical bases which it proposes to use for each class of business,

— the forms and other printed documents which it intends to use in its dealings with policy-holders, insofar as these are also required of established undertakings.

2. The competent authorities of the Member State of provision of services may require that the particulars referred to in paragraph 1 (c) be supplied to them in the official language of that State.

3. The competent authorities of the Member State of provision of services shall have a period of six months from receipt of the documents referred to in paragraph 1 in which to grant or refuse authorization on the basis of the compliance or non-compliance of the particulars in the scheme of operations submitted by the undertaking with the laws, regulations and administrative provisions applicable in that State.

Such authorization may not be refused on the grounds that some operations in the scheme of operations, which are subject in the Member State of establishment of the undertaking to supervision by the authorities responsible for the supervision of insurance undertakings, are not subject to such supervision in the Member State of provision of services.

4. If the competent authorities of the Member State of provision of services have not taken a decision by the end of the period referred to in paragraph 3, authorization shall be deemed to be refused.

5. Any decision to refuse authorization or to refuse a certificate as referred to in paragraph 1 (a) or (b) shall be accompanied by the precise grounds therefor and communicated to the undertaking in question.

6. Each Member State shall make provision for the right to apply to the courts in respect of a refusal of authorization or refusal to issue the certificate referred to in paragraph 1 (a) or (b).

Article 13

1. Commitments covered by way of freedom to provide services shall be subject to Article 14 where the policy-holder takes the initiative in seeking a commitment from the undertaking.

The policy-holder shall be deemed to have taken the initiative:

- where, on the one hand, the contract is entered into by both parties in the Member State in which the undertaking is established or by each of the parties in that party's own State of establishment or of habitual residence, and where, on the other hand, the policy-holder has not been contacted in his State of habitual residence by the undertaking or through an insurance intermediary or any person authorized to act for it or by means of any solicitation of business addressed to him personally,

— where the policy-holder approaches an intermediary established in the Member State in which the policy-holder has his habitual residence and carrying on the professional activities defined in Article 2 (1) (a) of Directive 77/92/EEC⁽¹⁾, in order to obtain information on assurance contracts offered by undertakings established in Member States other than his State of habitual residence or with a view to entering into a commitment through the intermediary with such an undertaking. In that event the policy-holder shall sign a statement, the text of which is set out, under item A in the Annex, expressly so requesting.

2. Before entering into a commitment in the cases referred to in the first and second indents of paragraph 1, the policy-holder shall sign a statement, the text of which is set out under item B in the Annex, to the effect that he notes that the commitment is subject to the rules of supervision of the Member State of establishment which is to cover the commitment.

Article 14

1. Each Member State within whose territory an undertaking intends, by way of freedom to provide services, to cover commitments in accordance with Article 13 shall require that the undertaking abide by the following procedure :

- (a) production of a certificate issued by the competent authorities of the head office Member State certifying that it possesses for its activities as a whole the minimum solvency margin calculated in accordance with Article 19 of the First Directive and that, in accordance with Article 6 (1) of the said Directive, the authorization enables the undertaking to operate outside the Member State of establishment ;
- (b) production of a certificate issued by the competent authorities of the Member State of establishment indicating the classes in respect of which the undertaking is authorized to transact business and certifying that those authorities do not object to the undertaking's transacting business by way of freedom to provide services ;
- (c) statement of the nature of the commitments which it proposes to cover in the Member State of provision of services.

The above procedure shall not apply where an activity falling within this Directive is not subject, in the Member State of the commitment, to supervision by the administrative authorities responsible for supervising private insurance.

2. Each Member State shall make provision for the right to apply to the courts in respect of a refusal to issue the certificate referred to in paragraph 1 (a) or (b).

⁽¹⁾ OJ No L 26, 31. 1. 1977, p. 14.

3. The undertaking may commence activities as from the certified date on which the authorities of the Member State of provision of services are in possession of the documents referred to in paragraph 1.

4. This Article shall also apply where the Member State in whose territory an undertaking intends, by way of freedom to provide services, to cover commitments in accordance with arrangements other than those referred to in Article 13 of this Directive does not make the taking-up of such activity conditional on official authorization.

5. Member States may not prevent the policy-holder from entering into any commitment which may be lawfully undertaken in the Member State of establishment unless it is contrary to public policy in the Member State of the commitment.

Article 15

1. Each Member State shall prescribe that a policy-holder who concludes an individual life-assurance contract in one of the cases referred to in Title III shall have a period of between 14 and 30 days from the time when he was informed that the contract had been concluded within which to cancel the contract.

The giving of notice of cancellation by the policy-holder shall have the effect of releasing him from any future obligation arising from the contract.

The other legal effects and the conditions of cancellation shall be determined by the law applicable to the contract as defined in Article 4, notably as regards the arrangements for informing the policy-holder that the contract has been concluded.

2. The Member States need not apply paragraph 1 to contracts of six months' duration or less.

Article 16

Member States' legislation shall provide that an undertaking established in a Member State may cover within that State by way of freedom to provide services from an establishment in another Member State at least :

- the commitments within the meaning of Article 10, where they are entered into in accordance with the arrangements in Article 13,
- the commitments within the meaning of Article 10 entered into in accordance with arrangements other than those laid down in Article 13, where they fall within classes in respect of which the undertaking established in the first Member State lacks authorization there in accordance with Article 6 of the First Directive.

If, however, in the latter case that undertaking has such authorization, the first Member State may prevent such provision of services.

Article 17

1. Where an undertaking referred to in Article 11 intends to amend the information referred to in Article 12 (1) (c) or 14 (1) (c), it shall submit the amendments to the competent authorities of the Member State of provision of services. Those amendments shall be subject to the provisions of Article 12 (3) and 14 (3), as the case may be.
2. Where the undertaking intends to extend its activities to commitments within the meaning of Article 10 in accordance with arrangements other than those laid down in Article 13 or 14 (4), it shall follow the procedure laid down in Articles 11 and 12.
3. Where the undertaking intends to extend its activities to commitments in accordance with the arrangements laid down in Article 13 or 14 (4), it shall follow the procedure laid down in Articles 11 and 14.

Article 18

1. Undertakings which, by virtue of Article 13 (3) of the First Directive, carry on simultaneously the activities referred to in the Annex to Directive 73/239/EEC and those listed in Article 1 of the First Directive may accept commitments in any of the classes referred to in the First Directive by way of provision of services as referred to in Article 13 of this Directive. They may also accept commitments by way of provision of services as referred to in Article 12 if the law of the Member State of provision of services so allows at the time of notification of this Directive, or thereafter and until 31 December 1995 in the other Member States.
2. This Article will be reviewed in the light of the report to be prepared by the Commission in accordance with Article 39 (2) of the First Directive.

Article 19

1. Member States of provision of services may maintain or introduce laws, regulations or administrative provisions justified on policy-holder protection grounds, concerning, in particular, approval of general and special policy conditions, of forms and other printed documents for use in dealings with policy-holders, of scales of premiums and of any other document necessary for the normal exercise of supervision on condition that the rules of the Member State of establishment are insufficient to achieve the necessary level of protection and the requirements of the Member State of provision of services do not go beyond what is necessary in that respect.
2. However, with regard to commitments entered into in accordance with the arrangements described in Article 13, Member States of provision of services shall not lay down provisions requiring approval or notification of general and special policy conditions, scales of premiums,

forms and other printed documents which the undertaking intends to use in its dealings with policy-holders.

3. They may require only non-systematic notification of these conditions and other documents, for the purpose of verifying compliance with laws, regulations and administrative provisions in respect of such commitments, although this requirement may not constitute a prior condition in order for an undertaking to carry on its activities.

Article 20

1. Any undertaking providing services shall submit to the competent authorities of the Member State of provision of services all documents requested of it for the purposes of implementing this Article, insofar as undertakings established there are also obliged to do so.
2. If the competent authorities of a Member State establish that an undertaking providing services within its territory does not comply with the legal provisions applicable to it in that State, such authorities shall request the undertaking concerned to put an end to the irregular situation.
3. If the undertaking in question fails to comply with the request referred to in paragraph 2, the competent authorities of the Member State of provision of services shall inform the competent authorities of the Member State of establishment accordingly. The latter authorities shall take all appropriate steps to ensure that the undertaking concerned puts an end to that irregular situation. The nature of those measures shall be communicated to the authorities of the Member State of provision of services.

The competent authorities of the Member State of provision of services may also apply to the competent authorities responsible for the head office of the assurance undertaking if the services are being provided by agencies or branches.

4. If, despite the steps thus taken by the Member State of establishment, or because such steps prove inadequate or are lacking in the Member State in question, the undertaking persists in violating the legal provisions in force in the Member State of provision of services, the latter Member State may, after informing the supervisory authorities of the Member State of establishment, take appropriate steps to prevent further irregularities, including, insofar as it is strictly necessary, the prevention of the further covering of commitments by the undertaking by way of freedom to provide services within its territory. In the case of commitments covered by way of freedom to provide services in accordance with arrangements other than those referred to in Article 13 of this Directive, such steps shall include withdrawal of the authorization referred to in Article 12. Member States shall ensure that within their territory it is possible to effect the notifications necessary for such steps.

5. These provisions shall not affect the right of Member States to punish irregularities committed within their territory.

6. If the undertaking which has committed the irregularity has an establishment or owns property in the Member State of provision of services, the supervisory authorities of the latter may, in accordance with national law, apply the administrative penalties prescribed for such irregularity by way of enforcement against such establishment or property.

7. Any step taken under paragraphs 2 to 6 involving penalties or restrictions on the provision of services must be properly justified and communicated to the undertaking concerned. Every such measure shall be subject to the right to apply to the courts in the Member State in which the authorities adopted it.

8. Where steps are taken under Article 24 of the First Directive, the competent authorities of the Member State of provision of services shall be informed accordingly by the authority which takes them and, where the steps are taken under paragraphs 1 and 3 of the said Article, take whatever action is necessary to safeguard the interests of assured persons.

In the event of withdrawal of authorization under Article 26 of the First Directive, the competent authorities of the Member State of provision of services shall be informed accordingly and shall take appropriate steps to prevent the establishment concerned from continuing to conclude assurance contracts by way of freedom to provide services within the territory of that Member State.

9. Every two years the Commission shall submit to the Council a report summarizing the number and type of cases in which, in each Member State, decisions refusing authorization have been communicated under Article 12 or measures have been taken under paragraph 4. Member States shall cooperate with the Commission by providing it with the information required for the report.

Article 21

In the event of an assurance undertaking being wound up, commitments arising from contracts underwritten by way of freedom to provide services shall be met in the same way as those arising from that undertaking's other assurance contracts, no distinction being made on grounds of the nationality of assured persons or beneficiaries.

Article 22

1. Where an operation is offered by way of freedom to provide services, the policy-holder shall, before any commitment is entered into, be informed of the Member State in which the head office, agency or branch with which the contract is to be concluded is established.

Any document issued to the policy-holder or to the insured shall contain the information referred to in the preceding subparagraph.

2. The contract or other document granting cover, together with the assurance proposal where it is binding upon the proposer, shall specify the address of the establishment which grants the cover and that of the head office.

Article 23

Every establishment must inform its supervisory authority in respect of operations effected by way of provision of services of the amount of the premiums, without deduction of reinsurance, receivable by Member State and by each of classes I to VI, as defined in the Annex to the First Directive.

This information shall be provided separately for commitments covered in accordance with the arrangements in Article 12 and for those covered in accordance with the arrangements in Article 14.

The supervisory authority of each Member State shall forward this information to the supervisory authorities of each of the Member States of provision of services which so requests.

Article 24

1. Where the provision of services is conditional upon authorization by the Member State of provision of services, the amount of the technical reserves, including mathematical reserves, and the rules on profit sharing and on the surrender and paid-up values of the contracts concerned shall be determined under the supervision of that Member State in accordance with the rules it has laid down or, failing such rules, in accordance with established practice in that Member State. The covering of those reserves by equivalent and matching assets, the location of those assets and the application of the rules on profit sharing and on surrender and paid-up values shall be under the supervision of that Member State in accordance with its rules or practice.

2. In all other cases, those various operations shall be under the supervision of the Member State of establishment, in accordance with its rules or practice.

3. The Member State of establishment shall ensure that the reserves relating to all the contracts which the undertaking concludes through the establishment concerned are sufficient and covered by equivalent and matching assets.

4. In the circumstances referred to in paragraph 1, the Member State of establishment and the Member State of provision of services shall exchange any information necessary for carrying out their respective duties under paragraphs 1 and 3.

Article 25

Without prejudice to any subsequent harmonization, every assurance contract concluded by way of freedom to provide services shall be subject only to the indirect taxes and parafiscal charges on assurance premiums of the

Member State of the commitment within the meaning of Article 2 (e) and, in the case of Spain, to the surcharges legally fixed to assist the Spanish body 'Consorcio de Compensación de Seguros' in its function of compensating for losses resulting from the occurrence of exceptional events in that Member State.

The law applicable to the contract pursuant to Article 4 shall not affect the tax arrangements applicable.

Subject to future harmonization, each Member State shall apply to undertakings which provide services in the territory its own national provisions concerning measures to ensure the collection of indirect taxes and parafiscal charges due under the first paragraph.

TITLE IV

Transitional provisions

Article 26

The following transitional arrangements shall apply for the benefit of Spain until 31 December 1995 and of Greece and Portugal until 31 December 1998:

- they may limit the commitments for which they are the Member State of provision of services to those entered into in accordance with the arrangements referred to in Article 13,
- they may require that the technical reserves, including mathematical reserves, relating to those commitments, should be calculated, covered and located in accordance with their national legislation in force.

Article 27

1. In the case of group assurance contracts entered into by virtue of the insured person's contract of employment or professional activity, any Member State may, until 31 December 1994, limit the commitments for which it is the Member State of provision of services to those entered into in accordance with the arrangements referred to in Article 12.

2. Member States may, up to three years at the latest after the date of application laid down in the second paragraph of Article 30, consider that the policy-holder shall be deemed to have taken the initiative only in the case provided for in the first indent of Article 13 (1).

TITLE V

Final provisions

Article 28

The Commission and the competent authorities of the Member States shall collaborate closely with a view to

facilitating the supervision of the kinds of insurance and the operations referred to in the First Directive within the Community.

Each Member State shall inform the Commission of any major difficulties to which application of this Directive gives rise, *inter alia* any arising if a Member State becomes aware of an abnormal transfer of business referred to in the first Directive to the detriment of undertakings established in its territory and to the advantage of agencies and branches located just beyond its borders.

The Commission and the competent authorities of the Member States concerned shall examine such difficulties as quickly as possible in order to find an appropriate solution.

Where necessary, the Commission shall submit appropriate proposals to the Council.

Article 29

The Commission shall forward to the European Parliament and the Council regular reports, the first on 20 November 1995, on the development of the market in assurance and operations transacted under conditions of freedom to provide services.

Article 30

Member States shall amend their national provisions to comply with this Directive within 24 months of the date of its notification⁽¹⁾ and shall forthwith inform the Commission thereof.

The provisions amended in accordance with the first paragraph shall be applied within 30 months of the date of notification of this Directive.

Article 31

Upon notification of this Directive, Member States shall ensure that the texts of the main laws, regulations or administrative provisions which they adopt in the field covered by this Directive are communicated to the Commission.

Article 32

This Directive is addressed to the Member States.

Done at Brussels, 8 November 1990.

For the Council

The President

P. ROMITA

⁽¹⁾ This Directive was notified to the Member States on 20 November 1990.

*ANNEX**A. Statement to be signed by the policy-holder under Article 13 (1), second indent*

'I hereby state that I wish (name of intermediary) to provide me with information on assurance contracts offered by undertakings established in Member States other than (Member State of habitual residence of policy-holder). I understand that such undertakings are subject to the supervisory arrangements of the State in which they are established and not to the supervisory arrangements of (Member State of habitual residence of policy-holder).'

B. Statement to be signed by the policy-holder under Article 13 (2)

'I hereby take note that (name of assurer) is established in (Member State of establishment of assurer) and I realize that supervision of that assurer is the responsibility of the supervisory authorities in (Member State of establishment of assurer) and not the responsibility of the authorities in (Member State of habitual residence of policy-holder).'

COMMISSION

COMMISSION DECISION

of 16 November 1990

on import licences in respect of beef and veal products originating in Botswana, Kenya, Madagascar, Swaziland and Zimbabwe

(90/620/EEC)

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 715/90 of 5 March 1990 on the arrangements applicable to agricultural products and certain goods resulting from the processing of agricultural products originating in the ACP States or in the overseas countries and territories (OCT) ⁽¹⁾, and in particular Article 27 thereof,

Having regard to Commission Regulation (EEC) No 2377/80 of 4 September 1980 on special detailed rules for the application of the system of import and export licences in the beef and veal sector ⁽²⁾, as last amended by Regulation (EEC) No 2996/90 ⁽³⁾, and in particular Article 15 (6) (b) (i) thereof,

Whereas Regulation (EEC) No 715/90 provides for the possibility of issuing import licences for beef and veal products; whereas, however, imports must take place within the limits of the quantities specified for each of these exporting non-member countries;

Whereas the applications for import licences submitted between 1 and 10 November 1990, expressed in terms of boned meat, in accordance with Article 15 (1) (b) of Regulation (EEC) No 2377/80, do not exceed, in respect of products originating from Botswana, Kenya, Madagascar, Swaziland and Zimbabwe, the quantities available from these States; whereas it is therefore possible to issue import licences in respect of the quantities requested;

Whereas the remaining quantities, in respect of which licences may be applied for from 1 December 1990, should be fixed within the scope of the total quantity of 39 100 tonnes;

Whereas it seems expedient to recall that this Decision is without prejudice to Council Directive 72/462/EEC of 12 December 1972 on health and veterinary inspection problems upon importation of bovine animals and swine

and fresh meat from third countries ⁽⁴⁾, as last amended by Directive 90/425 ⁽⁵⁾,

HAS ADOPTED THIS DECISION:

Article 1

The following Member States shall issue on 21 November 1990 import licences concerning beef and veal products, expressed in terms of boned meat, originating from certain African, Caribbean and Pacific States, in respect of the quantities and the countries of origin stated:

United Kingdom:

- 150,00 tonnes originating in Botswana,
- 400,00 tonnes originating in Zimbabwe,

Germany:

- 50,00 tonnes originating in Swaziland.

Article 2

Applications for licences may be submitted, in accordance with Article 15 (6) (b) (ii) of Regulation (EEC) No 2377/80 during the first 10 days of November 1990 in respect of the following quantities of boned beef and veal:

— Botswana:	7 832,96 tonnes,
— Kenya:	142,00 tonnes,
— Madagascar:	7 579,00 tonnes,
— Swaziland:	2 082,62 tonnes,
— Zimbabwe:	8 700,00 tonnes.

Article 3

This Decision is addressed to the Member States, with the exception of Portugal.

Done at Brussels, 16 November 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 84, 30. 3. 1990, p. 85.

⁽²⁾ OJ No L 241, 13. 9. 1980, p. 5.

⁽³⁾ OJ No L 286, 18. 10. 1990, p. 17.

⁽⁴⁾ OJ No L 302, 31. 12. 1972, p. 28.

⁽⁵⁾ OJ No L 224, 18. 8. 1990, p. 29.