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(Continued overleaf)

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 532/94

of 7 March 1994

extending the measures taken under the Agreement between the European Economic Community and the United States of America for the conclusion of negotiations under GATT Article XXIV.6

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas pursuant to an Agreement between the European Economic Communigy and the United States of America for the conclusion of negotiations under Article XXIV.6 of the General Agreement on Tariffs and Trade (GATT) [1] which was extended by an Exchange of Letters [2] complementing that Agreement until 31 December 1991, the Community agreed to take certain measures;

Whereas the Community applied these measures during 1992 and 1993 by virtue of Regulations (EEC) No 3919/91 [3] and (EEC) No 991/93 [4];

Whereas the reasons still exist for the extension of these measures,

HAS ADOPTED THIS REGULATION:

Article 1

The measures referred to in the Exchange of Letters complementing the Agreement between the European Economic Community and the United States of America for the conclusion of negotiations under GATT Article XXIV.6 shall be applied by the Community until 31 December 1994.

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 from 1 January 1994.

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

Done at Brussels, 7 March 1994.

For the Council

The President

Th. PANGALOS

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[1] OJ No L 98, 10. 4. 1987, p. 1.
[2] OJ No L 17, 23. 1. 1991, p. 17.
[3] OJ No L 372, 31. 12. 1991, p. 35.
[4] OJ No L 104, 29. 4. 1993, p. 1.

COMMISSION REGULATION (EC) No 533/94

of 10 March 1994

fixing the minimum levies on the importation of olive oil and levies on the importation of other olive oil sector products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European 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 (EC) No 3179/93 [2], and in particular Article 16 (2) thereof,

Having regard to Council Regulation (EEC) No 1514/76 of 24 June 1976 on imports of olive oil originating in Algeria [3], as last amended by Regulation (EEC) No 1900/92 [4], and in particular Article 5 thereof,

Having regard to Council Regulation (EEC) No 1521/76 of 24 June 1976 on imports of olive oil originating in Morocco [5], as last amended by Regulation (EEC) No 1901/92 [6], and in particular Article 5 thereof,

Having regard to Council Regulation (EEC) No 1508/76 of 24 June 1976 on imports of olive oil originating in Tunisia [7], as last amended by Regulation (EEC) No 413/86 [8], and in particular Article 5 thereof,

Having regard to Council Regulation (EEC) No 1180/77 of 17 May 1977 on imports into the Community of certain agricultural products originating in Turkey [9], as last amended by Regulation (EEC) No 1902/92 [10], and in particular Article 10 (2) thereof,

Having regard to Council Regulation (EEC) No 1620/77 of 18 July 1977 laying down detailed rules for the importation of olive oil from Lebanon [11],

Whereas by Regulation (EEC) No 3131/78 [12], as amended by the Act of Accession of Greece, the Commission decided to use the tendering procedure to fix levies on olive oil;

Whereas Article 3 of Council Regulation (EEC) No 2751/78 of 23 November 1978 laying down general rules for fixing the import levy on olive oil by tender [13] specifies that the minimum levy rate shall be fixed for each of the products concerned on the basis of the situation on the world market and the Community market and of the levy rates indicated by tenderers;

Whereas, in the collection of the levy, account should be taken of the provisions in the Agreements between the Community and certain third countries; whereas in particular the levy applicable for those countries must be fixed, taking as a basis for calculation the levy to be collected on imports from the other third countries;

Whereas, pursuant to Article 101 (1) of Council Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community [14], no levies shall apply on imports of products originating in the overseas countries and territories;

Whereas application of the rules recalled above to the levy rates indicated by tenderers on 7 and 8 March 1994 leads to the minimum levies being fixed as indicated in Annex I to this Regulation;

Whereas the import levy on olives falling within CN codes 0709 90 39 and 0711 20 90 and on products falling within CN codes 1522 00 31, 1522 00 39 and 2306 90 19 must be calculated from the minimum levy applicable on the olive oil contained in these products; whereas, however, the levy charged for olive oil may not be less than an amount equal to 8 % of the value of the

[1] OJ No 172, 30. 9. 1966, p. 3025/66.
[2] OJ No L 285, 20. 11. 1993, p. 9.
[3] OJ No L 169, 28. 6. 1976, p. 24.
[4] OJ No L 192, 11. 7. 1992, p. 1.
[5] OJ No L 169, 28. 6. 1976, p. 43.
[6] OJ No L 192, 11. 7. 1992, p. 2.
[7] OJ No L 169, 28. 6. 1976, p. 9.
[8] OJ No L 48, 26. 2. 1986, p. 1.
[9] OJ No L 142, 9. 6. 1977, p. 10.
[10] OJ No L 192, 11. 7. 1992, p. 3.
[11] OJ No L 181, 21. 7. 1977, p. 4.
[12] OJ No L 370, 30. 12. 1978, p. 60.
[13] OJ No L 331, 28. 11. 1978, p. 6.
[14] OJ No L 263, 19. 9. 1991, p. 1.

imported product, such amount to be fixed at a standard rate ; whereas application of these provisions leads to the levies being fixed as indicated in Annex II to this Regulation,

HAS ADOPTED THIS REGULATION :

Article 1

The minimum levies on olive oil imports are fixed in Annex I.

Article 2

The levies applicable on imports of other olive oil sector products are fixed in Annex II.

Article 3

This Regulation shall enter into force on 11 March 1994.

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

Done at Brussels, 10 March 1994.

For the Commission

René STEICHEN

Member of the Commission

ANNEX I

Minimum import levies on olive oil (1)

(ECU/100 kg)

CN code	Non-member countries
1509 10 10	79,00 (2)
1509 10 90	79,00 (2)
1509 90 00	92,00 (3)
1510 00 10	77,00 (2)
1510 00 90	122,00 (4)

(1) No levy applies to OCT originating products according to Article 101 (1) of Decision 91/482/EEC.

(2) For imports of oil falling within this CN code and produced entirely in one of the countries listed below and transported directly from any of those countries to the Community, the levy to be collected is reduced by :

(a) Lebanon : ECU 0,60 per 100 kg ;

(b) Tunisia : ECU 12,69 per 100 kg provided that the operator furnishes proof of having paid the export tax applied by that country ; however, the repayment may not exceed the amount of the tax in force ;

(c) Turkey : ECU 22,36 per 100 kg provided that the operator furnishes proof of having paid the export tax applied by that country ; however, the repayment may not exceed the amount of the tax in force ;

(d) Algeria and Morocco : ECU 24,78 per 100 kg provided that the operator furnishes proof of having paid the export tax applied by that country ; however, the repayment may not exceed the amount of the tax in force.

(3) For imports of oil falling within this CN code :

(a) produced entirely in Algeria, Morocco or Tunisia and transported directly from any of those countries to the Community, the levy to be collected is reduced by ECU 3,86 per 100 kg ;

(b) produced entirely in Turkey and transported directly from that country to the Community, the levy to be collected is reduced by ECU 3,09 per 100 kg.

(4) For imports of oil falling within this CN code :

(a) produced entirely in Algeria, Morocco or Tunisia and transported directly from any of those countries to the Community, the levy to be collected is reduced by ECU 7,25 per 100 kg ;

(b) produced entirely in Turkey and transported directly from that country to the Community, the levy to be collected is reduced by ECU 5,80 per 100 kg.

ANNEX II

Import levies on other olive oil sector products (1)

(ECU/100 kg)

CN code	Non-member countries
0709 90 39	17,38
0711 20 90	17,38
1522 00 31	39,50
1522 00 39	63,20
2306 90 19	6,16

(1) No levy applies to OCT originating products according to Article 101 (1) of Decision 91/482/EEC.

COMMISSION REGULATION (EC) No 534/94

of 9 March 1994

imposing a provisional anti-dumping duty on imports of certain magnetic disks (3,5" microdisks) originating in Hong Kong and the Republic of Korea

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European 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,

WHEREAS:

A. PROCEDURE

(1) In September 1992, the Commission 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 certain magnetic disks (3,5" microdisks) originating in Hong Kong and the Republic of Korea, and commenced an investigation.

The proceeding was initiated as a result of a complaint lodged by the Committee of European Diskette Manufacturers (Diskma) on behalf of producers whose collective output of 3,5" microdisks was alleged to represent a major proportion of the Community production of these microdisks.

The complaint contained evidence of dumping of the product originating in the countries indicated above, and of material injury resulting therefrom; this evidence was considered sufficient to justify opening a proceeding.

(2) The Commission officially advised the producers, exporters and importers known to be concerned, the representatives of the exporting countries, and the complainants, and gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

The Government of Hong Kong, a number of producers in the countries concerned and an importer in the Community related to a producer in the Republic of Korea made their views known. All parties who so requested were granted a hearing.

(3) The Commission sent questionnaires to parties known to be concerned and received detailed information from the complainant Community producers, certain producers in Hong Kong, one producer in the Republic of Korea, and one importer in the Community related to the Korean producer.

(4) The Commission carried out investigations at the premises of the following firms:

(a) *Complainant Community producers:*

Belgium:

— Sentinel Computer Products Europe, NV, Wellen;

France:

— RPS, Rhône-Poulenc Systems, Noisy-le-Grand;

Germany:

— Boeder AG, Flörsheim am Main;

Italy:

— Balteadisk SpA, Arnad,

— Computer Support Italy srl, Verderio inferiore;

(b) *Hong Kong producers:*

— Jackin Magnetic Company Limited,

— Plantron (HK) Ltd,

— Swire Magnetics Holdings Limited,

— Technosource Industrial Ltd;

(c) *Korean producer:*

— SKC Limited, Seoul;

(d) *Related importer:*

— SKC Europe GmbH, Frankfurt am Main, Germany.

(5) The investigation of dumping covered the period from 1 August 1991 to 31 July 1992 'the investigation period'.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No C 239, 18. 9. 1992, p. 4.

(6) Owing to the volume and complexity of the data gathered and examined, the investigation has exceeded the normal time period of one year.

(7) Following an anti-dumping proceeding on imports of certain magnetic disks (3,5" microdisks) originating in Japan, Taiwan and the People's Republic of China, hereafter referred to as the 'prior proceeding', definitive anti-dumping duties were imposed in October 1993 by Council Regulation (EEC) No 2861/93 (1).

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(i) Description of the product concerned

(8) The product covered by the complaint, and for which the proceeding was opened, was 3,5" microdisks, used to record and store digital computer information (CN code ex 8523 20 90).

(9) The microdisks concerned were available in various types, depending on their storage capacity and on the way in which they were marketed. However, no significant differences existed in the basic physical characteristics and technology of the various types of microdisk, all of which, in addition, showed a high degree of interchangeability.

(10) In these circumstances, and in the light of the position adopted by the Council at recital (7) of Regulation (EEC) No 2861/93, all 3,5" microdisks should be considered as one product for the purposes of this proceeding, as they were in the prior proceeding.

(ii) Like product

(11) The investigation showed that the various types of microdisks concerned sold on the domestic markets of Hong Kong and the Republic of Korea were alike to those exported from those two countries to the Community.

(12) Similarly, the various typers of microdisk manufactured in the Community and those exported to the Community from both the countries in question use the same basic technology and are alike in their essential physical characteristics and end-uses. They have, therefore, to be considered as a like product in accordance with Article 2 (12) of Regulation (EEC) No 2423/88 (hereinafter referred to as 'the basic Regulation').

C. DUMPING

(i) Normal value

For both the exporting countries concerned, normal values were provisionally established for each type of the product concerned exported to the Community during the investigation period.

(a) *Hong Kong*

(13) All four cooperating producers provided information on domestic sales and costs of production. None of these producers, however, had sufficient sales on the Hong Kong market (namely, less than 5 % of the quantities exported to the Community) to permit a proper comparison under Article 2 (3) (b) of the basic Regulation. Normal value was, therefore, constructed on the basis of the verified costs of manufacture of the producers concerned plus a reasonable amount for selling, general and administrative expenses and profit. Those last named items could not be established by reference to the cooperating producers, owing to the non-representative nature of their domestic sales of the product concerned, as indicated above, nor, for the same reason, by reference to sales by these companies in the same business sector. In those circumstances, therefore, the selling, general and administrative expenses of the only producer having sales on the Hong Kong market — albeit not in the same business sector — were considered to form the most reasonable basis for the determination of these expenses in Hong Kong, in accordance with Article 2 (3) (b) (ii) of the basic Regulation. As to profit, a margin of 10 % was indicated by reliable sources as reasonable for this type of product on the Hong Kong market. The Commission has, therefore, used this margin of 10 % as a basis for its provisional determination.

(b) *Republic of Korea*

(14) For the only Korean producer who replied to the Commission's questionnaire, normal value was established, in accordance with Article 2 (3) (a) of the basic Regulation, on the basis of the price actually paid in the ordinary course of trade for domestic sales of the like product, which were made in sufficient quantities to permit a proper comparison.

(1) OJ No L 262, 21. 10. 1993, p. 4.

(ii) **Export price**

(15) In the case of one producer in Hong Kong for whom the majority of sales were made to one own-equipment manufacturer (OEM) customer in the Community, the price actually charged reflected the fact that the assembled product contained components supplied, at no charge to the producer, by this OEM customer, and this price could not be considered the export price for the purposes of Article 2 (8) (b) of the basic Regulation.

In those circumstances, the Commission constructed the export price. To that end, it was considered reasonable to add to the price actually charged an amount to represent the cost and profit realizable on the component concerned.

For other producers in Hong Kong, and for sales by the cooperating producer in the Republic of Korea to unrelated importers in the Community, export prices, for the purposes of provisional findings, were established on the basis of the prices actually paid or payable for the products sold for export to the Community.

(16) In the case of sales made by the cooperating producer in the Republic of Korea to its related importers in the Community, export prices were constructed, in accordance with Article 2 (8) (b) of the basic Regulation, on the basis of the price at which the imported product was first resold to an independent buyer in the Community. In constructing these export prices, allowances were made for all costs incurred between importation and resale and for a profit margin of 5 %, which is provisionally considered to be reasonable on the basis of the profits made by independent importers in the electronics sector.

(iii) **Comparison**

(17) Normal value, by product type, was compared with the export price for the corresponding type, transaction by transaction, at the same level of trade, and on an ex-works basis. For the purposes of a fair comparison, adjustments were made, in accordance with Article 2 (9) and (10) of the basic Regulation, in respect of differences in physical characteristics and selling expenses for which satisfactory evidence was submitted.

(18) The Korean producer claimed an adjustment for physical characteristics relating to formatted micro-disks exported to the Community. The amount of increase proposed by this producer represented only the cost of the formatting process, without reference to its effect on the market value of the product concerned.

The Commission's view is that this adjustment should be calculated on the basis of the significant effect of this process on market prices, and normal value has, therefore, been adjusted accordingly.

The same exporter claimed adjustments for credit costs on the open account basis.

The Commission considers that the adjustment for credit costs should relate only to the conditions and terms of sale of the individual transaction, and, as such, should be determined on the basis of that sale. Claims under this heading were, therefore, only allowed up to the maximum permitted by the terms of the sales transactions in question.

Claims by this same producer for adjustment to normal value in respect of selling expenses not covered by Article 2 (10) of the basic Regulation, namely promotion and brand expenses, were disallowed.

(iv) **Dumping margins**

(19) The comparison showed the existence of dumping, the dumping margins being equal to the amount by which the normal value, as established, exceeds the price for export to the Community.

(20) The weighted average dumping margins for each producer, expressed as a percentage of the free-at-Community-frontier price are as follows:

Hong Kong

— Jackin Magnetic Company Limited: 7,2,

— Plantron (HK) Ltd: 6,7,

— Swire Magnetic Holdings Limited: 22,2,

— Technosource Industrial Ltd: 20,1;

Republic of Korea

— SKC Limited: 8,2.

(21) For those producers in the countries concerned which neither replied to the Commission's questionnaire nor otherwise made themselves known, the dumping margin was determined on the basis of the facts available in accordance with Article 7 (7) (b) of the basic Regulation.

(22) As far as Korea is concerned, it was considered that, since almost all imports into the Community originating in Korea were produced by the cooperating producer in that country, the finding made with regard to this producer provided the most appropriate basis for the determination of the dumping margin.

The Commission considers, therefore, that it would have provided a bonus for non-cooperation, and may lead to the circumvention of anti-dumping measures, should any of the producers concerned be deemed to have dumped at a level lower than that found for the producer in the Republic of Korea which had cooperated.

(23) Regarding Hong Kong, the Commission has noted that the exports reported by the cooperating producers accounted for approximately 26 % of total imports into the Community of the product concerned originating in Hong Kong.

In the light of the low level of exports covered by the investigation and the seriousness of the non-cooperation on the part of Hong Kong producers, the Commission considered, that the highest dumping margin found for a cooperating producer could not provide an appropriate basis for the dumping margin for non-cooperating producers.

This was considered necessary in order not to provide an unacceptable bonus for non-cooperation or to discriminate against those producers in Hong Kong which cooperated. The low level of cooperation in this case leads the Commission to believe that the companies with the higher dumping margins have deliberately chosen not to cooperate. In view of the lack of reliable information from other sources, and the need to ensure that the measures introduced consitute effective protection for the Community from unfair trade, it was considered appropriate, for provisional determination, to establish the dumping margin for non-cooperating producers in Hong Kong, in accordance with the provisions of Article 7 (7) (b) of the basic Regulation, at the dumping margin alleged for that country by the complainants, namely 35,7 %. The results of the investigation, in particular those concerning the establishment of normal value, generally appear to confirm the reliability of the allegations of the complaint on the dumping margin.

D. COMMUNITY INDUSTRY

(24) In examining whether the complainants constitute a major proportion of the total Community production of the like product, the Commission, as it had done in the prior proceeding on imports of the like product, requested and obtained information from all producers in the Community.

The Commission also had to take into consideration the fact that some of the producers in the Community are related to producers in Japan, Taiwan and the People's Republic of China found to be dumping and causing material injury thereby, under Regulation (EEC) No 2861/93, and that other producers in the Community without such relationships themselves imported the dumped product.

(25) The cooperating producer in the Republic of Korea argued that the complainant industry lacked the standing to submit the complaint on behalf of the Community industry, as is required by Article 5 (1) of the basic Regulation, on the grounds that no account had been taken by Diskma of the production in the Community of Japanese-affiliated producers. As the proceeding in question concerned 3,5" microdisks originating in Hong Kong and the Republic of Korea, it was not open to the Commission to exclude those Japanese-related companies from the 'Community industry' within the meaning of the first indent of Article 4 (5) of the basic Regulation.

(26) The situation of producers in the Community which were affiliated to Japanese producers was examined in the prior proceeding, where the Council found, in recital (20) of Regulation (EEC) No 2861/93, that it was only by excluding such producers which have participated in injurious dumping that the Community Institutions can obtain an objective and undistorted view of the effects of dumped imports. As a consequence, the assessment of the effects of the dumped imports originating in Hong Kong and the Republic of Korea would be equally distorted if those producers already found to be dumping the like product, and causing material injury to the same complainant, were not excluded from the definition of the Community industry.

(27) Some of the complainant producers imported the product under investigation from producers for which dumping has been established. However, the level of imports during the investigation period was limited to that necessary to maintain sales by the complainant producers concerned while their own output was temporarily insufficient, at a time of rapid market growth. Failure to keep pace with market developments at such a time would have had severely damaging consequences for their continued presence on the Community market. These producers, therefore, were neither shielded from the effects of dumping nor benefited from it.

In the light of the above, it was considered that there were no grounds for the exclusion of any of the complainant producers from the definition of the Community industry.

(28) In the course of its investigation, the Commission found that one of the complainant companies, Balteadisk, was unable to substantiate satisfactorily the information provided to the Commission in its questionnaire response regarding its levels of production and prices. The Commission, therefore, has provisionally excluded the information so provided by the company; as a consequence, the information supplied by Balteadisk has been disregarded.

(29) On the basis of the above considerations, the share of the total Community production of the product concerned held by the complainant producers during the investigation period amounted to approximately 72 %, which is a major proportion of total Community production.

E. INJURY

It will be recalled that the Council, in Regulation (EEC) No 2861/93, found that the Community industry was suffering material injury from the effects of the dumped imports from Japan, Taiwan and the People's Republic of China. In the present proceeding, the Commission examined whether the dumped imports of the like product from Hong Kong and the Republic of Korea also contributed to the material injury to the Community industry.

(i) Cumulation of the effects of the dumped imports

(30) In establishing the impact of the dumped imports from Hong Kong and the Republic of Korea on the Community industry, the Commission has considered the effect of all dumped imports from both countries. In analyzing whether cumulation of these imports is appropriate, the Commission has considered the comparability of the product imported from the countries concerned in terms of the following criteria : similarity of physical characteristics, interchangeability of end-uses, scale of the volumes imported, simultaneous competition on the Community market and with the like product manufactured by the Community industry, and similarity of channels of distribution and price behaviour in the Community market of the producers in the countries concerned.

(31) The cooperating producer in the Republic of Korea argued that imports of 3,5" microdisks from that country should not be cumulated with imports from Hong Kong, as the share of the Community market taken up by imports from Korea is too small to be a contributory factor to material injury. It was further argued that this market share has been decreasing constantly over the last four years, unlike that of Hong Kong which has greatly increased.

(32) The Commission has examined these claims. As to the size of the market share held by imports from the Republic of Korea during the investigation period, this was found to equal 2,4 %. Regarding changes in market shares, developments were indeed different, with Hong Kong's share of Community apparent consumption rising from 6,0 % in 1989 to 11,8 % in the investigation period. The Republic of Korea's share, on the other hand, was stable, at 2,5 % in 1989 and 2,4 % in the investigation period. At this percentage, however, Korea's share is above the level that can be considered *de minimis*. The arguments of the producer concerned in the Republic of Korea have, therefore, to be rejected.

(33) After examination of the facts, it was found that the 3,5" microdisks imported from both the countries concerned were, on a type-by-type basis, alike in all respects, interchangeable and marketed in the Community within a comparable period and under similar commercial policies. These imports competed with each other and with the like product manufactured by the Community industry. It was also found that there was no clear distinction in the price behaviour in the Community of the producers in the countries concerned. In addition, the volumes of the dumped imports from either of the countries could not be considered negligible.

(34) In those circumstances, and in accordance with the standard practice of the Community Institutions, it was considered that there are sufficient grounds to cumulate the imports from both the countries concerned.

(ii) **Community consumption, volume and market share of the dumped imports**

(35) The Commission has relied on the methodology adopted in the prior proceeding.

On this basis, Community consumption was 295 million units in 1989, 398 million in 1990, 582 million in 1991 and 656 million in the investigation period, i.e. growth of 122 % between 1989 and the investigation period. The volume of dumped imports into the Community of the product concerned originating in Hong Kong and the Republic of Korea was 25 million units in 1989, 37 million in 1990, 79 million in 1991 and 94 million in the investigation period — that is, an increase in dumped imports of 276 % between 1989 and the investigation period.

(36) The developments of these imports, assessed in the light of Community apparent consumption, led to a combined share of the Community market held by Hong Kong and the Republic of Korea of 8,5 % in 1989, 9,4 % in 1990, 13,6 % in 1991 and 14,2 % in the investigation period.

(iii) **Prices of dumped imports**

(37) The prices charged by the producers investigated in Hong Kong and the Republic of Korea were, during the investigation period, significantly below the prices charged by the Community industry. Price undercutting was established, for each of the producers investigated in the countries concerned, by comparing their prices for sales to the first independent customer in the Community with the weighted average prices of the Community industry. In general, the comparison was made for the markets of France, Germany, Italy and the United Kingdom, which together represent most of the Community market for the product concerned, and to which the majority of the dumped imports in question were delivered.

The comparison was made separately for each of the product-types imported which were considered for the dumping determination. Adjustments were also made in respect of customs duty and the importer's profit margin mentioned in recital (16).

The result of the comparison showed margins of price undercutting for all the producers investigated. The weighted average undercutting ranged from 8,1 % to 25,3 % for Hong Kong, and was 19,7 % for the Republic of Korea.

(iv) **Situation of the Community industry**

(a) *Production and capacity utilization*

(38) The volume of production of the product concerned by the Community industry increased from 31 million units in 1989, to 48 million in 1990, 69 million in 1991 and to 87 million in the investigation period — an absolute increase of 180 % over the period from 1989. Capacity utilization rates went from 49 % in 1989 to 60 % in 1990, 76 % in 1991 and to around 84 % in the investigation period.

(b) *Sales and market shares*

(39) While the Community industry's share of the Community market grew by 2,5 percentage points between 1989 and the investigation period, this growth was below the level that could normally have been expected from a relatively young industry at a time when apparent consumption on its domestic market rose by 122 % over the same period.

(c) *Prices*

(40) Complainant Community producers' prices fell overall by 29 % between 1989 and the investigation period. In general, the level of prices charged by the Community industry in that period, in its effort to achieve reasonable levels of capacity utilization and market share, did not permit a reasonable level of profit to be made, and, on average, did not cover production costs.

(d) *Profitability*

(41) The development of prices and production costs resulted in losses from 1989 for the majority of the Community producers concerned. These losses on turnover in the Community amounted, on average, to more than 6 % for the Community industry. In addition, in some cases, return on sales was insufficient to recover the costs of investments already incurred, and to support the further investment necessary to ensure a continued presence in this rapidly evolving, high-technology sector.

(e) *Investments*

(42) The development of investment by the Community industry in 3,5" microdisk production capacity has been as follows: between 1989 and 1990, an increase of 29 %; 1990 to 1991, 14 %; 1991 to investigation period 14 %. The slowdown in the annual rate of investment, even though the market was showing growth of more than 30 % over the period, is clear, as is the reluctance of Community producers to increase investments in line with market growth in the face of unfair competition from dumped imports.

(v) Conclusions on injury

(43) In the light of the remarks in the introduction to this section on injury, and the foregoing analysis, the Commission provisionally concludes that the Community industry is suffering material injury.

In its essentials, the situation remains as it was set out in recital (62) of Commission Regulation (EEC) No 920/93 imposing a provisional anti-dumping duty in the prior proceeding (1). Although certain quantitative indicators, such as production, sales and capacity utilization showed positive development, due in large measure to the expansion of the market, they remained below the levels necessary for the generation of profits adequate to finance the investments needed to allow the Community industry to keep pace with the swiftly changing conditions evident in the area of communications technology. Indeed, despite the expanding consumption prevailing in the market, the Community industry's prices fell by around 30 % over the period examined.

F. CAUSATION OF INJURY

(44) The Commission examined whether the material injury suffered by the Community industry had been caused by the dumped imports from Hong Kong and the Republic of Korea, and whether other factors may have caused or contributed to that injury.

(i) Effect of the dumped imports from Hong Kong and the Republic of Korea

(45) In its examination, the Commission found that the increasing volume and growing market share of the dumped imports from the countries concerned by the present proceeding coincided in time with the precarious financial situation of the Community industry. As far as the prices of the dumped imports were concerned, substantial margins of undercutting were found. These could not have failed to have had very negative consequences for the Community industry. Indeed, as pointed out in the prior proceeding, the market for 3,5" microdisks is transparent, with a high price elasticity of demand. There are many suppliers, many price-sensitive consumers and market information is good. As a result, the Community industry has had to reduce its prices in an attempt to capture a viable share of the Community market with a level of production that allows the economic employment of resources. The depression of prices has also led to the general lack of profitability referred to in recital (41) above.

(ii) Effects of other factors

(46) The Commission considered whether factors other than dumped imports from the countries concerned might have caused, or contributed to, the injury suffered by the Community industry. In particular, the Commission examined the imports from countries not covered by this proceeding, and the possibility that injury may have been self-inflicted through the import of low-priced 3,5" microdisks by the Community industry.

(47) The cooperating producer in the Republic of Korea contended, first, that imports of the like product from Korea could not have caused material injury as the market share held by these imports was negligible; secondly, it was claimed that any injury was due to imports from countries other than the Republic of Korea; finally, the decline in Community producers' prices was attributable to the import and sale of low-priced 3,5" microdisks by the Community industry.

(48) As to the allegedly negligible share of the Community market held by the Republic of Korea, this was examined at recital (32) above and found to be above a level that could be considered negligible.

As regards imports from countries other than those concerned by this proceeding, the Council has already determined that imports of the like product from Japan, Taiwan and the People's Republic of China were dumped and had caused material injury to the Community industry, as stated at recital (7) above.

(1) OJ No L 95, 21. 4. 1993, p. 5.

As to other countries, their share of the Community market remained generally stable over the period considered. As to the level of prices of these imports, no conclusions can be drawn from the information made available to the Commission during the preliminary investigation.

Even if it were assumed, however, that imports from countries other than those subject to this proceeding and the prior proceeding had caused some injury to the Community industry, this would not alter the fact that the injury caused by the dumped imports concerned by this proceeding, in isolation, is material.

(49) As to the contention that the decline in prices on the Community market was due to the import and sale by the Community industry of low-priced 3,5" microdisks, the Commission's investigation showed that these imports were made in order to defend a competitive position in the Community and maintain market share. Further, the prices at which the imported product was sold by the Community producer concerned were the same as the sales prices of its own-produced 3,5" microdisks.

(50) In those circumstances, the Commission concludes for the purposes of provisional findings, that, notwithstanding the injury found to have been caused by dumped imports from Japan, Taiwan and the People's Republic of China, the dumped imports from Hong Kong and the Republic of Korea, because of their low prices, their share of the Community market, and the resulting lack of profitability of the Community industry, have, in isolation, caused material injury to this industry.

G. COMMUNITY INTEREST

(51) In assessing the Community interest, the Commission has to take account of two basic elements. The first is that putting an end to distortions of competition arising from unfair commercial practices, and thus re-establishing open and fair competition on the Community market, is the very purpose of anti-dumping measures, and is fundamentally in the general interest of the Community. Secondly, failure to take provisional measures in the present proceeding would aggravate the already precarious situation of the Community industry, marked by a lack of profitability and a consequential slowing of investment. This has put the continued existence of this industry at considerable risk. Should this industry be forced to cease production, the Community would become almost wholly dependent on third-country sources of supply in a rapidly developing area of increasing technological significance. Further, this could entail serious consequences for Community manufacturers of components for 3,5" microdisks.

(52) The cooperating producer in the Republic of Korea has argued that the imposition of anti-dumping measures was not likely to improve the future health of the Community industry, and would only serve to increase costs to the consumer. Further, it is contended that, as Community production capacity is limited and Community manufacturers themselves need to import from Asian sources to service their customer base, the introduction of duties would reduce supply and drive up prices. Relief for the Community industry would be short-term only, while the software industry would be seriously damaged.

(53) The Commission examined those contentions.

As to the interests of consumers and the software industry, any short-term price advantages have to be weighed against the longer-term effects of not restoring fair competition. Indeed, to refrain from taking action would seriously threaten the viability of the Community industry, the disappearance of which would, in fact, reduce supply and competition, to the detriment of consumers and the software houses.

Further, while it is true that production in the Community is currently insufficient to meet demand for the product concerned anti-dumping measures merely remove the distortion of competition arising from dumping and are not, therefore, an obstacle to filling the gap in demand with supplies from third countries at fair prices. Indeed, where the level of the anti-dumping measures is equal to the dumping margin, but lower than the amount required to fully remove the injury, it is only the unfair element of the exporters' price advantage that is eliminated. In those circumstances, exports can still compete on the basis of their true comparative advantage and exporters, therefore, will be unlikely to experience diminished access to the Community market.

(54) In addition, since anti-dumping duties have already been imposed on imports of the like product from Japan, Taiwan and the People's Republic of China, Community interest requires that, in order to avoid discrimination between countries found to have been dumping and causing material injury, protective measures be introduced, in the interests of equity, with regard to imports of the dumped 3,5" microdisks subject to this proceeding.

(55) After consideration of the various interests involved, it is provisionally concluded that the adoption of measures in the present case will re-establish fair competition by eliminating the injurious effects of dumping practices, and will afford the Community industry the opportunity of maintaining and developing this essential technology. In addition, certain safeguards will be offered to the component supply industry in the Community.

(56) The Commission finds, therefore, that it is in the Community interest to adopt anti-dumping measures, in the form of provisional duties, in order to prevent further injury being caused by the dumped imports concerned during the proceeding.

H. DUTY

(57) For the purpose of establishing the level of the provisional duty, the Commission took account of the dumping margins found and of the amount of duty necessary to eliminate the injury sustained by the Community industry.

(58) Since the injury consists principally of price depression, suppression of market share and, in particular, lack of profitability or losses, the removal of such injury requires that the industry shall be put in the position where prices can be increased to profitable levels without loss of sales volume. In order to achieve this, the prices of the imports concerned originating in Hong Kong and the Republic of Korea should be increased accordingly.

For calculating the necessary price increase, the Commission considered that the actual prices of these imports had to be compared to selling prices that reflect the costs of production of the complainant Community producers, plus a reasonable amount of profit.

(59) To that end, the Commission has used the production costs of the complainant industry, together with an amount for profit for which account was taken of the fact that the Community industry, being at a relatively early stage of development, requires a profit margin of 12 % on turnover to provide the amount of profit needed to ensure the viability of the Community industry.

The actual weighted average selling prices charged during the investigation period by the Community industry were increased for each product type, where appropriate, in order to achieve the overall minimum amount of profit required. The resultant prices thus established were compared with the prices of the dumped imports used to establish undercutting as outlined in recital (37).

The differences between these two prices expressed on a weighted average basis and as a percentage of the free-at-Community-frontier price, were above the dumping margins found for all the producers concerned in Hong Kong and the Republic of Korea. Therefore, the provisional duties imposed should be limited to the dumping margins established.

(60) In establishing the level of duty for producers in the Republic of Korea who neither replied to the Commission's questionnaire nor otherwise made themselves known, the Commission considers it appropriate, for the reasons concerning the dumping margin outlined in recital (22), to use the findings of the investigation as a basis and to apply the level of duty determined for the producer investigated.

As for producers in Hong Kong who neither replied to the Commission's questionnaire nor otherwise made themselves known, the Commission considers it appropriate, for the reasons outlined in recital (23) to establish the level of provisional duty at the highest dumping margin alleged by the complainant, namely 35,7 %.

(61) In the interests of sound administration, 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 :

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of 3,5" microdisks used to record and store encoded digital computer information falling within CN code ex 8523 20 90 (Taric Code 8523 2090*10), and originating in Hong Kong and the Republic of Korea.

2. The rate of duty applicable to the net free-at-Community-frontier price, before duty, shall be as follows :

Country	Products manufactured by	Rate of duty %	Taric additional code
Hong Kong	Jackin Magnetic Co., Ltd	7,2	8775
	Plantron HK Ltd	6,7	8776
	Swire Magnetic Holdings Ltd	22,2	8777
	Technosource Industrial Ltd	20,1	8778
	Other companies	35,7	8779
Republic of Korea	SKC Limited	8,2	8780
	Other companies	8,2	8781

3. The release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 7 (4) (b) of Regulation (EEC) No 2423/88, the parties concerned may make known their views 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.*

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

Done at Brussels, 9 March 1994.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION REGULATION (EC) No 535/94

of 9 March 1994

amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (1), as last amended by Commission Regulation (EEC) No 3080/93 (2), and in particular Article 9 thereof,

Whereas, to ensure uniform application of the Combined Nomenclature, provisions should be laid down for the classification of salted meat and edible meat offal falling within CN code heading 0210, in order to distinguish them from fresh, chilled or frozen meat and edible meat offal; whereas a total salt content of 1,2 % or more by weight appears an appropriate criterion for distinguishing between these two types of products;

Whereas an additional note to this effect should be inserted in Chapter 2 of the Combined Nomenclature; whereas Annex I to Regulation (EEC) No 2658/87 should therefore be amended;

Whereas the provisions of this Regulation are in accordance with the opinion of the Customs Code Committee — Tariff and Statistical Nomenclature Section,

HAS ADOPTED THIS REGULATION:

Article 1

The following additional note shall be inserted in Chapter 2 of the Combined Nomenclature annexed to Regulation (EEC) No 2658/87:

'8. For the purposers of heading No 0210, the term 'salted' means meat or edible meat offal which has been deeply and homogeneously impregnated with salt in all parts, having a total salt content not less than 1,2% by weight.'

Article 2

This Regulation shall enter into force on the twenty-first 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, 9 March 1994.

For the Commission

Christiane SCRIVENER

Member of the Commission

(1) OJ No L 256, 7. 9. 1987, p. 1.
(2) OJ No L 277, 10. 11. 1993, p. 1.

COMMISSION REGULATION (EC) No 536/94

of 9 March 1994

concerning the classification of certain goods in the combined nomenclature

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2658/87 [1] on the tariff and statistical nomenclature and on the Common Customs Tariff, as last amended by Commission Regulation (EC) No 535/94 [2], and in particular Article 9,

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

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

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

Whereas it is acceptance that binding tariff information issued by the customs authorities of Member States in respect of the classification of goods in the combined nomenclature and which do not conform to the rights established by this Regulation, can continue to be invoked, under the provisions in Article 12 (6) of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code [3], for a period of three months by the holder;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Tariff and Statistical Nomenclature Section of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

Article 3

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

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

Done at Brussels, 9 March 1994.

For the Commission

Christiane SCRIVENER

Member of the Commission

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[1] OJ No L 256, 7. 9. 1987, p. 1.

[2] See page 15 of this Official Journal.

[3] OJ No L 302, 19. 10. 1992, p. 1.

ANNEX

Description of goods	Classification CN code	Reasons
(1)	(2)	(3)
1. Diatomite, presented as an off-white powder with the following physical and chemical properties: — moisture content 4,7 % — ignition loss 5,6 % — pH (10 % suspension) 7 — sodium (% Na_2O): 0,2 % When calcined, the product takes on a pinkish tinge. The product is used as a filter medium.	2512 00 00	Classification is determined by the provisions of general rules 1 and 6 for the interpretation of the combined nomenclature, and by the wording of CN code 2512 00 00. See also the HS explanatory notes to heading 25.12. Its physical and chemical properties are those of natural diatomites, neither calcined nor activated.
2. Diatomite, presented as a pink/off-white powder with the following physical and chemical properties : — moisture content 0,2 % — ignition loss 0,4 % — pH (10 % suspension) 6 — sodium (% Na_2O): 0,3 % The product is used as a filter medium.	2512 00 00	Classification is determined by the provisions of general rules 1 and 6 for the interpretation of the combined nomenclature, and by the wording of CN code 2512 00 00. See also the HS explanatory notes to heading 25.12. The physical and chemical properties are those of diatomite which has been merely calcined, not activiated.
3. Diatomite, presented as a white powder with the following physical and chemical properties: — moisture content < 0,1 % — ignition loss 0,3 % — pH (10 % suspension) 8 — sodium (% Na_2O): 3,5 % The colour remains unchanged even after calcination. The product is used as a filter medium.	3802 90 00	Classification is determined by the provisions of general rules 1 and 6 for the interpretation of the combined nomenclature, and by the wording of CN codes 3802 and 3802 90 00. See also the HS explanatory notes to heading 38.02 (Part A), third paragraph, subparagraph (b) (1). The physical and chemical properties are those of the activated diatomite.

COMMISSION REGULATION (EC) No 537/94

of 10 March 1994

laying down a transitional measure relating to coupage of table wine in Spain for 1994

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Spain and Portugal [1], and in particular Article 90 thereof, whose period of validity has been extended to 31 December 1994 by Council Regulation (EEC) No 4007/87 [2], as last amended by Regulation (EC) No 370/94 [3],

Whereas Article 16 (5) of Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine [4], as last amended by Regulation (EEC) No 1566/93 [5], prohibits coupage of a white table wine with a red table wine ; whereas the abovementioned practice forms part of the arrangements in force in Spain and whereas Article 125 of the Act of Accession authorizes it until 31 December 1989, and Regulation (EEC) No 288/93 [6] confirms this authorization until 31 December 1993 ;

Whereas the conditions for the abandonment of this practice are not yet ripe in that country as they are related to the structure of wine-growing and consumers' attitudes, which change relatively slowly ; whereas the abandonment of the abovementioned practice would result in the immediate future in an imbalance on the market generating a shortage of red wine and a substantial surplus of white wine, which would require major intervention operations ; whereas the need to avoid very serious disturbance of the market justifies the adoption of a transitional measure ;

Whereas, so that the possibility of carrying out coupage involving white table wine and red table wine remains limited to the country where it is necessary, care must be taken to ensure that wine obtained from this practice may not be mixed with other Community wines ;

Whereas the measures provided for in this Regulation are in accordance with the Management Committee for Wine,

HAS ADOPTED THIS REGULATION :

Article 1

1. Until 31 December 1994, coupage of a wine suitable for yielding a white table wine or of a white table wine with a wine suitable for yielding a red table wine or with a red table wine shall be permitted on Spanish territory provided that the product obtained has the characteristics of a red table wine and that the percentage of red wine used is not less than 65 %.

2. Until the date in paragraph 1, coupage in the Community as constituted at 31 December 1985 of Spanish wine other than white table wine with wine from other Member States shall be prohibited.

3. Spanish red and rosé table wines may only be the subject of trade with the other Member States or be exported to third countries if they are not obtained from coupage as referred to in paragraph 1.

4. For the purposes of applying paragraph 3, each competent authority designated by Spain shall guarantee until 30 June 1995 the origin of Spanish red and rosé table wine by affixing a stamp preceded by the words 'wine not obtained from white/red coupage' in the box reserved for official remarks on document provided for in Commission Regulation (EEC) No 2238/93 [7].

Article 2

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

It shall apply from 1 January 1994.

[1] OJ No L 302, 15. 11. 1985, p. 9.
[2] OJ No L 378, 31. 12. 1987, p. 1.
[3] OJ No L 48, 19. 2. 1994, p. 9.
[4] OJ No L 84, 27. 3. 1987, p. 1.
[5] OJ No L 154, 25. 6. 1993, p. 39.
[6] OJ No L 34, 10. 2. 1993, p. 9.
[7] OJ No L 200, 10. 8. 1993, p. 10.

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

Done at Brussels, 10 March 1994.

For the Commission
René STEICHEN
Member of the Commission

COMMISSION REGULATION (EC) No 538/94

of 10 March 1994

laying down certain prices and amounts fixed in ecus for dried fodder and reduced as a result of the monetary realignments

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy [1], as amended by Regulation (EC) No 3528/93 [2], and in particular Article 9 (1) thereof,

Having regard to Commission Regulation (EEC) No 3824/92 of 28 December 1992 laying down the prices and amounts fixed in ecus to be amended as a result of the monetary realignments [3], as last amended by Regulation (EEC) No 1663/93 [4], and in particular Article 1 thereof,

Whereas Regulation (EEC) No 3824/92 lists the prices and amounts fixed in ecus which are to be divided by the coefficient 1,000426 fixed in Commission Regulation (EEC) No 537/93 [5], as last amended by Regulation (EEC) No 1331/93 [6], and provides for the resulting prices and amounts to be specified for each product group concerned; whereas the prices and amounts thus altered must apply from the beginning of the 1994/95 marketing year; whereas, furthermore, the guide price for dried fodder and the difference between the aid for dehydrated fodder and the aid for fodder otherwise dried should be adjusted;

Whereas Council Regulation (EEC) No 1288/93 [7] fixes the guide price for dried fodder for the 1993/94 and 1994/95 marketing years;

Whereas Article 4 of Commission Regulation (EEC) No 1528/78 [8], as last amended by Regulation (EEC) No 1069/93 [9], fixes the difference between the aid for dehydrated fodder and the aid for fodder otherwise dried;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. The guide price for dried fodder as referred to in Article 1 of Regulation (EEC) No 1288/93, reduced in accordance with Article 1 of Regulation (EEC) No 3824/92 shall be ECU 176,29 tonnes.

2. The difference between the aid for dehydrated fodder and the aid for fodder otherwise dried as referred to in Article 4 of Regulation (EEC) No 1528/78 reduced in accordance with Article 1 of Regulation (EEC) No 3824/92 shall be ECU 24,68 tonnes.

Article 2

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

It shall apply from 1 May 1994.

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

Done at Brussels, 10 March 1994.

For the Commission

René STEICHEN

Member of the Commission

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[1] OJ No L 387, 31. 12. 1992, p. 1.
[2] OJ No L 320, 22. 12. 1993, p. 32.
[3] OJ No L 387, 31. 12. 1992, p. 29.
[4] OJ No L 158, 30. 6. 1993, p. 18.
[5] OJ No L 57, 10. 3. 1993, p. 18.
[6] OJ No L 132, 29. 5. 1993, p. 114.
[7] OJ No L 132, 29. 5. 1993, p. 1.
[8] OJ No L 179, 1. 7. 1978, p. 10.
[9] OJ No L 108, 1. 5. 1993, p. 114.

COMMISSION REGULATION (EC) No 539/94

of 10 March 1994

authorizing Ireland to derogate from the minimum fat content of drinking milk

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1411/71 of 29 June 1971 laying down additional rules on the common market organization in milk and milk products for drinking milk [1], as last amended by Regulation (EEC) No 2138/92 [2], and in particular Article 6 (3) thereof,

Whereas Regulation (EEC) No 1411/71 lays down a minimum fat content of 3,50 % for whole milk intended to be delivered to consumers ; whereas pursuant to Article 6 (3) of that Regulation, derogations may, however, be granted for areas in which the natural fat content of the milk produced does not reach 3,50 % ; whereas Ireland has requested that this provision be applied to its whole territory ; whereas, in view of the supporting evidence submitted by this Member State, this derogation should be granted, with regard to the period for which the need for such derogation has been proved ; whereas application of this measure should be monitored closely ;

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

HAS ADOPTED THIS REGULATION :

Article 1

1. Milk produced in Ireland whose natural fat content does not reach 3,50 % may be sold as non-standardized whole milk the meaning of Article 3 of Regulation (EEC) No 1411/71.

2. The Member State referred to in paragraph 1 shall ensure that the milk subject to this derogation is not subjected to any skimming.

The Commission shall be informed of the measures taken for this purpose and of the application of this derogation.

Article 2

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

It shall apply from 1 March 1994 to 31 July 1994.

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

Done at Brussels, 10 March 1994.

For the Commission

René STEICHEN

Member of the Commission

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[1] OJ No L 148, 3. 7. 1971, p. 4.
[2] OJ No L 214, 30. 7. 1992, p. 6.

COMMISSION REGULATION (EC) No 540/94
of 10 March 1994
fixing the import levies on rice and broken rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice [1], as last amended by Regulation (EEC) No 1544/93 [2], and in particular Article 11 (2) thereof,

Having regard to Commission Regulation (EEC) No 833/87 of 23 March 1987 laying down detailed rules for the application of Council Regulation (EEC) No 3877/86 on imports of rice of the long-grain aromatic Basmati variety falling within CN codes 1006 10, 1006 20 and 1006 30 [3], as last amended by Regulation (EEC) No 674/91 [4], and in particular Article 8 thereof,

Whereas the import levies on rice and broken rice were fixed by Commission Regulation (EEC) No 2666/93 [5], as last amended by Regulation (EC) No 453/94 [6],

HAS ADOPTED THIS REGULATION:

Article 1

The import levies to be charged on the products listed in Article 1 (1) (a) and (b) of Regulation (EEC) No 1418/76 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 11 March 1994.

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

Done at Brussels, 10 March 1994.

For the Commission
René STEICHEN
Member of the Commission

[1] OJ No L 166, 25. 6. 1976, p. 1.
[2] OJ No L 154, 25. 6. 1993, p. 5.
[3] OJ No L 80, 24. 3. 1987, p. 20.
[4] OJ No L 75, 21. 3. 1991, p. 29.
[5] OJ No L 245, 1. 10. 1993, p. 4.
[6] OJ No L 57, 1. 3. 1994, p. 44.

ANNEX

to the Commission Regulation of 10 March 1994 fixing the import levies on rice and broken rice

(ECU / tonne)

CN code	Levies (6)		
	Arrangement in Regulation (EEC) No 3877/86 (5)	ACP Bangladesh (1) (2) (3) (4)	Third countries (except ACP) (3)
1006 10 21	—	144,15	295,50
1006 10 23	—	128,36	263,92
1006 10 25	—	128,36	263,92
1006 10 27	197,94	128,36	263,92
1006 10 92	—	144,15	295,50
1006 10 94	—	128,36	263,92
1006 10 96	—	128,36	263,92
1006 10 98	197,94	128,36	263,92
1006 20 11	—	181,08	369,37
1006 20 13	—	161,35	329,90
1006 20 15	—	161,35	329,90
1006 20 17	247,43	161,35	329,90
1006 20 92	—	181,08	369,37
1006 20 94	—	161,35	329,90
1006 20 96	—	161,35	329,90
1006 20 98	247,43	161,35	329,90
1006 30 21	—	224,27	472,40
1006 30 23	—	245,62	515,01
1006 30 25	—	245,62	515,01
1006 30 27	386,26	245,62	515,01
1006 30 42	—	224,27	472,40
1006 30 44	—	245,62	515,01
1006 30 46	—	245,62	515,01
1006 30 48	386,26	245,62	515,01
1006 30 61	—	239,20	503,11
1006 30 63	—	263,69	552,09
1006 30 65	—	263,69	552,09
1006 30 67	414,07	263,69	552,09
1006 30 92	—	239,20	503,11
1006 30 94	—	263,69	552,09
1006 30 96	—	263,69	552,09
1006 30 98	414,07	263,69	552,09
1006 40 00	—	52,87	111,74

(1) Subject to the application of the provisions of Articles 12 and 13 of Regulation (EEC) No 715/90.

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

(3) The import levy on rice entering the overseas department of Réunion is specified in Article 11a of Regulation (EEC) No 1418/76.

(4) The levy on imports of rice, not including broken rice (CN code 1006 40 00), originating in Bangladesh is applicable under the arrangements laid down in Regulations (EEC) No 3491/90 and (EEC) No 862/91.

(5) The levy on imports of rice of the long-grain aromatic Basmati variety is applicable under the arrangements laid down in amended Regulation (EEC) No 3877/86.

(6) No import levy applies to products originating in the OCT pursuant to Article 101 (1) of Decision 91/482/EEC, subject to the provisions of Decision 93/127/EEC.

COMMISSION REGULATION (EC) No 541/94

of 10 March 1994

fixing the premiums to be added to the import levies on rice and broken rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice [1], as last amended by Regulation (EEC) No 1544/93 [2], and in particular Article 13 (6) thereof,

Whereas the premiums to be added to the levies on rice and broken rice were fixed by Commission Regulation (EEC) No 2667/93 [3], as last amended by Regulation (EC) No 454/94 [4];

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

The premiums to be added to the import levies fixed in advance in respect of rice and broken rice originating in third countries shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 11 March 1994.

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

Done at Brussels, 10 March 1994.

For the Commission

René STEICHEN

Member of the Commission

[1] OJ No L 166, 25. 6. 1976, p. 1.
[2] OJ No L 154, 25. 6. 1993, p. 5.
[3] OJ No L 245, 1. 10. 1993, p. 7.
[4] OJ No L 57, 1. 3. 1994, p. 46.

ANNEX

to the Commission Regulation of 10 March 1994 fixing the premiums to be added to the import levies on rice and broken rice

(ECU / tonne)

CN code	Current	1st period	2nd period	3rd period
	3	4	5	6
1006 10 21	0	0	0	—
1006 10 23	0	0	0	—
1006 10 25	0	0	0	—
1006 10 27	0	0	0	—
1006 10 92	0	0	0	—
1006 10 94	0	0	0	—
1006 10 96	0	0	0	—
1006 10 98	0	0	0	—
1006 20 11	0	0	0	—
1006 20 13	0	0	0	—
1006 20 15	0	0	0	—
1006 20 17	0	0	0	—
1006 20 92	0	0	0	—
1006 20 94	0	0	0	—
1006 20 96	0	0	0	—
1006 20 98	0	0	0	—
1006 30 21	0	0	0	—
1006 30 23	0	0	0	—
1006 30 25	0	0	0	—
1006 30 27	0	0	0	—
1006 30 42	0	0	0	—
1006 30 44	0	0	0	—
1006 30 46	0	0	0	—
1006 30 48	0	0	0	—
1006 30 61	0	0	0	—
1006 30 63	0	0	0	—
1006 30 65	0	0	0	—
1006 30 67	0	0	0	—
1006 30 92	0	0	0	—
1006 30 94	0	0	0	—
1006 30 96	0	0	0	—
1006 30 98	0	0	0	—
1006 40 00	0	0	0	0

COMMISSION REGULATION (EC) No 542/94

of 10 March 1994

on the issue of import licences for high-quality fresh, chilled or frozen beef and veal

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 129/94 of 24 January 1994 opening a Community tariff quota for high-quality fresh, chilled or frozen meat of bovine animals falling within CN codes 0201 and 0202 and for products falling within CN codes 0206 10 95 and 0206 29 91 (1994) [1], and in particular Article 2 thereof,

Whereas Commission Regulation (EC) No 212/94 of 31 January 1994 laying down detailed rules for the application of import arrangements provided for by Council Regulations (EC) No 129/94 and (EC) No 131/94 for high-quality beef and frozen buffalo meat [2] provides in Article 6, that applications for and the issue of import licences for the meat referred to in Article 1 (1) (d) thereof are to be effected in accordance with the provisions of Articles 12 and 15 of 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 [3], as last amended by Regulation (EEC) No 2867/93 [4];

Whereas Article 1 (1) (d) of Regulation (EC) No 212/94 fixes the amount of high-quality fresh, chilled or frozen beef and veal originating in and imported from the United States of America and Canada which may be imported on special terms in 1994 at 10 000 tonnes;

Whereas it should be recalled that licences issued pursuant to this Regulation will, throughout the period of validity, be open for use only in so far as provisions on health protection in force permit,

HAS ADOPTED THIS REGULATION:

Article 1

1. All applications for import licences from 1 until 5 March 1994 for high-quality fresh, chilled or frozen beef and veal as referred to in Article 1 (1) (d) of Regulation (EC) No 212/94 shall be met in full.

2. Applications for licences may be submitted, in accordance with Article 15 of Regulation (EEC) No 2377/80, during the first five days of April 1994 for 3 033 tonnes.

Article 2

This Regulation shall enter into force on 11 March 1994.

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

Done at Brussels, 10 March 1994.

For the Commission

René STEICHEN

Member of the Commission

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[1] OJ No L 22, 27. 1. 1994, p. 1.
[2] OJ No L 27, 1. 2. 1994, p. 38.
[3] OJ No L 241, 13. 9. 1980, p. 5.
[4] OJ No L 262, 21. 10. 1993, p. 26.

COMMISSION REGULATION (EC) No 543/94

of 10 March 1994

introducing a countervailing charge and suspending the preferential customs duty on imports of apples originating in Turkey

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables [1], as last amended by Regulation (EC) No 3669/93 [2], and in particular the second subparagraph of Article 27 (2) thereof,

Whereas Article 25a (1) of Regulation (EEC) No 1035/72 provides that, if the entry price of a product imported from a non-member country is alternatively above and below the reference price for five to seven consecutive market days a countervailing charge is introduced in respect of that non-member country, save in exceptional cases ; whereas that charge is introduced when three entry prices fall below the reference price and one of those entry prices is at least ECU 0,6 below the reference price ; whereas that charge is equal to the difference between the reference price and the last available entry price by at least ECU 0,6 below the reference price ;

Whereas Commission Regulation (EEC) No 1640/93 of 28 June 1993 fixing the reference price for apples for the 1993/94 marketing year [3] fixed the reference price for products of class I at ECU 52,73 per 100 kilograms net for the month of March 1994 ;

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

Whereas, in accordance with Article 3 (1) of Regulation (EEC) No 2118/74 [4], as last amended by Regulation (EEC) No 249/93 [5], the prices to be taken into consideration must be recorded on the representative markets or, in certain circumstances, on other markets ;

Whereas for apples originating in Turkey the entry prices calculated in this way have for six consecutive market days been alternatively above and below the reference price ; whereas two of these entry prices are at least ECU 0,6 below the reference prices ; whereas a counterviling charge should therefore be introduced for these apples ;

Whereas, in Article 1 of Council Regulation (EEC) No 3671/81 of 15 December 1981 on imports into the Community of certain agricultural products originating in Turkey [6], as amended by Regulation (EEC) No 1555/84 [7], a rate of customs duty of 8 % should be reintroduced ;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92 [8], as amended by Regulation (EC) No 3528/93 [9], are used to convert amounts expressed in third country currencies and are used as the basis for determining the agricultural conversion rates of the Member States' currencies ; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93 [10],

HAS ADOPTED THIS REGULATION :

Article 1

1. A countervailing charge of ECU 2,44 per 100 kilograms net is applied on imports of apples falling within CN code 0808 10 31, 0808 10 33, 0808 10 39, 0808 10 51, 0808 10 53, 0808 10 59, 0808 10 81, 0808 10 83 and 0808 10 89) originating in Turkey.

2. The import duty on these products is fixed at 8 %.

Article 2

This Regulation shall enter into force on 12 March 1994.

Subject to the provisions of the second subparagraph of Article 26 (2) of Regulation (EEC) No 1035/72, this Regulation shall be applicable until 17 March 1994.

(1) OJ No L 118, 20. 5. 1972, p. 1.
(2) OJ No L 338, 31. 12. 1993, p. 26.
(3) OJ No L 157, 29. 6. 1993, p. 8.
(4) OJ No L 220, 10. 8. 1974, p. 20.
(5) OJ No L 28, 5. 2. 1993, p. 45.
(6) OJ No L 367, 23. 12. 1981, p. 3.
(7) OJ No L 150, 6. 6. 1984, p. 4.
(8) OJ No L 387, 31. 12. 1992, p. 1.
(9) OJ No L 320, 22. 12. 1993, p. 32.
(10) OJ No L 108, 1. 5. 1993, p. 106.

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

Done at Brussels, 10 March 1994.

For the Commission
René STEICHEN
Member of the Commission

COMMISSION REGULATION (EC) No 544/94

of 10 March 1994

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 Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals [1], as amended by Regulation (EEC) No 2193/93 [2], and in particular Articles 10 (5) and 11 (3) thereof,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy [3], as amended by Regulation (EC) No 3528/93 [4],

Whereas the import levies on cereals, wheat and rye flour, and wheat groats and meal were fixed by Commission Regulation (EEC) No 2703/93 [5] and subsequent amending Regulations;

Whereas, in order to make it possible for the levy arrangements to function normally, the representative market rate established during the reference period from 9 March 1994, as regards floating currencies, should be used to calculate the levies;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 2703/93 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 (1) (a), (b) and (c) of Regulation (EEC) No 1766/92 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 11 March 1994.

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

Done at Brussels, 10 March 1994.

For the Commission

René STEICHEN

Member of the Commission

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[1] OJ No L 181, 1. 7. 1992, p. 21.
[2] OJ No L 196, 5. 8. 1993, p. 22.
[3] OJ No L 387, 31. 12. 1992, p. 1.
[4] OJ No L 320, 22. 12. 1993, p. 32.
[5] OJ No L 245, 1. 10. 1993, p. 108.

ANNEX

to the Commission Regulation of 10 March 1994 fixing the import levies on cereals and on wheat or rye flour, groats and meal

(ECU/tonne)

CN code	Third countries (8)
0709 90 60	91,44 (2) (3)
0712 90 19	91,44 (2) (3)
1001 10 00	0 (1) (5)
1001 90 91	97,45
1001 90 99	97,45 (9)
1002 00 00	118,12 (6)
1003 00 10	121,79
1003 00 90	121,79 (9)
1004 00 00	96,11
1005 10 90	91,44 (2) (3)
1005 90 00	91,44 (2) (3)
1007 00 90	99,84 (4)
1008 10 00	30,32 (9)
1008 20 00	44,87 (4)
1008 30 00	0 (5)
1008 90 10	(7)
1008 90 90	0
1101 00 00	174,09 (9)
1102 10 00	202,91
1103 11 10	29,65
1103 11 90	197,72
1107 10 11	184,34
1107 10 19	140,49
1107 10 91	227,67 (10)
1107 10 99	172,86 (9)
1107 20 00	199,65 (10)

(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.

(3) Where maize originating in the ACP is imported into the Community the levy is reduced by ECU 1,81/tonne.

(4) Where millet and sorghum originating in the ACP 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), as last amended by Regulation (EEC) No 1902/92 (OJ No L 192, 11. 7. 1992, p. 3), and Commission Regulation (EEC) No 2622/71 (OJ No L 271, 10. 12. 1971, p. 22), as amended by Regulation (EEC) No 560/91 (OJ No L 62, 8. 3. 1991, p. 26).

(7) The levy applicable to rye shall be charged on imports of the product falling within CN code 1008 90 10 (triticale).

(8) No levy applies to OCT originating products according to Article 101 (1) of Decision 91/482/EEC.

(9) Products falling within this code, imported from Poland, Czechoslovakia or Hungary under the Interim Agreements concluded between those countries and the Community, and in respect of which EUR.1 certificates issued in accordance with Regulation (EEC) No 585/92 have been presented, are subject to the levies set out in the Annex to that Regulation.

(10) In accordance with Council Regulation (EEC) No 1180/77 this levy is reduced by ECU 5,44 per tonne for products originating in Turkey.

COMMISSION REGULATION (EC) No 545/94

of 10 March 1994

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 Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals [1], as amended by Regulation (EEC) No 2193/93 [2], and in particular Article 12 (4) thereof,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy [3], as amended by Regulation (EC) No 3528/93 [4],

Whereas the premiums to be added to the levies on cereals and malt were fixed by Commission Regulation (EEC) No 1681/93 [5] and subsequent amending Regulations;

Whereas, in order to make it possible for the levy arrangements to function normally, the representative market rate established during the reference period from 9 March 1994, as regards floating currencies, should be used to calculate the levies;

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

The premiums to be added to the levies fixed in advance for the import in respect of the products listed in Article 1 (1) (a), (b) and (c) of Regulation (EEC) No 1766/92 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 11 March 1994.

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

Done at Brussels, 10 March 1994.

For the Commission

René STEICHEN

Member of the Commission

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(1) OJ No L 181, 1. 7. 1992, p. 21.
(2) OJ No L 196, 5. 8. 1993, p. 22.
(3) OJ No L 387, 31. 12. 1992, p. 1.
(4) OJ No L 320, 22. 12. 1993, p. 32.
(5) OJ No L 159, 1. 7. 1993, p. 11.

ANNEX

to the Commission Regulation of 10 March 1994 fixing the premiums to be added to the import levies on cereals, flour and malt

A. Cereals and flour

(ECU/tonne)

CN code	Current	1st period	2nd period	3rd period
	3	4	5	6
0709 90 60	0	2,29	2,29	2,29
0712 90 19	0	2,29	2,29	2,29
1001 10 00	0	0	0	0
1001 90 91	0	0	0	0
1001 90 99	0	0	0	0
1002 00 00	0	0	0	0
1003 00 10	0	0	0	0
1003 00 90	0	0	0	0
1004 00 00	0	0	0	0
1005 10 90	0	2,29	2,29	2,29
1005 90 00	0	2,29	2,29	2,29
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	0
1102 10 00	0	0	0	0
1103 11 10	0	0	0	0
1103 11 90	0	0	0	0

B. Malt

(ECU/tonne)

CN code	Current	1st period	2nd period	3rd period	4th period
	3	4	5	6	7
1107 10 11	0	0	0	0	0
1107 10 19	0	0	0	0	0
1107 10 91	0	0	0	0	0
1107 10 99	0	0	0	0	0
1107 20 00	0	0	0	0	0

COMMISSION REGULATION (EC) No 546/94
of 10 March 1994
fixing the export refunds on malt

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals (1), as amended by Regulation (EEC) No 2193/93 (2), and in particular the fourth subparagraph third of Article 13 (2) thereof,

Whereas Article 13 of Regulation (EEC) No 1766/92 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund;

Whereas the refunds must be fixed taking into account the factors referred to in Article 2 of Commission Regulation EEC No 1533/93 (3), as amended by Regulation (EC) No 120/94 (4), laying down detailed rules on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals;

Whereas the refund applicable in the case of malts must be calculated with amount taken of the quantity of cereals required to manufacture the products in question; whereas the said quantities are laid down in Regulation (EEC) No 1533/93;

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

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92 (5), as amended by Regulation (EC) No 3528/93 (6), are used to convert amounts expressed in third country currencies and are used as the basis for determining the agricultural conversion rates of the Member States' currencies; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93 (7);

Whereas the refund must be fixed once a month; whereas it may be altered in the intervening period;

Whereas Council Regulation (EEC) No 990/93 (8) prohibits trade between the European Community and the Federal Republic of Yugoslavia (Serbia and Montenegro); whereas this prohibition does not apply in certain situations as comprehensively listed in Articles 2, 4, 5 and 7 thereof; whereas account should be taken of this fact when fixing the refunds;

Whereas in follows from applying these rules to the present situation on markets in cereals, and in particular to quotations or prices for these products within the Community and on the world market, that the refunds should be as set out in the Annex hereto;

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

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on malt listed in Article 1 (c) of Regulation (EEC) No 1766/92 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 11 March 1994.

(1) OJ No L 181, 1. 7. 1992, p. 21.
(2) OJ No L 196, 5. 8. 1993, p. 22.
(3) OJ No L 151, 23. 6. 1993, p. 15.
(4) OJ No L 21, 26. 1. 1994, p. 1.
(5) OJ No L 387, 31. 12. 1992, p. 1.
(6) OJ No L 320, 22. 12. 1993, p. 32.
(7) OJ No L 108, 1. 5. 1993, p. 106.
(8) OJ No L 102, 28. 4. 1993, p. 14.

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

Done at Brussels, 10 March 1994.

For the Commission
René STEICHEN
Member of the Commission

ANNEX

to the Commission Regulation of 10 March 1994 fixing the export refunds on malt

(ECU/tonne)

Product code	Refund (1)
1107 10 19 000	70,00
1107 10 99 000	94,25
1107 20 00 000	109,75

(1) Refunds on exports to the Federal Republic of Yugoslavia (Serbia and Montenegro) may be granted only where the conditions laid down in Regulation (EEC) No 990/93 are observed.

NB: The product codes and the footnotes are defined in Commission Regulation (EEC) No 3846/87 (OJ No L 366, 24. 12. 1987, p. 1), as last amended by Regulation (EC) No 3567/93 (OJ No L 327, 28. 12. 1993, p. 1).

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 21 February 1994

relating to a proceeding under Article 85 of the EC Treaty (IV/30.525 — Interational Energy Agency)

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

(94/153/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty [1], as last amended by the Act of Accession of Spain and Portugal, and in particular Articles 6 and 8 thereof,

Having regard to the application submitted to the Commission on 12 October 1993 by the Chariman of the Industry Advisory Board of the International Energy Agency (hereinafter: 'the IEA') for the benefit of all the IEA Reporting companies, pursuant to Article 8 (2) of Regulation No 17, requesting renewal of the exemption under Article 85 (3) by Commission Decision 83/671/EEC [2],

Having regard to the publication [3] pursuant to Article 19 (3) of Regulation No 17 of a summary of the concerted practices between oil companies which are needed to carry out the emergency oil allocation system of the International Energy Program ('IEP') and relevant changes which have occured since Decision 83/671/EEC, in which the Commission granted an exemption pursuant to Article 85 (3) for those concerted practices, for a period ending on 31 December 1993,

Having consulted the Advisory Committee on Restrictive Pratices and Dominant Positions pursuant to Article 10 (3) of Regulation No 17,

Whereas:

I. THE FACTS

(1) The IEP results from an agreement signed on 18 November 1974. 23 countries, members of the OECD, now participate in the IEP. The objectives of the IEP are set out in Commission Decision 83/671/EEC. The IEP aims at responding to oil supply disruptions by ensuring the availability of oil stocks for use in emergencies, and by restraining demand and allocating available supplies among the participating countries on a equitable basis according to an allocation process.

The implementation of the IEP is described in the Notice [4] pursuant to Article 19 (3) of Regulation No 17 and in Decision 83/671/EEC.

(2) Since Decision 83/671/EEC, the following changes have occurred:

[1] OJ No 13, 21. 2. 1962, p. 204/62.
[2] OJ No L 376, 31. 12. 1983, p. 30.
[3] OJ No C 300, 6. 11. 1993, p. 8.
[4] OJ No C 199, 26. 7. 1983, p. 2.

(a) At present 18 oil companies and one association of oil companis (compared to 16 oil companies and two associations in December 1983) are members of the Industry Advisory Board (IAB). The IAB assists the IEA in ensuring the effective operation of emergency measures.

The oil companies and the association are all members of the group of 'reporting companies' of which there are at present 41.

(b) Some changs have occurred in the allocation process. There have been two amendments to the IEA's Emergency Management Manual, which was last published in December 1982. One of the two amendments clarified the intention that, in oil transactions which might occur as part of the activation and operation of the IEA's Emergency Sharing System, prices should be based on conditions prevailing for comparable commercial transactions. The other admendment sets out procedures for resolving, during an emergency, any large discrepancies in the oil supply data submitted by different member countries.

(c) Another important new contingency arrangement, which does not affect directly the Emergency Sharing System, is the Agency's co-called 'Coordinated Emergency Response Measures' (CERM) mechanism. Under the CERM, IEA member governments have agreed to give early consideration, during an energy crisis, to the coordinated use of their oil stocks and to additional demand-restraint measures.

(d) Concerning the types of activities which constitute part of the allocation process (Types 1, 2, 3), there have been changes related to Type 1 and Type 2 activities. In order to take into account the changes in the structure of the oil market, as well as technical improvements in the computer capabilities available to the Secretariat for crisis-management purposes, the Emergency Sharing System was improved in 1986. It was decided to extend the prescribed period for the solicitation, processing and implementation of 'closed-loop voluntary offers' by reporting companies and non-reporting companies for the re-arrangement of oil supplies in response to an emergency and to accelerate the process for the approval of those offers by the Allocation Coordinator. Thus, under the 'Wider Window' proposal 'closed-loop voluntary offers' can be submitted to the ISAG (Industry Supply Advisory Group) or the IEA Secretariat at nearly any time during an allocation cycle, not just at specified times.

(e) As to the situation in the oil market, there have been significant developments over the past ten years. During the 1970s, the OECD countries were able to reduce their energy dependence through the reduction of consumption, the exploitation of new areas (Alaska, North Sea) and the development of other sources of energy (nuclear, renewable energy). But since 1985 there has been a trend towards increased oil imports. This is likely to continue, with the IEA forecasting that coverage of OECD demand by net imports will rise from 60 per cent or so at present to possibly 70 per cent during the first decade of the next century. Most of the increase in oil imports will come from the major producing regions, which are subject to an endemic political uncertainty, thus increasing OECD countries' vulnerability to oil supply disruptions. The IEA will, therefore, need to maintain, update and periodicallytest its emergency response capabilities.

Crude OIl and NGL (Natural Gas Liquids) Production

	1980	1988	1990	1992 (*)
				(million tonne)
EC (1)	93	142	116	135
OECD countries (2)	702	780	740	761
World total (2)	2 924	3 090	3 189	3 180
				(million barrels/day)
EC (1)	2	3	2,5	2,9
OECD countries (2)	15	16,6	15,9	16,4
World total (2)	63	63,3	65,6	65,4

(*) Provisional

(Sources : (1) Eurostat.
(2) IEA Statistics)

Imports and exports of crude oil and NGL

(million tons)

	1978	1988	1990	1992 (*)
EG countries (1)				
Imports	527	450	471	502
Exports	44	80	67	71
OECD countries (2)				
Imports	1 251	934	1 040	1 104
Exports	63	171	174	211

(*) Provisional
(Sources : (1) Eurostat.
(2) IEA Statistics)

(3) The application for an extension of the exemption, for a further period of no less than the years from 1 January 1994 onwards, is motivated by the need to allow oil companies to cooperate in carrying out the Emergency Sharing System. Indeed the Emergency Sharing System relies heavily upon the oil industry to coordinate any necessary redistribution of the available oil supplies, in accordance with the sharing formula set out in the IEP Agreement.

II. COMMENTS FROM THIRD PARTIES

(4) Following the publication of the notice pursuant to Article 19 (3) of Regulation No 17, no comments were received from third parties.

III. LEGAL ASSESSMENT

A. Article 85 (1)

(5) For the same reasons as those previously outlined in Decision 83/671/EEC, to which reference should be made, the consent of the oil companies to cooperate with one another and the IFA in the framework of the IEP and in the operation of the IEA emergency oil allocation system is a concerted practice which falls within the scope of Article 85 (1), notably because :

(a) The concertation between the oil copanies has the object and effect of taking into account and balancing allocation rights and obligations. This means in some cases directing oil to destinations where it would not have gone had the IEA system not been activated.

(b) The oil companies' behaviour when exchanging information within the framework of the IEA may alter the market conditions from what they would be without such exchanges of information.

(c) The possible effects of thse restrictions on competition may be appreciable. The undertakings start to concert on allocation actions when a 7 % shortfall in oil supplies available to all IEA countries or to one of them has occurred or may reasonably be expected to occur. In the event of activation, several million tonnes of oil may have to be redistributed each month.

(d) The joint effort of the oil companies to redistribute available oil may have an appreciable effect on trade between Member States. The usual flow of oil supplies may be modified in order to meet allocation rights and obligations according to the situation of each participating country.

B. Article 85 (3)

(6) On the basis of the information at its disposal, the Commission has come to the conclusion that the advantages of the concerted practice of the oil companies continue to constitute a sufficient basis for the application of Article 85 (3). The changes which have occurred since 1983 do not affect the validity of the exemption. They aim at improving the reallocation process and take into account the changes in the structure of the oil market and the technical improvements.

(a) The concerted practice does contribute to improving the distribution of the relevant goods and to promoting economic progress by reducing the inconvenience and sharing the difficulties in case of supply disruptions.

(b) The concerted practice allows the consumer a fair share of the resulting benefit, as the concerted practice is experted to minimize the impact of the shortage of the general economny of the participating countries, with an immediate benefit to consumers.

(c) The concertation between companies to achieve the allocation needed does not go beyond what is necessary for the fulfilment of the objectives of the IEP.

(d) The concerted practice does not afford the undertakings the possibility of eliminating competition in respect of a substantial part of the products in question. Competition between the oil companies will continue in all other respects apart from their obligation to observe allocation rights and to fulfil allocation obligations.

IV. ARTICLES 6 AND 8 OF REGULATION No 17

(7) The appliction for renewal of the exemption granted by Decision 83/671/EEC was submitted by the Chariman of the IAB before 31 December 1993, the date the Decision expires. Pursuant to Article 6 (1) of Regulation No 17, this Decision should take effect from 1 January 1994.

(8) Article 3 of Decision 83/671/EEC obliged the oil companies to inform the Commission at the earliest possible moment of:

1. any change adopted by the Governing Board or National Emergency Sharing Organizations to the rules governing the emergency oil allocation system and the participation of oil companies therein;

2. any consultations with oil companies provided for in Article 19 (6) and (7) or Article 55 (3) of the International Energy Program or submission by the companies to the Interantional Energy Agency or national governments pursuant to the foregoing rules of data such as that on imports, exports, indigenous production and investories;

3. the declaration of the beginning of any emergency;

4. any proposals or arrangements for a test run of the emergency oil allocation system or of the data system.

The exemption was granted subject to the obligation that the Commission should have access for its representatives to any consultations with oil companies provided for in Article 19 (6) and (7) or Article 55 (3) of the International Energy Program which may take place, and to any meeting of the Industry Supply Advisory Group or its subgroups or of the Industry Advisory Board or its subcommittes which might take place when the emergency oil allocation system was being implemented or when test runs were being carried out. The Commission's representatives were to have made available to them upon request all documents and other information in connection with such consultations, meetings and test runs in the possession or under the control of any company to which the Decision applied, and all documents and other information in such possession or control in connection with Type 2 and Type 3 activities and with Type 1 activities that were reported to the Commission.

The reporting requirements have been fulfilled throughout the period of exemption and should be imposed again for the extended duration of the exemption pursuant to Article 8 (2) of Regualtion No. 17.

(9) Pursuant to Article 8 (1) of Regulation No 17, a Commission decision in application of Article 85 (3) of the Treaty must be issued for a specified period. In the present case an extension of the Decision for a period of ten years appears appropriate.

HAS ADOPTED THIS DECISION:

Article 1

The exemption granted by Decision 83/671/EEC is hereby until 31 December 2003.

Article 2

Exemption is granted subjected to the same reporting requirements as are specified in Article 3 of Decision 83/671/EEC.

Article 3

This Decision shall apply from 1 January 1994.

Article 4

This Decision is addressed to:

— Amerada Hess Corporation,
1185, Avenue of the Americas,
New York, NY-10036,
USA;

— Amoco Corporation,
200, East Randolph Drive,
Chicago, IL-60601,
USA;

— Anonima Petroli Italiana (API),
Corso d'Italia, 6,
00198 Rome,
Italy;

— Ashland Oil, Inc.,
2000, Ashland Drive,
Russell, KY-41169,
USA;

— Atlantic Richfield Company,
1601, Bryant Street,
Dallas, TX-75228,
USA;

— BP Oil International Limited,
Britannic House,
1, Finsbury House,
London, EC2M 7BA,
United Kingdom;

— Caltex Petroleum Corporation,
125, E. John Carpenter Freeway,
Irving, TX-75062-2794,
USA;

— Chevron Corporation,
225, Bush Street,
San Francisco, CA-94104-4289,
USA;

— Compañía Española de Petróleos, SA (Cepsa),
Apartado 671,
Avenida de América, 32,
Madrid 2,
Spain;

— Conoco Inc.,
600 N. Dairy Ashfort Road,
Houston, TX-77079,
USA;

— Cosmo Oil Co. Ltd,
Toshiba Building,
1-1, Shibaura, 1-Chome,
Minato-ku,
Tokyo, 105,
Japan;

— DEA Mineralöl AG,
Überseering 40,
22297 Hamburg,
Germany;

— Ente Nazionale Idrocarburi (ENI) Agip Petroli SpA,
Via Laurentina, 449,
00142 Rome,
Italy;

— Exxon Corporation,
200, Park Avenue,
Florham Park,
NJ-07932,
USA;

— Idemitsu Kosan Co., Ltd,
1-1, 3-Chome, Marunouchi,
Chiyoda-ku,
Tokyo 100,
Japan;

— Japan Energy Corporation,
10-1, Toranomon 2-Chome,
Minato-Ku,
Tokyo 105,
Japan;

— Mabanaft GmbH,
Admiralitätsstr. 55,
20459 Hamburg,
Germany;

— Mitsubishi Oil Co., Ltd,
2-4, Toranomon, 1-Chome,
Minato-ku,
Tokyo 105,
Japan;

— Mobil Oil Corporation,
3225, Gallows Road,
Fairfax, VA-22037,
USA;

— Neste Oy,
POB 20,
FIN-02151 Espoo,
Finland;

— Norsk Hydro as,
PO Box 220,
N-1321, Stabekk,
Norway;

— OK Petroleum AB,
S-11590 Stockholm,
Sweden;

— ÖMV AG,
Otto-Wagner-Platz 5,
A-1090 Vienna,
Austria;

— Petro-Canada Products Ltd,
PO Box 2844,
150 6th Avenue S.W.,
Calgary,
Alberta, T2P 3E3,
Canada;

— Petrofina SA,
rue de l'Industrie, 52,
1040 Brussels,
Belgium ;

— Petrogal, SA,
R. Mouzinho da Silveira, 26-7,
1200 Lisbon,
Portugal ;

— Petróleos del Norte, SA (Petronor),
Paseo de la Castellana, 280,
28046 Madrid,
Spain ;

— Petroleum Association of Japan (PAJ),
Keidanren Building,
1-9-4, Ohtemachi,
Chiyoda-Ku,
Tokyo 100,
Japan ;

— Praoil,
Strada 2, Pal. F7,
20090 Assago,
Milan,
Italy ;

— Phillips Petroleum Company,
17 D3 Phillips Building,
Bartlesville, OK 74004,
USA ;

— Repsol, SA,
Paseo de la Castellana, 278,
28046 Madrid,
Spain ;

— Shell International Petroleum Co., Ltd,
Shell Centre,
London, SE1 7NA,
United Kingdom ;

— Shell Oil Company,
901 Louisiana,
Houston, TX 77002,
USA ;

— Société nationale Elf Aquitaine,
Tour Elf,
Cedex 45,
92078 Paris-La Défense,
France ;

— Statoil,
Postbox 300,
4001 Stavanger,
Norway ;

— Sun Oil Company, Inc.,
1801, Market Street,
Philadelphia, PA-19103-1699,
USA ;

— Texaco Inc.,
2000 Westchester Avenue,
White Plains, NY-10650,
USA ;

— Total SA,
Tour Total,
24, Cours Michelet,
Cedex 47,
92069 Paris-La Défense,
France ;

— Türkiye Petrol Rafinerili AS (TÜPRAS),
41002 Izmit,
Turkey ;

— VEBA Öl AG,
Alexander-von-Humboldt-Straße,
45876 Gelsenkirchen,
Germany ;

— Wintershall AG,
Friedrich-Ebert-Straße 160,
34119 Kassel,
Germany.

Done at Brussels, 21 February 1994.

For the Commission

Karel VAN MIERT

Member of the Commission