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Contents

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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.

The titles of all other Acts are printed in bold type and preceded by an asterisk.

Contents (continued)

(Continued on inside back cover)

Contents (continued)

Commission

Corrigenda

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(1) Text with EEA relevance

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 3291/94

of 19 December 1994

fixing, for 1995, certain measures for the conservation and management of fishery resources, applicable to vessels flying the flag of a Member State, other than Spain and Portugal, in waters falling under the sovereignty or within the jurisdiction of Portugal

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Spain and Portugal, and in particular Article 351 thereof,

Having regard to the proposal from the Commission,

Whereas, pursuant to Article 351 of the Act of Accession, it is for the Council to fix the fishing possibilities and the corresponding number of Community vessels which may fish in the waters referred to in that Article;

Whereas it is therefore necessary to establish principles and certain procedures at Community level so that each Member State can assure the management of the fishing activities of vessels flying its flag;

Whereas these possibilities are determined, with respect to pelagic species not subject to the system of total allowable catches (TAC) and quotas, other than highly migratory species, on the basis of the situation of the fishing activities of the Member States apart from Spain, in Portuguese waters for the period prior to accession; whereas there is a need to ensure stock conservation, taking account moreover of the limits placed on fishing by Portuguese vessels for similar species in waters of the Member States, apart from Spain,

Whereas, for 1995, no fishing possibilities for species not subject to TACs and quotas are granted to Portugal in the waters of the Member States apart from Spain;

Whereas the specific conditions governing the fishing activities of vessels exploiting stocks of highly migratory species, for which catch possibilities are granted, should be laid down, whereas the limits concerning the zones and the periods of fishing of these vessels are laid down by Article 351 (2) (3) and (4) of the Act of Accession;

Whereas the fishing activities covered by this Regulation are subject to the control measures provided for by Regulation (EEC) No 2847/93 [1], as well as to the specific detailed rules drawn up in accordance with the second subparagraph of Article 351 (5) of the Act of Accession,

HAS ADOPTED THIS REGULATION:

Article 1

The number of vessels flying the flag of a Member State other than Spain and Portugal, authorized to fish in waters falling under the sovereignty or within the jurisdiction of Portugal, as provided for in Article 351 of the Act of Accession and the procedures for access, shall be as set out in the Annex.

Article 2

This Regulation shall enter into force on 1 January 1995.

It shall apply until 31 December 1995.

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

Done at Brussels, 19 December 1994.

For the Council

The President

J. BORCHERT

[1] OJ No L 261, 20. 10. 1993, p. 1.

ANNEX

EC — PORTUGAL

Species	Quantity (tonnes)	Zones (1)	Authorized fishing gear	Total number of vessels (3)	Period of fishing authorization
Albacore tuna *(Thunnus alalunga)*	Unlimited	X and CECAF	Troll line	110 (France) (2)	Between 2 June and 28 July
Tropical tuna	Unlimited	X (to the south of 36°30'N) CECAF (to the south of 31° N and to the north of 31° N to the west of 17°30' W)	All except gill-nets	Unlimited	Year round
Other tunas	Unlimited	IX	All except gill-nets	Unlimited	Year round

(1) Waters falling under the sovereignty or within the juridsdiction of Portugal.
(2) Not exceeding 26 m in length between perpendiculars.
(3) Authorized to carry out fishing activities simultaneously.

COUNCIL REGULATION (EC) No 3292/94

of 19 December 1994

establishing, for 1995, certain measures for the conservation and management of fishery resources, applicable to vessels flying the flag of a Member State, other than Spain and Portugal, in waters falling under the sovereignty or within the jurisdiction of Spain

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Spain and Portugal, and in particular Article 164 thereof,

Having regard to the proposal from the Commission,

Whereas, pursuant to Article 164 of the Act of Accession, it is for the Council to fix the fishing possibilities and the corresponding number of Community vessels which may fish in Atlantic waters falling under the sovereignty or within the jurisdiction of Spain and covered by the International Council for the Exploration of the Sea (ICES);

Whereas it is therefore necessary to establish principles and certain procedures at Community level so that each Member State can ensure the management of the fishing activities of vessels flying its flag;

Whereas these possibilities are determined, with respect to species subject to the system of total allowable catches (TACs) and quotas, on the basis of the fishing possibilities allocated and, with respect to species not subject to the TAC and quota system, according to the relative stability of stocks and the need to ensure their conservation;

Whereas specialized fishing activities shall be carried out with the same quantitative limits as those specified for Spanish vessels authorized to carry out their fishing activities in the waters of Member States apart from Portugal;

Whereas the specific conditions governing the fishing activities of such vessels should be laid down;

Wheres the fishing activities covered by this Regulation are subject to the control measures provided for by Regulation (EEC) No 2847/93 [1], as well as to the specific procedures drawn up in accordance with Article 164 (4) of the Act of Accession,

HAS ADOPTED THIS REGULATION:

Article 1

The number of vessels flying the flag of a Member State of the Community, other than Spain and Portugal, authorized to fish in waters falling under the sovereignty or within the jurisdiction of Spain as provided for in Article 164 of the Act of Accession and the procedures governing access, shall be as set out in the Annex.

Article 2

This Regulation shall enter into force on 1 January 1995.

It shall apply until 31 December 1995.

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

Done at Brussels, 19 December 1994.

For the Council

The President

J. BORCHERT

[1] OJ No L 261, 20. 10. 1993, p. 1.

ANNEX

EC — SPAIN

I. General fishing

Species	ICES zone (1)	Authorized fishing gear	Total number of vessels		Period of fishing authorization
			Basic list	Periodic list	
Hake *(Merluccius merluccius)*	VIII, IX	Long-lines, trawls, (vessels over 100 grt)	10 (France)	5 (2) (France)	Year-round
Monkfish *(Lophius piscatorius)* *(Lophius boudegassa)*	VIII, IX	Trawl			Year-round
Megrim *(Lepidorhombus whiffiagonis)* *(Lepidorhombus boscii)*	VIII, IX	Trawl			Year-round
Norway lobster *(Nephrops norvegicus)*	VIII, IX	Trawl			Year-round
Pollack *(Pollachius pollachius)*	VIII, IX	Trawl			Year-round

(1) Waters falling under the sovereignty and within the jurisdiction of the Kingdom of Spain.
(2) Total number of standard vessels per Member State ; standard vessel means a vessel having a brake horsepower equal to 700 horsepower (BHP). The conversion rates for vessels having a different engine power are the same as those defined in Article 158 (2) of the Act of Accession.

II. Specialized fishing

Species	ICES zone (1)	Authorized fishing gear	Total number of vessels		Period of fishing authorization
			Basic list	Periodic list	
All	VIII, IX	Long-lines (vessels under 100 grt)	25	10	Year-round
		Rods (vessels under 50 grt)	—	64	Year-round
Anchovy *(Engraulis encrasicholus)* as main catch	VIII	Seine		40 (France)	Between 1/3 and 30/6
Anchovy *(Engraulis encrasicholus)* as live bait	VIII	Seine		20 (France)	Between 1/7 and 31/10
Sardine *(Sardina pilchardus)*	VIII	Seine (vessels under 100 grt)	71 (France)	40 (France)	Between 1/1 and 28/2 and between 1/7 and 31/12

(1) Waters falling under the sovereignty and within the jurisdiction of the Kindom of Spain.

Species	Quantity (tonnes)	ICES zone (1)	Authorized fishing vessels	Total number of vessels	Period of fishing authorization
Thunnidae	Unlimited	VIII, IX	All except gillnets	Unlimited	Year-round

(1) Waters falling under the sovereignty within the jurisdiction of the Kingdom of Spain.

COUNCIL REGULATION (EC) No 3293/94

of 19 December 1994

fixing, for 1995, certain measures for the conservation and management of fishery resources, applicable to vessels flying the flag of Portugal in waters falling under the sovereignty or within the jurisdiction of Member States, apart from Spain and Portugal

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Spain and Portugal, and in particular Article 349 thereof,

Having regard to the proposal from the Commission,

Whereas, pursuant to Article 349 of the Act of Accession, it is for the Council to decide on the fishing possibilities and the corresponding number of Portuguese vessels authorized to fish in the waters referred to in paragraph 1 of that Article;

Whereas it is therefore necessary to establish principles and certain procedures at Community level so that each Member State can ensure the management of the fishing activities of vessels flying its flag;

Whereas, pursuant to Article 349 (2), fishing possibilities for catches of blue whiting and horse mackerel are granted to Portuguese vessels; whereas the number of these vessels and the procedures for their access and control should be fixed annually;

Whereas fishing possibilities for species not subject to the system of total allowable catches and the corresponding number of vessels should be determined on the basis of the situation of Portuguese fishing activities in the waters of the Member States apart from Spain for the period prior to accession; whereas there is a need to ensure the conservation of stocks taking into account the limits imposed on fishing for similar species in Portuguese waters by vessels of a Member State other than Spain;

Whereas the specific conditions governing the fishing activities referred to in Article 349 of the Act of Accession should be laid down;

Whereas the fishing activities covered by this Regulation are subject to the control measures provided for by Regulation (EEC) No 2847/93 [1], as well as to the specific detailed rules drawn up in accordance with the second subparagraph of Article 349 (5) of the Act of Accession,

HAS ADOPTED THIS REGULATION:

Article 1

The number of vessels flying the flag of Portugal authorized to fish in waters falling under the sovereignty or within the jurisdiction of another Member State, other than Spain and Portugal, as provided for in Article 349 of the Act of Accession, the procedures for access and the catch possibilities for certain species shall be as set out in the Annex.

Article 2

This Regulation shall enter into force on 1 January 1995.

It shall be applicable until 31 December 1995.

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

Done at Brussels, 19 December 1994.

For the Council

The President

J. BORCHERT

[1] OJ No L 261, 20. 10. 1993, p. 1.

ANNEX

PORTUGAL — EC

Species	Quantity (t)	ICES zone	Authorized fishing gear	Total number of vessels	Period of fishing authorization
Blue whiting *(Micromesistius poutassou)*	3 000	V b, VI, VII, VIII a, b, d (1) (2)	Pelagic trawl	5 (3) 2 (4)	Year round
Horse mackerel *(Trachurus trachurus)*	3 000	V b, VI, VII, VIII a, b, d (1) (2)	Pelagic trawl	6 (3) 4 (4)	Year round
Thunhidae	unlimited	Vb, VI, VII, VIII a, b, d (1) (2)	All except gill-nets	unlimited	Year round

(1) Except for the zone to the south of latitude 56°30′ North, to the east of longitude 12° West and to the north of latitude 50°30′ North.
(2) Waters falling under the sovereignty and within the jurisdiction of Member States of the Community, other than Spain and Portugal.
(3) Total number (basic list) of standard Portuguese vessels; standard vessel means a vessel having a brake horsepower equal to 700 horsepower (BHP). The conversion rates for vessels having a different engine power are the same as those defined in Article 158 (2) of the Act of Accession.
(4) Total number of Portuguese vessels authorized to carry out fishing activities simultaneously (periodic list).

COUNCIL REGULATION (EC) No 3294/94

of 22 December 1994

amending Regulation (EEC) No 302/93 on the establishment of the European Monitoring Centre for Drugs and Drug Addiction

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 235 thereof,

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

Having regard to the opinion of the European Parliament (2),

Whereas on 8 February 1993 the Council adopted Regulation (EEC) No 302/93 on the establishment of the European Monitoring Centre for Drugs and Drug Addiction (3);

Whereas the financial provisions relating to bodies set up by the Community should be harmonized;

Whereas Article 11 of the aforementioned Regulation, which concerns the financial provisions governing the Centre, should be amended to take account of this need for harmonization;

Whereas, pursuant to Article 130 of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities (4), the provisions of the Financial Regulation should be taken into account as far as possible when adopting the Centre's internal financial rules,

HAS ADOPTED THIS REGULATION:

Article 1

Article 11 (12) of Regulation (EEC) No 302/93 shall be replaced by the following:

'12. After receiving the opinion of the Court of Auditors, the management board shall adopt internal financial provisions laying down in particular the detailed rules for establishing and implementing the Centre's budget.'

Article 2

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

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

Done at Brussels, 22 December 1994.

For the Council

The President

H. SEEHOFER

(1) OJ No C 225, 20. 8. 1993, p. 3.
(2) OJ No C 61, 28. 2. 1994, p. 241.
(3) OJ No L 36, 12. 2. 1993, p. 1.
(4) OJ No L 356, 31. 12. 1977, p. 1. Regulation as last amended by Regulation (ECSC, EC, Euratom) No 1923/94 (OJ No L 198, 30. 7. 1994, p. 4).

COUNCIL REGULATION (EC) No 3295/94

of 22 December 1994

laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods

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 (1),

Having regard to the opinion of the European Parliament (2),

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

Whereas Council Regulation (EEC) No 3842/86 of 1 December 1986 laying down measures to prohibit the release for free circulation of counterfeit goods (4) has been in force since 1 January 1988; whereas conclusions should be drawn from the experience gained during the early years of its implementation with a view to improving the operation of the system it set up;

Whereas the marketing of counterfeit goods and pirated goods causes considerable injury to law-abiding manufacturers and traders and to holders of the copyright or neighbouring rights and misleads consumers; whereas such goods should as far as possible be prevented from being placed on the market and measures should be adopted to that end to deal effectively with this unlawful activity without impeding to freedom of legitimate trade; whereas this objective is also being pursued through efforts being made along the same lines at international level;

Whereas, in so far as counterfeit or pirated goods and similar products are imported from third countries, it is important to prohibit their release for free circulation in the Community or their entry for a suspensive procedure and to set up an appropriate procedure enabling the customs authorities to act to ensure that such a prohibition can be properly enforced;

Whereas action by the customs authorities to prohibit the release for free circulation of counterfeit or pirated goods or their entry for a suspensive procedure should also apply to the export or re-export of such goods from the Community;

Whereas, as regards suspensive procedures and re-export subject to notification, action by the customs authorities will take place only where suspected counterfeit or pirated goods are discovered during a check;

Whereas the Community takes into account the terms of the GATT agreement on trade-related intellectual property issues, including a trade in counterfeit goods, in particular the measures to be taken at the frontier;

Whereas provision should be made that the customs authorities are empowered to take decisions on applications for action to be taken that are submitted to them;

Whereas action by the customs authorities should consist either in suspending the release for free circulation, export or re-export of goods suspected of being counterfeit or pirated or in detaining such goods when they are entered for a suspensive procedure or re-exported subject to notification for as long as is necessary to enable it to be determined whether the goods are actually counterfeit or pirated;

Whereas it is appropriate to authorize the Member States to detain the goods in question for a certain period even before an application by the right holder has been lodged or approved in order to allow him to lodge an application for action by the customs authorities;

Whereas the competent authority should decide cases submitted to it by reference to the criteria which are used to determine whether goods produced in the Member State concerned infringe intellectual property rights; whereas Member States' provisions on the competence of the judicial authorities and procedures are not affected by this Regulation;

Whereas it is necessary to determine the measures to be applied to the goods in question where it is established that they are counterfeit or pirated; whereas those measures should not only deprive those responsible for trading in such goods of the economic benefits of the transaction and penalize them but also constitute an effective deterrent to further transactions of the same kind;

(1) OJ No C 238, 2. 9. 1993, p. 9.
(2) OJ No C 61, 28. 2. 1994.
(3) OJ No C 52, 19. 2. 1994, p. 37.
(4) OJ No L 357, 18. 12. 1986, p. 1.

Whereas in order to avoid serious disruption to the clearing of goods contained in travellers' personal luggage, it is necessary to exclude from the scope of this Regulation goods which may be counterfeit or pirated which are imported from third countries within the limits laid down by Community rules in respect of relief from customs duty;

Whereas uniform application of the common rules laid down by this Regulation must be ensured and to that end a Community procedure must be established enabling measures implementing these rules to be adopted within appropriate periods and mutual assistance between the Member States, of the one part, and between the Member States and the Commission, of the other part, to be strengthened so as to ensure greater effectiveness;

Whereas it will be appropriate to consider the possibility of increasing the number of intellectual property rights covered by this Regulation in the light, *inter alia*, of the experience gained in its implementation;

Whereas Regulation (EEC) No 3842/86 should therefore be repealed,

HAS ADOPTED THIS REGULATION:

CHAPTER I

General

Article 1

1. This Regulation shall lay down:

(a) the conditions under which the customs authorities shall take action where goods suspected of being counterfeit or pirated are:

— entered for free circulation, export or re-export,

— found when checks are made on goods placed under a suspensive procedure within the meaning of Article 84 (1) (a) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (1), or re-exported subject to notification; and

(b) the measures which shall be taken by the competent authorities with regard to those goods where it has been established that they are indeed counterfeit or pirated.

2. For the purposes of this Regulation:

(a) 'counterfeit goods' means:

— goods, including the packaging thereof, being without authorization a trade mark which is identical to the trade mark validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such trade mark, and which thereby infringes the rights of the holder of the trade mark in question under Community law or the law of the Member State in which the application for action by the customs authorities is made,

— any trade mark symbol (logo, label, sticker, brochure, instructions for use or guarantee document) whether presented separately or not, in the same circumstances as the goods referred to in the first indent,

— packaging materials bearing the trade marks of counterfeit goods, presented separately in the same circumstances as the goods referred to in the first indent;

(b) 'pirated goods' means goods which are or embody copies made without the consent of the holder of the copyright or neighbouring rights, or of the holder of a design right, whether registered under national law or not, or of a person duly authorized by the holder in the country of production, where the making of those copies infringes the right in question under Community law or the law of the Member State in which the application for action by the customs authorities is made;

(c) 'holder of a right' means the holder of a trade mark, as referred to in (a), and/or one of the rights referred to in (b), or any other person authorized to use the trade mark and/or rights, or their representative;

(d) 'declaration for release for free circulation, for export or for re-export' means declarations made in accordance with Article 61 of Regultion (EEC) No 2913/92.

3. Any mould or matrix which is specifically designed or adapted for the manufacture of a counterfeit trade mark or of goods bearing such a trade mark or of pirated goods shall be treated as 'counterfeit or pirated goods', as appropriate, provided that the use of such moulds or matrices infringes the rights of the holder of a right under Community law or the law of the Member State in which the application for action by the customs authorities is made.

4. This Regulation shall not apply to goods which bear a trade mark with the consent of the holder of that trade mark or which are protected by a copyright or neighbouring right or a design right and which have been

(1) OJ No L 302, 19. 10. 1992, p. 1.

manufactured with the consent of the holder of the right but are placed in one of the situations referred to in paragraph 1 (a) without the latter's consent.

Nor shall it apply to goods referred to in the first subparagraph which have been manufactured or bear a trade mark under conditions other than those agreed with the holders of the rights in question.

CHAPTER II

Prohibition of the release for free circulation, export, re-export or of the placing under a suspensive procedure of counterfeit goods and pirated goods

Article 2

The release for free circulation, export, re-export or placing under a suspensive procedure of goods founds to be counterfeit or pirated on completion of the procedure provided for in Article 6 shall be prohibited.

CHAPTER III

Application for action by the customs authorities

Article 3

1. In each Member State, the holder of a right may lodge an application in writing with the competent service of the customs authority for action by the customs authorities where the goods are placed in one of the situations referred to in Article 1 (1) (a).

2. The application referred to in paragraph 1 shall include :

— a sufficiently detailed description of the goods to enable the customs authorities to recognize them,

— proof that the applicant is the holder of the right for the goods in question.

The holder of the right must also provide all other pertinent information available to him to enable the competent customs service to take a decision in full knowledge of the facts without, however, that information being a condition of admissibility of the application.

By way of indication, in the case of pirated goods, that information shall, wherever possible, include :

— the place where the goods are situated or the intended destination,

— particulars identifying the consignment or packages,

— the scheduled date of arrival or departure of the goods,

— the means of transport used,

— the identity of the importer, exporter or holder.

3. The application must specify the length of the period during which the customs authorities are requested to take action.

4. The applicant may be charged a fee to cover the administrative costs incurred in dealing with the application. The fee shall not be disproportionate to the service provided.

5. The competent customs service with which an application drawn up pursuant to paragraph 2 has been lodged shall deal with the application and shall forthwith notify the applicant in writing of its decision.

Where that service grants the application, the service shall specify the period during which the customs authorities shall take action. That period may, upon application by the holder of the right, be extended by the service which took the initial decision.

Any refusal to grant an application shall give the reasons for refusal and may form the subject of an appeal.

6. Member States may require the holder of a right, where his application has been granted, or where action as referred to in Article 1 (1) (a) has been taken pursuant to Article 6 (1), to provide a security :

— to cover any liability on his part *vis-à-vis* the persons involved in one of the operations referred to in Article 1 (1) (a) where the procedure initiated pursuant to Article 6 (1) is discontinued owing to an act or omission by the holder of the right or where the goods in question are subsequently found not be counterfeit or pirated,

— to ensure payment of the costs incurred in accordance with this Regulation, in keeping the goods under customs control pursuant to Article 6.

7. The holder of the right shall be obliged to inform the service referred to in paragraph 1 should the right cease to be validly registered or should it expire.

8. Each Member State shall designate the service within the customs authority competent to receive and deal with the applications referred to in this Article.

Article 4

Where, in the course of checks made under one of the customs procedures referred to in Article 1 (1) (a) and before an application by the holder of the right has been lodged or approved, it appears evident to the customs office that goods are counterfeit or pirated, the customs authority may, in accordance with the rules in force in the Member States concerned, notify the holder of the right, where known, of a possible infringement thereof. The customs authority shall be authorized to suspend release of the goods or detain them for a period of three working days to enable the holder of the right to lodge an application for action in accordance with Article 3.

Article 5

The decision granting the application by the holder of the right shall be forwarded immediately to the customs offices of the Member State which are liable to be concerned with the goods alleged in the application to be conterfeit or pirated.

CHAPTER IV

Conditions governing action by the customs authorities and by the authority competent to take a substantive decision

Article 6

1. Where a customs office to which the decision granting an application by the holder of a right has been forwarded pursuant to Article 5 is satisfied, after consulting the applicant where necessary, that goods placed in one of the situations referred to in Article 1 (1) (a) correspond to the description of the conterfeit or pirated goods contained in that decision, it shall suspend release of the goods or detain them.

The customs office shall immediately inform the service which dealt with the application in accordance with Article 3. That service or the customs office, shall forthwith inform the declarant and the person who applied for action to be taken. In accordance with national provisions on the protection of peronal data, commercial and industrial secrecy and professional and administrative confidentiality, the customs office or the service which dealt with the application shall notify the holder of the right, at his request, of the name and address of the declarant and, if known, of those of the consignee so as to enable the holder of the right to ask the competent authorities to take a substantive decision. The customs office shall afford the applicant and the persons involved in any of the operations referred to in Article 1 (1) (a) the opportunity to inspect the goods whose release has been suspended or which have been detained.

When examining the goods the customs office may take samples in order to expedite the procedure.

2. The law in force in the Member State within the territory of which the goods are placed in one of the situations referred to in Article 1 (1) (a) shall apply as regards :

(a) referral to the authority competent to take a substantive decision and immediate notification of the customs service or office referred to in paragraph 1 of that referral, unless referral is effected by that service or office ;

(b) reaching the decision to be taken by that authority. In the absence of Community rules in this regard, the criteria to be used in reaching that decision shall be the same as those used to determine whether goods produced in the Member State concerned infringe the rights of the holder. Reasons shall be given for decisions adopted by the competent authority.

Article 7

1. If, within 10 working days of notification of suspension of release or of detention, the customs office referred to in Article 6 (1) has not been informed that the matter has been referred to the authority competent to take a substantive decision on the case in accordance with Article 6 (2) or that the duly empowered authority has adopted interim measures, the goods shall be released, provided that all the customs formalities have been complied with and the detention order has been revoked.

This period may be extended by a maximum of 10 working days in appropriate cases.

2. In the case of goods suspected of infringing design rights, the owner, the importer or the consignee of the goods shall be able to have the goods in question released or their detention revoked against provision of a security, provided that :

— the customs service or office referred to in Article 6 (1) has been informed, within the time limit referred to in paragraph 1, that the matter has been referred to the authority competent to take a substantive decision referred to in said paragraph 1,

— on expiry of the time limit, the authority empowered for this purpose has not imposed interim measures, and

— all the customs formalities have been completed.

The security must be sufficient to protect the interests of the holder of the right. Payment of the security shall be without prejudice to the other remedies open to the holder of the right. Where the matter has been referred to the authority competent to take a substantive decision other than on the initiative of the holder of the right, the security shall be released if that person does not exercise his right to institute legal proceedings within 20 working days of the date on which he is notified of the suspension of release or detention. Where the second subparagraph of paragraph 1 applies, this period may be extended to a maximum of 30 working days.

3. The conditions governing storage of the goods during the period of suspension of release or detention shall be determined by each Member State.

CHAPTER V

Provisions applicable to goods found to be counterfeit or pirated goods

Article 8

1. Without prejudice to the other rights of action open to the holder of a trade mark which is found to have been counterfeited or the holder of a copyright or neighbouring right or of a design right which is found to have been pirated, Member States shall adopt the measures necessary to allow the competent authorities :

(a) as a general rule, and in accordance with the relevant provisons of national law, to destroy goods found to be counterfeit or pirated, or dispose of them outside commercial channels in such a way as to preclude injury to the holder of the right, without compensation of any sort and at no cost to the exchequer;

(b) to take, in respect of such goods, any other measures which effectively deprive the persons concerned of the economic benefits of the transaction.

The following in particular shall not be regarded as having such effect :

— re-exporting the counterfeit or pirated goods in the unaltered state,

— other than in exceptional cases, simply removing the trade marks which have been affixed to the counterfeit goods without authorization,

— placing the goods under a different customs procedure.

2. The counterfeit or pirated goods may be handed over to the exchequer. In that event, paragraph 1 (a) shall apply.

3. In addition to the information given pursuant to the second subparagraph of Article 6 (1) and under the conditions laid down therein, the customs office or the competent service shall inform the holder of the right, upon request, of the names and addresses of the consignor, of the importer or exporter and of the manufacturer of the goods found to be counterfeit or pirated and of the quantity of the goods in question.

CHAPTER VI

Final provisions

Article 9

1. Save as provided by the law of the Member State in which the application is made, the acceptance of an application drawn up in accordance with Article 3 (2) shall not entitle the holder of a right to compensation where counterfeit or pirated goods are not detected by a customs office and are released or no action is taken to detain them in accordance with Article 6 (1).

2. Save as provided by the law of the Member State in which the application is made, exercise by a customs office or by another duly empowered authority of the powers conferred on them in regard to combating counterfeit or pirated goods shall not render them liable to the persons involved in the operations referred to in Article 1 (1) (a) or Article 4, in the event of their suffering loss or damage as a result of their action.

3. The civil liability of the holder of a right shall be governed by the law of the Member State in which the goods in question were placed in one of the situations referred to in Article 1 (1) (a).

Article 10

This Regulation shall not apply to goods of a non-commercial nature contained in travellers' personal luggage within the limits laid down in respect of relief from customs duty.

Article 11

Moreover, each Member State shall introduce penalties to apply in the event of infringements of Article 2. Such penalties must be sufficiently severe to encourage compliance with the relevant provisions.

Article 12

The provisions necessary for the application of this Regualtion shall be adopted in accordance with the procedure laid down in Article 13 (3) and (4).

Article 13

1. The Commission shall be assisted by the Committee set up under Article 247 of Regulation (EEC) No 2913/92.

2. The Committee shall examine any matter concerning implementation of this Regulation which its chairman may raise, either on his own initiative or at the request of the representative of a Member State.

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

4. The Commission shall adopt measures which shall apply immediately. However, if the measures are not in accordance with the opinion of the Committee, they shall be communicated by the Commission to the Council forthwith. In the event:

— the Commission shall defer application of the measures which it has decided for not more than three months from the date of their communication,

— the Council, acting by a qualified majority, may take a different decision within the time limit provided for in the first indent.

Article 14

Member States shall communicate all relevant information on the application of this Regulation to the Commission.

The Commission shall communicate that information to the other Member States.

For the purpose of the application of this Regulation, the provisions of Regulation (EEC) No 1468/81 of 19 May 1981 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs or agricultural matters [1] shall apply *mutatis mutandis.*

The details of the information procedure shall be drawn up in the framework of the implementing provisions in accordance with Article 13 (2), (3) and (4).

Article 15

Within two years of the entry into force of this Regulation, the Commission shall, on the basis of the information referred to in Article 14, report to the European Parliament and the Council on the operation of the system particularly with regard to the economic and social consequences of counterfeiting and shall propose any amendments or additions required, within a period of two years from the implementation of this Regulation.

Article 16

Regulation (EEC) No 3842/86 shall be repealed as from the date of implementation of this Regulation.

Article 17

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 July 1995.

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

Done at Brussels, 22 December 1994.

For the Council

The President

H. SEEHOFER

[1] OJ No L 144, 2. 6. 1981, p. 1. Regulation as last amended by Regulation (EEC) No 945/87 (OJ No L 90, 2. 4. 1987, p. 3).

COUNCIL REGULATION (EC) No 3296/94

of 19 December 1994

on certain procedures for applying the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part

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 a Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Czech and Slovak Federal Republic (CSFR), of the other part, was signed in Brussels on 16 December 1991;

Whereas pending the entry into force of the Europe Agreement, its provisions on trade and trade-related matters have been given effect since 1 March 1992 by an Interim Agreement on trade and trade-related matters between the European Economic Community and the European Coal and Steel Community, of the one part, and the CSFR, of the other part [1], signed in Brussels on 16 December 1991;

Whereas Council Regulation (EEC) No 520/92 [2] provides for the implementation of the said Interim Agreement;

Whereas a separate Europe Agreement with the Czech Republic was signed in Luxembourg on 4 October 1993, as a consequence of the dissolution of the CSFR on 31 December 1992;

Whereas pursuant to the conclusions of the Copenhagen European Council on 21 and 22 June 1993 the Interim Agreement was amended by an Additional Protocol signed on 22 December 1993 in order to increase and accelerate the granting of certain Community concessions;

Whereas a Supplementary Protocol to the Interim Agreement was signed with the Czech Republic on 21 December 1993 in order to adapt this Agreement to the dissolution of the CSFR and the subsequent succession thereto by the Czech Republic;

Whereas it is necessary to lay down the procedures for applying various provisions of the Europe Agreement, incorporating the same provisions as those of Regulation (EEC) No 520/92;

Whereas, with regard to trade protection measures, it is appropriate, where the provisions of the Europe Agreement render it necessary, to lay down specific provisions concerning the general rules provided for in particular in Council Regulation (EC) No 518/94 of 7 March 1994 on common rules for imports [3] and in 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 [4];

Whereas account should be taken of the undertakings set out in the Europe Agreement when examining whether a safeguard measure should be introduced;

Whereas the procedures concerning safeguard clauses provided for in the Treaty establishing the European Community are also applicable;

Whereas specific provisions have been adopted for safeguard measures concerning the textile products covered by the additional Protocol to the Europe Agreement;

Whereas certain special procedures should be introduced for the application of safeguard measures in the agricultural sectors,

HAS ADOPTED THIS REGULATION:

TITLE I

Agricultural products

Article 1

Provisions for the application of Article 21 (2) and (4) of the Agreement concerning agricultural products falling within Annex II of the Treaty and subject in the framework of the common market organization to a regime of levies or of import duties and concerning products falling within CN codes 0711 90 50 and 2003 10 10 shall be adopted in accordance with the procedure provided for in Article 23 of Regulation (EEC) 1766/92 or in the corresponding provisions of other regulations establishing a common organization of the agricultural markets. Where the application of the Agreement calls for close cooperation with the Czech Republic, the Commission may take any measure necessary to ensure such cooperation.

[1] OJ No L 115, 30. 4. 1992, p. 2.
[2] OJ No L 56, 29. 2. 1992, p. 9.
[3] OJ No L 67, 10. 3. 1994, p. 77.
[4] OJ No L 209, 2. 8. 1988, p 1. Regulation last amended by Regulation (EC) No 522/94 (OJ No L 66, 10. 3. 1994, p. 10).

TITLE II

Protective measures

Article 2

The Council may, in accordance with the procedures provided for in Article 113 of the Treaty, decide to refer to the Association Council established by the Agreement with regard to the measures provided for in Articles 29 and 117 (2) of the Agreement. Where necessary, the Council shall adopt these measures in accordance with the same procedure.

The Commission may, on its own initiative or at the request of a Member State, present the necessary proposals to this end.

Article 3

1. In the case of a practice that may justify application by the Community of the measures provided for in Article 64 of the Agreement, the Commission, after examining the case, on its own initiative or at the request of a Member State, shall decide whether such practice is compatible with the Agreement. Where necessary, it shall propose the adoption of safeguard measures to the Council, which shall act in accordance with the procedure laid down in Article 113 of the Treaty, except in the cases of aid to which Regulation (EEC) No 2423/88 applies, when measures shall be taken according to the procedures laid down in that Regulation. Measures shall be taken only under the conditions set out in Article 64 (6) of the Agreement.

2. In the case of a practice that may cause measures to be applied to the Community by the Czech Republic on the basis of Article 64 of the Agreement, the Commission, after examining the case, shall decide whether the practice is compatible with the principles set out in the Agreement. Where necessary, it shall take appropriate decisions on the basis of the criteria which result from the application of Articles 85, 86 and 92 of the Treaty.

Article 4

In the case of a practice which is liable to warrant the application, by the Community, of the measures provided for in Article 30 of the Agreement, the introduction of anti-dumping measures shall be decided upon in accordance with the provisions laid down in Regulation (EEC) No 2423/88 and the procedures provided for in Article 34 (2) and (3) (b) or (d) of the Agreement.

Article 5

1. Where a Member State requests the Commission to apply safeguard measures as provided for in Article 31 or 32 of the Agreement, it shall provide the Commission, in support of its request, with the information needed to justify it.

If the Commission decides not to apply safeguard measures, it shall inform the Council and the Member States accordingly within five working days of receipt of the request from the Member State.

Any Member State may refer this decision of the Commission to the Council within ten working days of its notification.

If the Council, acting by a qualified majority, indicates its intention to adopt a different decision, the Commission shall inform the Czech Republic thereof forthwith and shall notify it of the opening of consultations within the Association Council as provided for in Article 34 (2) and (3) of the Agreement.

The Council, acting by a qualified majority, may take a different decision within twenty working days of the conclusion of the consultations with the Czech Republic within the Association Council.

2. The Commission shall be assisted by the Committee established by Regulation (EC) No 3491/93 [1].

The Committee shall meet when convened by its chairman. The latter shall communicate any appropriate information to the Member State at the earliest opportunity.

3. Where the Commission, on its own initiative or at the request of a Member State, decides that the safeguard measures provided for in Article 31 or 32 of the Agreement should be applied:

— it shall inform the Member State forthwith if acting on its own initiative or, if it is responding to a Member State's request, within five working days of the date of receipt of that request,

— it shall consult the Committee,

— at the same time it shall inform the Czech Republic and notify the Association Council of the opening of consultations as referred to in Article 34 (2) and (3) of the Agreement,

— at the same time it shall provide the Association Council with all the information necessary for these consultations.

4. In any event, the consultations within the Association Council shall be deemed to be completed 30 days after the notification referred to in the fourth subparagraph of paragraph 1 and in paragraph 3.

At the end of the consultations or on expiry of the period of 30 days, and if no other arrangement proves possible, the Commission, after consulting the Committee, may take appropriate measures to implement Articles 31 and 32 of the Agreement.

5. The decision referred to in paragraph 4 shall be notified forthwith to the Council, the Member States and the Czech Republic; it shall also be notified to the Association Council.

The decision shall be immediately applicable.

[1] OJ No L 319, 21. 12. 1993, p. 1.

6. Any Member State may refer the Commission decision referred to in paragraph 4 to the Council within 10 working days of receiving notification of the decision.

7. If the Commission has not taken a decision within the meaning of the second subparagraph of paragraph 4 within 10 working days of the end of the period of 30 days referred to in that paragraph, any Member State which has referred the matter to the Commission in accordance with paragraph 3 may refer it to the Council.

8. In the cases referred to in paragraphs 6 and 7 the Council, acting by a qualified majority, may adopt a different decision within two months.

Article 6

1. Where exceptional circumstances arise within the meaning of Article 34 (3)(d) of the Agreement, the Commission may take immediate safeguard measures in the cases referred to in Articles 31 and 32 of the Agreement.

2. If the Commission receives a request from a Member State, it shall take a decision thereon within five working days of receipt of the request.

The Commission shall notify the Council and the Member States of its decision.

3. Any Member State may refer the Commission's decision to the Council in accordance with the procedure provided for in Article 5 (6).

The procedure set out in Article 5 (7) and (8) shall be applicable.

If the Commission has not taken a decision within the time limit mentioned in paragraph 2, any Member State which has referred the matter to the Commission may refer it to the Council in accordance with the procedures laid down in the first and second subparagraphs of this paragraph.

Article 7

The procedures laid down in Articles 5 and 6 shall not apply to products covered by Protocol 1 of the Agreement.

Article 8

By way of derogation from Articles 5 and 6, if the circumstances demand that measures are taken concerning agricultural products on the basis of Article 22 or 31 of the Agreement or on the basis of provisions in the Annexes covering these products, such measures shall be taken according to procedures provided for by the rules establishing a common organization of the agricultural markets, or in specific provisions adopted under Article 235 of the Treaty and applicable to products resulting from the processing of agricultural products, provided that the conditions established under Article 22 or Article 34 (2) and (3) of the Agreement are met.

Article 9

Notification to the Association Council as required by the Agreement shall be the responsibility of the Commission, acting on behalf of the Community.

Article 10

This Regulation does not preclude the application of safeguard measures provided for in the Treaty, in particular in Articles 109 H and 109 I, according to the procedures laid down therein.

Article 11

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

It shall apply from the date of entry into force of the Agreement [1].

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

Done at Brussels, 19 December 1994.

For the Council

The President

K. KINKEL

[1] Not later than 1 February 1995.

COUNCIL REGULATION (EC) No 3297/94

of 19 December 1994

on certain procedures for applying the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part

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 a Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Czech and Slovak Federal Republic (CSFR), of the other part, was signed in Brussels on 16 December 1991;

Whereas pending the entry into force of the Europe Agreement, its provisions on trade and trade-related matters have been given effect since 1 March 1992 by an Interim Agreement on trade and trade-related matters between the European Economic Community and the European Coal and Steel Community, of the one part, and the CSFR, of the other part [1], signed in Brussels on 16 December 1991;

Whereas Council Regulation (EEC) No 520/92 [2] provides for the implementation of the said Interim Agreement;

Whereas a separate Europe Agreement with the Slovak Republic was signed in Luxembourg on 4 October 1993, as a consequence of the dissolution of the CSFR on 31 December 1992;

Whereas pursuant to the conclusions of the Copenhagen European Council on 21 and 22 June 1993 the Interim Agreement was amended by an Additional Protocol signed on 22 December 1993 in order to increase and accelerate the granting of certain Community concessions;

Whereas a Supplementary Protocol to the Interim Agreement was signed with the Slovak Republic on 21 December 1993 in order to adapt this Agreement to the dissolution of the CSFR and the subsequent succession thereto by the Slovak Republic;

Whereas it is necessary to lay down the procedures for applying various provisions of the Europe Agreement, incorporating the same provisions as those of Regulation (EEC) No 520/92;

Whereas, with regard to trade protection measures, it is appropriate, where the provisions of the Europe Agreement render it necessary, to lay down specific provisions concerning the general rules provided for in particular in Council Regulation (EC) No 518/94 of 7 March 1994 on common rules for imports [3] and in 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 [4];

Whereas account should be taken of the undertakings set out in the Europe Agreement when examining whether a safeguard measure should be introduced;

Whereas the procedures concerning safeguard clauses provided for in the Treaty establishing the European Community are also applicable;

Whereas specific provisions have been adopted for safeguard measures concerning the textile products covered by the additional Protocol to the Europe Agreement;

Whereas certain special procedures should be introduced for the application of safeguard measures in the agricultural sectors,

HAS ADOPTED THIS REGULATION:

TITLE I

Agricultural products

Article 1

Provisions for the application of Article 21 (2) and (4) of the Agreement concerning agricultural products falling within Annex II of the Treaty and subject in the framework of the common market organization to a regime of levies or of import duties and concerning products falling within CN codes 0711 90 50 and 2003 10 10 shall be adopted in accordance with the procedure provided for in Article 23 of Regulation (EEC) 1766/92 or in the corresponding provisions of other regulations establishing a common organization of the agricultural markets. Where the application of the Agreement calls for close cooperation with the Slovak Republic, the Commission may take any measure necessary to ensure such cooperation.

[1] OJ No L 115, 30. 4. 1992, p. 2.
[2] OJ No L 56, 29. 2. 1992, p. 9.
[3] OJ No L 67, 10. 3. 1994, p. 77.
[4] OJ No L 209, 2. 8. 1988, p 1. Regulation last amended by Regulation (EC) No 522/94 (OJ No L 66, 10. 3. 1994, p. 10).

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Protective measures

Article 2

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The Commission may, on its own initiative or at the request of a Member State, present the necessary proposals to this end.

Article 3

1. In the case of a practice that may justify application by the Community of the measures provided for in Article 64 of the Agreement, the Commission, after examining the case, on its own initiative or at the request of a Member State, shall decide whether such practice is compatible with the Agreement. Where necessary, it shall propose the adoption of safeguard measures to the Council, which shall act in accordance with the procedure laid down in Article 113 of the Treaty, except in the cases of aid to which Regulation (EEC) No 2423/88 applies, when measures shall be taken according to the procedures laid down in that Regulation. Measures shall be taken only under the conditions set out in Article 64 (6) of the Agreement.

2. In the case of a practice that may cause measures to be applied to the Community by the Slovak Republic on the basis of Article 64 of the Agreement, the Commission, after examining the case, shall decide whether the practice is compatible with the principles set out in the Agreement. Where necessary, it shall take appropriate decisions on the basis of the criteria which result from the application of Articles 85, 86 and 92 of the Treaty.

Article 4

In the case of a practice which is liable to warrant the application, by the Community, of the measures provided for in Article 30 of the Agreement, the introduction of anti-dumping measures shall be decided upon in accordance with the provisions laid down in Regulation (EEC) No 2423/88 and the procedures provided for in Article 34 (2) and (3) (b) or (d) of the Agreement.

Article 5

1. Where a Member State requests the Commission to apply safeguard measures as provided for in Article 31 or 32 of the Agreement, it shall provide the Commission, in support of its request, with the information needed to justify it.

If the Commission decides not to apply safeguard measures, it shall inform the Council and the Member States accordingly within five working days of receipt of the request from the Member State.

Any Member State may refer this decision of the Commission to the Council within ten working days of its notification.

If the Council, acting by a qualified majority, indicates its intention to adopt a different decision, the Commission shall inform the Slovak Republic thereof forthwith and shall notify it of the opening of consultations within the Association Council as provided for in Article 34 (2) and (3) of the Agreement.

The Council, acting by a qualified majority, may take a different decision within twenty working days of the conclusion of the consultations with the Slovak Republic within the Association Council.

2. The Commission shall be assisted by the Committee established by Regulation (EC) No 3491/93 [1].

The Committee shall meet when convened by its chairman. The latter shall communicate any appropriate information to the Member State at the earliest opportunity.

3. Where the Commission, on its own initiative or at the request of a Member State, decides that the safeguard measures provided for in Article 31 or 32 of the Agreement should be applied:

— it shall inform the Member State forthwith if acting on its own initiative or, if it is responding to a Member State's request, within five working days of the date of receipt of that request,

— it shall consult the Committee,

— at the same time it shall inform the Slovak Republic and notify the Association Council of the opening of consultations as referred to in Article 34 (2) and (3) of the Agreement,

— at the same time it shall provide the Association Council with all the information necessary for these consultations.

4. In any event, the consultations within the Association Council shall be deemed to be completed 30 days after the notification referred to in the fourth subparagraph of paragraph 1 and in paragraph 3.

At the end of the consultations or on expiry of the period of 30 days, and if no other arrangement proves possible, the Commission, after consulting the Committee, may take appropriate measures to implement Articles 31 and 32 of the Agreement.

5. The decision referred to in paragraph 4 shall be notified forthwith to the Council, the Member States and the Slovak Republic; it shall also be notified to the Association Council.

The decision shall be immediately applicable.

[1] OJ No L 319, 21. 12. 1993, p. 1.

6. Any Member State may refer the Commission decision referred to in paragraph 4 to the Council within 10 working days of receiving notification of the decision.

7. If the Commission has not taken a decision within the meaning of the second subparagraph of paragraph 4 within 10 working days of the end of the period of 30 days referred to in that paragraph, any Member State which has referred the matter to the Commission in accordance with paragraph 3 may refer it to the Council.

8. In the cases referred to in paragraphs 6 and 7 the Council, acting by a qualified majority, may adopt a different decision within two months.

Article 6

1. Where exceptional circumstances arise within the meaning of Article 34 (3)(d) of the Agreement, the Commission may take immediate safeguard measures in the cases referred to in Articles 31 and 32 of the Agreement.

2. If the Commission receives a request from a Member State, it shall take a decision thereon within five working days of receipt of the request.

The Commission shall notify the Council and the Member States of its decision.

3. Any Member State may refer the Commission's decision to the Council in accordance with the procedure provided for in Article 5 (6).

The procedure set out in Article 5 (7) and (8) shall be applicable.

If the Commission has not taken a decision within the time limit mentioned in paragraph 2, any Member State which has referred the matter to the Commission may refer it to the Council in accordance with the procedures laid down in the first and second subparagraphs of this paragraph.

Article 7

The procedures laid down in Articles 5 and 6 shall not apply to products covered by Protocol 1 of the Agreement.

Article 8

By way of derogation from Articles 5 and 6, if the circumstances demand that measures are taken concerning agricultural products on the basis of Article 22 or 31 of the Agreement or on the basis of provisions in the Annexes covering these products, such measures shall be taken according to procedures provided for by the rules establishing a common organization of the agricultural markets, or in specific provisions adopted under Article 235 of the Treaty and applicable to products resulting from the processing of agricultural products, provided that the conditions established under Article 22 or Article 34 (2) and (3) of the Agreement are met.

Article 9

Notification to the Association Council as required by the Agreement shall be the responsibility of the Commission, acting on behalf of the Community.

Article 10

This Regulation does not preclude the application of safeguard measures provided for in the Treaty, in particular in Articles 109 H and 109 I, according to the procedures laid down therein.

Article 11

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

It shall apply from the date of entry into force of the Agreement [1].

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

Done at Brussels, 19 December 1994.

For the Council

The President

K. KINKEL

[1] Not later than 1 February 1995.

COMMISSION REGULATION (EC) No 3298/94

of 21 December 1994

laying down detailed measures concerning the system of Rights of Transit (Ecopoints) for heavy goods vehicles transitting through Austria, established by Article 11 of Protocol No 9 to the Act of Accession of Norway, Austria, Finland and Sweden

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Norway, Austria, Finland and Sweden, and in particular Article 11 (6) and Annex 4 of Protocol No 9 thereto,

Whereas the abovementioned Protocol provided for a special regime concerning the transit of heavy goods vehicles through Austrian territory based on a system of Rights of Transit (Ecopoints); whereas such a regime shall replace, from the date of Accession, the system of distribution of ecopoints established by Council Regulation (EEC) No 3637/92 of 27 November 1992 [1];

Whereas the Commission should adopt detailed implementing measures concerning the procedures relating to the ecopoint system and the distribution of ecopoints;

Whereas, according to the second subparagraph of Article 11 (6) of Protocol No 9, such measures should ensure that the actual situation for the present Member States resulting from the application of Council Regulation (EEC) No 3637/92 and of the Administrative Arrangement, signed on 23 December 1992 [2], setting the date of entry into force and the procedures for the introduction of the ecopoint system referred to in the Transit Agreement, is maintained;

Whereas the Commission should adopt detailed measures concerning outstanding technical questions relating to the ecopoint system as foreseen in Joint Declaration No 18;

Whereas Annex 4 of Protocol No 9 shall be adapted to take account of transit journeys by heavy goods vehicles registered in Finland and Sweden, based on indicative values for the respective countries calculated on the basis of the number of transit journeys in 1991 and a standard value of NOx emission of 15,8 grammes NOx/kw;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Committee set up by Article 16 of Protocol No 9,

HAS ADOPTED THIS REGULATION:

I. Administrative provisions

Article 1

1. The driver of a heavy goods vehicle on a transit journey shall carry, and produce at the request of the supervisory authorities, a duly-completed standard form or an Austrian certificate confirming payment for the ecopoints for the journey in question, modelled on Annex A and known as the 'ecocard'.

The competent Austrian authorities shall issue the ecocard shown in Annex A against payment of the cost of producing and distributing the form and the ecopoints.

2. The driver of a heavy goods vehicle registered after 1 October 1990 shall also carry, and produce upon request, a standard COP document, modelled on Annex B, as evidence of the Nox emissions of that vehicle. Heavy goods vehicles first registered before 1 October 1990 or in respect of which no document is produced shall be assumed to have a COP value of 15,8 g/kw.

The Member States shall notify the Commission in writing of the national authorities authorized to issue the above documents.

3. Transit journeys made in the circumstances listed in Annex C or under ECMT authorizations shall be exempt from the ecopoints scheme.

Article 2

1. The requisite number of ecopoints shall be affixed to the form referred to in Article 1 (1) and cancelled. The ecopoints shall be cancelled by signing in such a way that the signature extends over both the ecopoints and the form to which they have been affixed. A rubber stamp may be used instead of a signature.

2. Until 31 December 1996, on a vehicle's entry into Austrian territory a duly-completed form bearing the requisite number of ecopoints shall be handed to the supervisory authorities, who will hand back a copy with the proof of payment.

[1] OJ No L 373, 21. 12. 1992, p. 1.
[2] OJ No L 373, 21. 12. 1992, p. 1.

In the case of an Austrian-registered heavy goods vehicle, the proof of payment and the COP document shall be presented together to the supervisory authorities of the Member State on entering or leaving Italy or Germany. A copy of the proof of payment shall be presented to the customs authorities on entry.

Special ecopoints shall be used for Austrian-registered heavy goods vehicles engaged in transit journeys to or from Italy or journeys which continue in Germany after transit through Austria. Their use shall be recorded on the proof of payment.

Such controls may be done at a point other than the border at the discretion of the Member State.

3. Where a traction unit is switched during a transit journey, the proof of payment issued on entry shall remain valid and be retained. Where the COP value of the new traction unit exceeds that indicated on the form, additional ecopoints, affixed to a new card, shall be affixed and cancelled on leaving the country.

4. For journeys requiring ecopoints, the form specified in Article 1 (1) shall replace all Austrian forms hitherto used for transport statistics.

5. The competent authorities of the Member States shall regularly notify the Commission of the number of points used. The originals, or copies, of forms bearing cancelled ecopoints shall, where necessary, be made availale to individual national authorities or to the Commission.

Article 3

1. Until 31 December 1996 Austrian proof of payment for ecopoints for Italy or Germany shall be recognized as replacing the authorizations previously used in Austria, Germany and Italy. In Italy such proof of payment shall replace a bilateral half-ticket for a single journey and in Germany a bilateral authorization for a return journey.

For Austrian-registered heavy goods vehicles leaving Italy, a duly-completed copy of the form referred to in Article 1 (1), bearing the requisite number of ecopoints for Italy, shall replace the authorization provided for.

2. Continuous journeys which involve crossing the Austrian frontier once by train, whether by conventional rail transport or in a combined transport operation, and crossing the frontier by road before or after crossing by rail, shall be regarded not as transit of goods by road through Austria within the meaning of Article 1 (e) of Protocol No 9, but as bilateral journeys within the meaning of Article 1 (g) thereof.

3. Conitnuous transit journeys through Austria using the following rail terminals shall be deemed as bilateral journeys :

Fürnitz/Villach Süd, Sillian, Innsbruck/Hall, Brennersee, Graz.

Article 4

The ecopoints shall be overprinted with the year for which they are valid. They may be used between 1 January of the year for which they are valid and 31 January of the following year.

Article 5

1. Infringements of Protocol No 9 or of this Regulation by a driver of a heavy goods vehicle or an undertaking shall be prosecuted in accordance with the national legislation in force. In the case of repeated infringements, Article 8 (3) of Council Regulation (EEC) No 881/92 [1] shall apply.

2. The Commission and the competent authorities of the Member States shall, each within the limits of their jurisdiction, provide each other with administrative assistance in investigating and prosecuting infringements of Protocol No 9 or this Regulation, notably in ensuring that the documents specified in Article 1 are correctly used and handled.

3. Where the ecocards referred to in Article 1 are not presented to the supervisory authorities in accordance with the provisions of this Regulation, where such a form is incomplete or obviously incorrect, or where the ecopoints are not correctly affixed, the supervisory authorities may, with due regard to the principle of proportionality, refuse permission for the journey to be continued.

II. Distribution of ecopoints

Article 6

1. A number of ecopoints equal to 96,66 % of the total available shall be distributed between the Member States according to the distribution scale shown in Annex D.

2. These ecopoints shall be made available to the Member States, each year in two portions, the first before 1 October of the preceding year and the second before 1 March of the relevant year.

In the circumstances provided for in Article 11 (2) (c) of Protocol No 9, the second instalment shall be reduced by the number of ecopoints calculated using the method laid down in Annex 5 (3) to the Protocol.

Article 7

1. The competent authorities of the Member States will distibute their available ecopoints to interested operators, established on their territory.

[1] OJ No L 95, 9. 4. 1992, p. 1.

2. Each year the competent authorities of the Member States shall return to the Commission, by 15 October at the latest, any ecopoints which, on the basis of available data and the estimates for traffic for the final months of the year, are likely not be used before the end of the year.

Article 8

1. The ecopoints which are not distributed among Member States, in accordance with Article 6, as well as those which have been returned to the Commission, in accordance with Article 7, shall constitute a Community reserve.

2. The ecopoints of the Community reserve are to be allocated by the Commission to the Member States, according to the procedure set out in Article 16 of Protocol No 9, at least one month before the end of the year, taking into account the manner in which each Member State managed the ecopoints allocated to it and the objective needs of the hauliers of each Member State, which may, in particular, be determined using the following criteria :

— the special position of Greece and Italy as detailed in Annex E,

— a disadvantageous starting position,

— problems with the technical upgrading of the vehicle fleet concerning NOx emissions,

— geographical circumstances,

— unforeseen occurrences.

III. Adaptation of ecopoint figures

Article 9

Annex 4 of Protocol No 9 to the Act of Accession of Norway, Austria, Finland and Sweden shall be adapted as follows :

Year	Percentage of ecopoints	Ecopoints for EU-15
1991 base	100 %	23 556 220
1995	71,7 %	16 889 810
1996	65,0 %	15 311 543
1997	59,1 %	13 921 726
1998	54,8 %	12 908 809
1999	51,9 %	12 225 678
2000	49,8 %	11 730 998
2001	48,5 %	11 424 767
2002	44,8 %	10 533 187
2003	40,0 %	9 422 488

IV. Technical questions concerning the ecopoint system

Article 10

By way of clarification from Article 11 (2) (b) and Annex 5 (1) of Protocol No 9, in the case of vehicles registered before 1 October 1990 which have had a change of engine since this date, the COP value of the new engine shall apply. In such a case the certificate issued by the appropriate authority shall mention the change of engine and give details of the new COP value for NOx emissions.

Article 11

Where a traction unit registered in a Member State other than Austria is replaced by an Austrian-registered traction unit during a transit journey across Austria to Italy, a permit for bilateral traffic between Austria and Italy shall, until 31 December 1996, be required in addition to the proof of payment for the journey by the first traction unit.

Article 12

A transit journey shall be exempt from paying ecopoints if the following three conditions are met :

(i) the sole purpose of the journey is to deliver a brand-new vehicle, or vehicle combination, from the manufacturers to a destination in another State ;

(ii) no goods are transported on the journey ;

(iii) the vehicle or vehicle combination has appropriate international registration papers and export licence plates.

Article 13

A transit journey shall be exempt from paying ecopoints if it is the empty leg of a journey exempt from ecopoints as listed in Annex C and the vehicle carries suitable documentation to demonstrate this. Such suitable documentation shall be either :

— a bill of lading, or

— a completed ecocard to which no ecopoints have been attached, or

— a completed ecocard with ecopoints, which are subsequently reinstated.

Article 14

1. This Article shall apply to the transit traffic of heavy goods vehicles with a maximum authorized weight of over 3,5 tonnes registered in Austria across German territory either via Bad Reichenhall ('Kleines Deutsches Eck') or via the Inntal-motorway A8/A93 between the crossings Bad Reichenhall/Autobahn and Kiefersfelden ('Großes Deutsches Eck').

2. On the 'Kleines Deutsches Eck', Germany may limit the number of single journeys of Austrian heavy goods vehicles to 4 700 per week until 30 June 1995 and to 2 350 single journeys per week until 31 December 1996.

3. On the 'Großes Deutsches Eck', Germany may, until 31 December 1996, limit the number of single journeys of transiting Austrian vehicles, other than those made on the basis of bilateral traffic authorizations or journeys on own account, to 2 350 per week. As from 1 January 1997 the non-discriminatory treatment of Austrian hauliers shall be ensured.

4. On the 'Kleines Deutsches Eck' the Commission shall, before 1 October 1996 and after consultation, notably with Austria and Germany, review the necessity and efficiency of this regime with a view to establishing a non-discriminatory system based on environmental criteria and electronic controls to be applied as from 1 January 1997 to heavy goods vehicles as defined in Article 1 (d) of Protocol No 9 to the Act of Accession for Austria and which shall not exceed the restrictions applying to the transit of heavy goods vehicles across Austrian territory.

V. Final provisions

Article 15

This Regulation shall enter into force on 1 January 1995, subject to the entry into force of the Act of Accession of Norway, Austria, Finland and Sweden.

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

Done at Brussels, 21 December 1994.

For the Commission

Marcelino OREJA

Member of the Commission

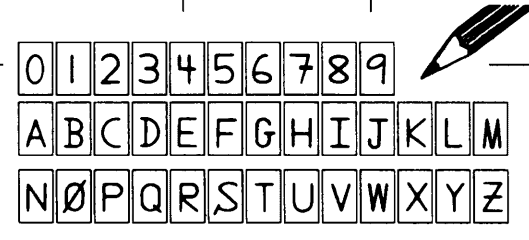
BM für öffentl. Wirtschaft und Verkehr
Straßengüterverkehr
Ökokarte
1031 Wien, Radetzkystraße 2

Raum zum Aufkleben der Ökopunkte-Marken

Space for affixing Ecopoint stamps

Spazio per l'apposizione degli Ecopunti

00019789



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Straßengüterverkehr

Ökokarte

Original

1033 Wien, Hintere Zollamtsstraße 2 b

Für nationale Kennzeichnung/National identification mark/
Segno di riconoscena nazionale

00019789

Erläuterungen siehe Rückseite der Bestätigung *Spiegazioni sul verso della conferma (Bestätigung)*
For explanation see back of confirmation (Bestätigung)

3 Datum der Einreise (Tag, Monat, Jahr)

27 Name und Firma sowie vollständige Anschrift des Verkehrsunternehmers

A

4 Angaben zum LKW/Zugfahrzeug
5 Nationalität 6 Amtliches Kennzeichen

7 Monat und Jahr der 1. Zulassung

8 COP-Wert (mit 1 Dezimale)

9 Anzahl der Ökopunkte

10 Angaben zum Anhänger/Sattelauflieger
5 Nationalität 6 Amtliches Kennzeichen

11 Fuhrgewerbe X

12 Werkverkehr X

28 Ökopunkte ohne besonderen Aufdruck: X

Besonders gekennzeichnete österreichische Ökopunkte:

A

mit Aufdruck (D) X

13 Angaben zum Transport (nur bei beladenem Fahrzeug)
14 Gewicht der Ladung in Tonnen (mit 1 Dezimale)

15 beladen X

16 leer X

29 mit Aufdruck (I) X

17 (Abgangs-) Ladeland	18 (Abgangs-) Ladeort (Postleitzahl)	19 (Ziel-) Entladeland	20 (Ziel-) Entladeort (Postleitzahl)

21 Grenzübergangsstellen

22 beim Eintritt

23 beim Austritt

Beleg wird maschinell eingelesen *Machine-read information* *Ricevato alla lettura tramite computer*

00000000

00019789

26 Unterschrift und Name des Ausstellers

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Straßengüterverkehr

STAT **Ökokarte**

Bestätigung

Für nationale Kennzeichnung/National identification mark/
Segno di riconoscena nazionale

☐☐☐☐☐☐☐☐☐☐☐☐

Diese Bestätigung gilt für österreichische Transportunternehmen als Genehmigung für den internationalen Straßengüterverkehr mit der Bundesrepublik Deutschland einschließlich Transitverkehr, wenn das Feld Nr. 24 einen Kontrollvermerk der zuständigen österreichischen Organe enthält. Bei Verwendung als Genehmigung ist folgendes zu beachten:

1. **Gültig zwei Monate ab Datum der Einreise.**
2. **Diese Genehmigung ist im Fahrzeug mitzuführen und den zuständigen Kontrollbeamten auf Verlangen vorzuzeigen.**
3. **Sie gilt nicht für den Binnenverkehr.**
4. **Diese Genehmigung ist nicht übertragbar.**

Zollstempel

00019789	Hinfahrt	Rückfahrt

Erläuterungen siehe Rückseite — *For explanation see over* — *Spiegazioni sul verso*

3 Datum der Einreise (Tag, Monat, Jahr)

☐☐ ☐☐ ☐☐

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5 Nationalität 6 Amtliches Kennzeichen

☐☐☐ _____

7 Monat und Jahr der 1. Zulassung

☐☐ ☐☐

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☐☐▲☐

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☐☐

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☐☐☐ _____

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13 Angaben zum Transport (nur bei beladenem Fahrzeug)
14 Gewicht der Ladung in Tonnen (mit 1 Dezimale)

☐☐▲☐

15 beladen: X

16 leer: X

28 Ökopunkte ohne besonderen Aufdruck: X

Besonders gekennzeichnete österreichische Ökopunkte:

29 mit Aufdruck (D): X

29 mit Aufdruck (I): X

17 (Abgangs-) Ladeland	18 (Abgangs-) Ladeort (Postleitzahl)	19 (Ziel-) Entladeland	20 (Ziel-) Entladeort (Postleitzahl)
☐☐☐	☐☐☐☐☐☐☐	☐☐☐	☐☐☐☐☐☐☐

21 Grenzübergangsstellen

_____ ☐☐☐

22 beim Eintritt

_____ ☐☐☐

23 beim Austritt

24 Kontrollvermerk der zuständigen Organe

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Österreichische Ökopunkte mit Aufdruck (D) abgegeben 24a

00019789

Österreichische Ökopunkte mit Aufdruck (I) abgegeben 24b

Ökopunkte ohne besonderen Aufdruck abgegeben 24c

25 Datum/Stempel/Unterschrift

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Österreichische Zollämter
(Grenzübergangsstellen)

840 Achenkirch
545 Achleiten
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735 Bad Radkersburg
965 Balderschwang
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533 Braunau
860 Brenner-Straße
859 Brennerpaß
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935 Feldkirch-Bangs
936 Feldkirch-Meiningen
934 Feldkirch-Nofels
932 Feldkirch-Tisis
933 Feldkirch-Tosters
547 Felsenhütt
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250 Kleinhaugsdorf
340 Klingenbach
937 Koblach
255 Laa an der Thaya
760 Langegg
431 Lavamünd

Austrian Border Customs Offices
(Frontier posts)

837 Leutasch
445 Loibltunnel
942 Lustenau
940 Lustenau-Schmitterbrücke
941 Lustenau-Wiesenrain
938 Mäder
460 Naßfeld
862 Nauders
870 Nauders-Martinsbruck
539 Neuhaus
548 Neustift
333 Nickelsdorf
844 Niederndorf
549 Oberkappel
536 Obernberg
665 Oberndorf
963 Oberreute
542 Passau-Mariahilf
543 Passau-Saming
540 Passau-Voglau
871 Pfunds
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465 Plöckenpaß
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538 Schärding
838 Scharnitz
830 Schattwald
848 Schleching
655 Schwarzbach
554 Schwarzenberg
440 Seebergsattel
734 Sicheldorf
856 Sillian
534 Simbach
745 Spielfeld
872 Spiß
964 Springen
630 Steinpaß
537 Suben
832 Vils
839 Vorderriß
650 Walserberg-Autobahn
550 Wegscheid
961 Weienried
558 Weigetschlag
847 Wildbichl
560 Wullowitz
450 Wurzenpaß

Uffici doganali Austriachi
(Uffici doganali in frontiera)

Internationale (Europäische) Kennzeichen / International (European) distinguishing signs / Targa internazionale (Europeo)

AL	Albanien	F	Frankreich	LV	Lettland	PL	Polen	YU	Serbien
B	Belgien	GBZ	Gibraltar	FL	Liechtenstein	P	Portugal	SLØ	Slowenien
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BG	Bulgarien	GB	Großbritannien	LU	Luxemburg	SU	Rußland	CS	Tschechei
D	Deutschland	IRL	Irland	M	Malta	A	Österreich	TR	Türkei
DK	Dänemark	IS	Island	NL	Niederlande	S	Schweden	H	Ungarn
EW	Estland	I	Italien	N	Norwegen	CH	Schweiz	CY	Zypern
SF	Finnland	CRØ	Kroatien						

① Ecocard
② Federal Ministry for public economy and transport
③ Date of entry (Day, Month, Year)
④ Details of HGV/articulated vehicle tractor unit
⑤ Nationality
⑥ Vehicle registration number
⑦ Month and year of first registration
⑧ COP value (to one decimal place)
⑨ Number of Ecopoints
⑩ Details about trailer/semi-trailer
⑪ Transport for hire or reward
⑫ Transport on own account
⑬ Details of transport (for laden vehicles only)
⑭ Weight of load in tonnes (to one decimal place)
⑮ laden ⑯ unladen
⑰ Country of loading
⑱ Place of loading (post code)
⑲ Country of unloading
⑳ Place of unloading (post code)
㉑ Border Customs Office
㉒ of entry ㉓ of exit
㉔ Mark indicating that check has been carried out by the appropriate authority
㉕ Date/Stamp/Signature
㉖ Signature and name of person filling in this form
㉗ Name, firm and complete address of the haulier
㉘ Ecopoints without special imprint ㉙ with imprint

① Ecocarta
② Ministero federale dell'economia pubblica e del traffico
③ Data d'ingresso (Giorno, Mese, Anno)
④ Dati sull'autocarro o sulla motrice di autoarticolato
⑤ Nazionalità
⑥ Targa del veicolo
⑦ Mese e anno di prima immatricolazione
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⑱ Località di carico (codice postale)
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⑳ Località di scarico (codice postale)
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Straßengüterverkehr

STAT **Ökokarte**

Kontrollbeleg

Für nationale Kennzeichnung/National identification mark/
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Erläuterungen siehe Rückseite *For explanation see over* *Spiegazioni sul verso*

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(Frontier posts)

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EW	Estland	I	Italien	N	Norwegen	CH	Schweiz	CY	Zypern
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A-1037 Wien

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COP DOCUMENT

Fortlaufende Dokumentnummer: 1) Document serial number: Numero di serie del documento:	

Nationalität: 2) Nationality: Nazionalità:		Amtliches Kennzeichen: 3) Vehicle registration number: Targa del veicolo:	
Datum der Erstzulassung: 4) Date of first registration: Data della prima immatricolazione:		Motor wurde getauscht am: 4a) Motor was changed at: Motore cambiato il:	
EWG-Betriebserlaubnisnummer: Type approval number: CEE-numero della licenza per l'esercizio: 5) *oder/or/o* Motorcodierungsnummer: Engine serial number: Numero di serie del motore:	(nach 88/77/EWG 91/542/EWG oder/or/o ECE R 49)		
Fahrzeugidentifizierungsnummer: 6) Chassis number: Chassis numero:			
NOx Emission: 7) NOx Emission: Emissione di NOx:		COP Wert (Typengenehmigung + 10%): 8) COP Value (Type approval + 10%): Valore COP (Omologazione + 10 %):	
Anzahl Ökopunkte: 9) Number of Ecopoints: Numero di Ecopunti:			

Behördenstempel: 10) Official stamp: Timbro ufficiale:	

Herstellerbestätigung (nach Bedarf): 11) Manufacturer confirmation (if necessary): Attestazione del produttore (a seconda del fabbisogno):	

Der Lenker eines Lkw im Gütertransitverkehr durch Österreich hat dieses Dokument mitzuführen und den Kontrollorganen zur Kontrolle vorzuweisen. Wird das Dokument nicht vorgewiesen, sind für die Fahrt 16 Ökopunkte auf die Ökokarte aufzukleben und zu entwerten.

The driver of a H.G.V. in transit through Austria must carry this document with him/her and present it to control authorities for inspection. If the document is not presented for inspection then 16 Ecopoints are to be affixed to the Ecocard and cancelled.

Il conducente di un camion in transito attraverso l'Austria deve avere con sè questo documento e deve presentarlo alle Autorità competenti per il controllo. In caso di mancata presentazione del documento, 16 Ecopunti verrano applicati sull'Ecocarta e annullati.

ANNEX C

JOURNEYS FOR WHICH NO ECOPOINTS ARE REQUIRED

1. The occasional transport of goods to and from airports when flights are diverted.
2. The carriage of baggage in trailers attached to passenger vehicles, and the carriage of baggage to and from airports by vehicles of all kinds.
3. The carriage of postal consignments.
4. The carriage of damaged vehicles or vehicles in need of repair.
5. The carriage of waste and sewage.
6. The carriage of animal carcases for disposal.
7. The carriage of bees and fish spawn.
8. The transport of corpses.
9. The carriage of works of art for exhibition or commercial purposes.
10. The occasional carriage of goods for advertising or educational purposes.
11. The carriage of goods by removal firms possessing the appropriate personnel and equipment.
12. The carriage of equipment, accessories and animals to and from theatrical, musical, cinema, sporting or circus events, exhibitions or fairs, or to and from radio, cinema or television recordings.
13. The carriage of spare parts for ships and aircraft.
14. The empty journey of a goods vehicle sent to replace a vehicle that has broken down in transit and the continuation of the journey by the replacement vehicle using the authorization issued for the first vehicle.
15. The carriage of emergency medical aid (particularly in the case of natural disasters).
16. The carriage of valuable goods (e.g. precious metals) in special vehicles escorted by the police or another security service.

ANNEX D

DISTRIBUTION SCALE OF ECOPOINTS

Member State	Units
Austria	214 800
Belgium	32 500
Denmark	40 500
Germany	482 500
Greece	60 500
Spain	1 200
Finland	4 600
France	5 000
Ireland	1 000
Italy	510 000
Luxembourg	5 000
Netherlands	123 500
Portugal	400
Sweden	7 500
United Kingdom	8 500
Total	1 497 500

ANNEX E

SPECIAL POSITION REFERRED TO IN ARTICLE 8 (2)

Of the normal reserve of 3,34 % of the total number of ecopoints, a portion approximately equivalent to 5 430 of the units in Annex D shall in principle be allocated, on a priority basis and in accordance with the distribution scale in Annex D, to Greece and Italy. Furthermore, all necessary efforts shall be made to ensure that the share of ecopoints allocated to Greece takes sufficient account of Greek needs.

COMMISSION REGULATION (EC) No 3299/94

of 21 December 1994

on transitional measures applicable in Austria in the wine-growing sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Austria, Finland, Norway and Sweden [1], and in particular Article 149 (1) thereof,

Whereas pursuant to Article 2 (3) of the Accession Treaty the institutions of the European Union may adopt, before accession, the measures referred to in Article 149 of the Act of Accession ; whereas those measures must enter into force on the date of and subject to the entry into force of the Accession Treaty ;

Whereas Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine [2], as last amended by Regulation (EC) No 1891/94 [3], lays down the basic rules for the management of the market in that sector and, in particular, Article 1 (6) thereof lays down that the wine marketing year lasts from 1 September to 31 August ;

Whereas pursuant to the Act of Accession the common organization of the market in wine will apply in Austria from the moment of accession ; whereas, however, there are important market management measures that cannot usefully be initiated during the current marketing year in that Member State ; whereas the application of the market management measures should therefore be postponed until the next marketing year ; whereas the situation on the wine market in Austria should be monitored in order to allow a harmonious transition from the previous national arrangements to the Community arrangements and ensure the balance of the Austrian wine market ;

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

HAS ADOPTED THIS REGULATION :

Article 1

This Regulation establishes the transitional measures applicable in Austria in the wine-growing sector.

Article 2

Without prejudice to the specific transitional provisions of the Act of Accession, the products referred to in Article 1 (2) (a) and (b) of Council Regulation (EEC) No 822/87, where these are located on Austrian territory, that do not meet the requirements of Title II and Articles 65 to 70 of that Regulation or of Council Regulation (EEC) No 4252/88 [4] and Council Regulation (EEC) No 2332/92 [5], both amended by Regulation (EC) No 1893/94 [6], may be marketed, in Austria alone, until stocks are exhausted, when those products :

— are of Austrian origin and have been produced up to 31 August 1995 at the latest, in compliance with the legislation in force in Austria before its accession, or

— were imported into Austria before its accession in compliance with Austrian legislation.

Article 3

The replanting rights referred to in Article 7 (1) of Regulation (EEC) No 822/87, acquired in Austria on the basis of the national legislation in force before accession, may be exercised on the conditions laid down in Community legislation :

— until the end of the 14th marketing year following the one during which grubbing up was carried out, when this took place before 1 September 1988,

— until 31 August 2003 when grubbing up took place between 1 September 1988 and 31 December 1994.

Article 4

Title III of Regulation (EEC) No 822/87 shall apply only from the 1995/96 marketing year.

Article 5

Austria shall communicate to the Commission, not later than 28 February 1995 :

— the quantities of grape must/juice and wine harvested in Austria in 1994/95, broken down according to quality, category and colour, and

— the quantities of grape must and wine held in storage at 31 August 1994 by producers and traders other than retailers.

Article 6

This Regulation shall enter into force on the date of its publication in the *Official Journal of the European Communities* and subject to the entry into force of the Treaty of Accession of Austria, Finland, Norway and Sweden.

It shall apply from 1 January 1995.

[1] OJ No C 241, 29. 8. 1994, p. 21.
[2] OJ No L 84, 27. 3. 1987, p. 1.
[3] OJ No L 197, 30. 7. 1994, p. 42.
[4] OJ No L 373, 31. 12. 1988, p. 59.
[5] OJ No L 231, 13. 8. 1992, p. 1.
[6] OJ No L 197, 30. 7. 1994, p. 45.

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

Done at Brussels, 21 December 1994.

For the Commission
René STEICHEN
Member of the Commission

COMMISSION REGULATION (EC) No 3300/94

of 21 December 1994

laying down transitional measures in the sugar sector following the accession of Austria, Finland and Sweden

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Norway, Austria, Finland and Sweden, hereinafter referred to as the 'Act', and in particular Article 149 (1) thereof,

Whereas the Act and therefore the Community rules introduced for the production and trade in agricultural products apply from 1 January 1995; whereas, accordingly, the production arrangements laid down in particular in Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector [1], as last amended by the Act [2], will not be applicable until that date, that is to say during the course of the 1994/95 marketing year; whereas transitional measures within the meaning of Article 149 (1) of the Act are required in order to enable Austria, Finland and Sweden to change over, from 1 January 1995 from the production arrangements in force in Austria, Finland and Sweden to those laid down in Regulation (EEC) No 1785/81;

Whereas in order to ensure the best possible application of the production and self-financing arrangements particular to the sugar sector, the conditions applicable to the quantities likely to form part of the normal carry-over stocks should be determined from the moment the accession of the new Member States takes place;

Whereas, for the 1994/95 marketing year, the entire sugar output of Austria, Finland and Sweden was produced under national arrangements and much of the sugar they produced was disposed of before 1 January 1995; whereas, accordingly, retroactive action on delivery contracts concluded in respect of that production between sugar beet or cane producers and sugar manufacturers must be ruled out; whereas there are grounds therefore, for not applying the provisions on self-financing laid down in Articles 28 and 28a of Regulation (EEC) No 1785/81 to sugar produced before 1 July 1995; whereas, in the case of the production of isoglucose in Finland, the normal carry-over stocks as at 1 January 1995 are not very large, since production tends to be steady and in keeping with demand; whereas, for the purposes of ensuring the same treatment for isoglucose and sugar, the said Articles 28 and 28a should not apply to isoglucose produced before 1 July 1995, the date on which the new 1995/96 marketing year begins;

Whereas, for the period 1 January to 30 June 1995, Austria, Finland and Sweden have already produced their sugar in respect of the quotas for the 1994/95 marketing year and whereas demand during that period must be met from normal carry-over stocks; whereas, in the case of isoglucose production, taking into account the characteristics described above and in order to avoid jeopardizing one of the main objectives of the quota system, namely achieving a certain balance in the Community between production and outlets, provision should be made for satisfying demand in Austria, Finland and Sweden during the period 1 January to 30 June 1995 on the basis of the quantities produced during that period; whereas the basic quantities of A and B isoglucose applicable in Finland during the period from 1 January to 30 June 1995 should be limited to the quantities corresponding to the share of the Community's average recorded production before accession during the months between January and June, reference being made to the basic annual quantities for Finland;

Whereas the non-application of the self-financing arrangements covered by Articles 28 and 28a of Regulation (EEC) No 1785/81 to sugar and isoglucose in respect of production during the period from 1 January to 30 June 1995 in Austria, Finland and Sweden means that the export refund arrangements referred to in Article 19 of Regulation (EEC) No 1785/81 and the production refund arangements referred to in Article 9 (3) of that same Regulation should not apply to sugar and isoglucose in the said Member States during that period;

Whereas Article 16a (2a) of Regulation (EEC) No 1785/81 lays down that a specified quantity of raw sugar may be imported at a reduced levy into Finland; whereas it is necessary to specify the relevant conditions of application and in particular those relating to the granting of an adjustment aid to the refining industry in Finland corresponding to the aid arrangements foreseen for Portugal;

Whereas pursuant to Article 145 (2) of the Act, normal carry-over stocks shall be defined for each product on the basis of criteria and objectives peculiar to each common market organization; whereas the stock of sugar and isoglucose in free circulation in Austria, Finland and

[1] OJ No L 177, 1. 7. 1981, p. 4.
[2] OJ No C 241, 29. 8. 1994, p. 21.

Sweden on 1 January 1995 should accordingly be determined in the case of the sugar sector, together with the normal carry-over stock and the conditions for the elimination by those Member States of the quantities exceeding the said normal carry-over stock;

Whereas provision should accordingly be made for these Member States to undertake a survey; whereas, to this end, the rules laid down in Council Regulation (EEC) No 431/68 of 9 April 1968 determining the standard quality for raw sugar and fixing the Comminiy frontier crossing point for calculating cif prices for sugar [1] and Commission Regulation (EEC) No 1443/82 of 8 June 1982 laying down detailed rules for the application of the quota system in the sugar sector [2], as last amended by Regulation (EC) No 392/94 [3], should be applied for the conversion of the various types of sugar into white sugar;

Whereas, to determine the quantities of sugar and isoglucose to be eliminated from the market the normal carry-over stock considered necessary, should be defined for each of these products allowing for consumption, production, traditional exports and operating stocks for refineries; whereas the granting of the reimbursement of storage costs for the quantities of sugar in normal carry-over stocks is justified to the extent that the storage levy is incurred from 1 January 1995 in accordance with Article 12 of Commission Regulation (EEC) No 1998/78 of 18 August 1978 laying down detailed rules for the offsetting of storage costs for sugar [4], as last amended by Regulation (EEC) No 1758/93 [5];

Whereas, in view of the features of the markets for sugar and isoglucose which overall are in surplus, the disposal of quantities in excess of normal carry-over stocks must be carried out under certain conditions by export outside the Community either in the natural state or in the form of processed products in accordance with Commission Regulation (EC) No 1222/94 of 30 May 1994 laying down common detailed rules for the application of the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex II to the Treaty, and the criteria for fixing the amount of such refunds [6], as last amended by Regulation (EC) No 2296/94 [7]; whereas, to that end, certain provisions of Commission Regulation (EEC) No 3719/88 of 16 November 1988 laying down common detailed rules for the application of the system of import and export licences and advanced fixing certificates for agricultural products [8], as last amended by Regulation (EC) No 2746/94 [9], should be referred to as regards evidence for export;

Whereas quantities in excess of the normal carry-over stock in question which have not been exported before the date laid down and therefore have not been eliminated from the market must be considered as being disposed of on the Community internal market and being imported from third countries; whereas, under these conditions, provision should rightly be made for levying an amount equal to the import levy for the product in question in force on the final day of the time limit laid down for export; whereas the agricultural rate aplicable on the date should be used to convert that amount into national currency;

Whereas Austria, Finland and Sweden are each responsible for elimininating their respective quantities in excess of the normal carry-over stock under Article 145 (2) of the Act; whereas it is thus for those Member States to ensure that the quantities in question are indeed exported outside the Community and it is their responsibility therefore to take all necessary measures for that end;

Whereas, for good management of the markets for sugar, provision must be made for the new Member States to provide notification of the level of their recorded stocks and of quantities considered as being disposed of on the internal market;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. The provisions of Articles 9 (3), 19, 28 and 28a of Regulation (EEC) No 1785/81 shall not apply to the quantities of:

(a) sugar produced from beet or cane harvested in Austria, Finland and Sweden before 1 July 1995;

(b) isoglucose produced in Finland before 1 July 1995 within the quotas defined in Article 2.

2. The provisions of Articles 9 (3) and 19 of Regulation (EEC) No 1785/81 shall not apply to the quantities of sugar and isoglucose referred to in Article 5 (1).

[1] OJ No L 89, 10. 4. 1968, p. 3.
[2] OJ No L 158, 9. 6. 1982, p. 17.
[3] OJ No L 53, 24. 2. 1994, p. 7.
[4] OJ No L 231, 23. 8. 1978, p. 5.
[5] OJ No L 161, 2. 7. 1993, p. 58.
[6] OJ No L 136, 31. 5. 1994, p. 5.
[7] OJ No L 249, 24. 9. 1994, p. 9.
[8] OJ No L 331, 2. 12. 1988, p. 1.
[9] OJ No L 290, 11. 11. 1994, p. 6.

3. However, for the sugar and isoglucose used before 1 October 1995 for the manufacture in Austria, Finland and Sweden of chemical products referred to in the Annex to Council Regulation (EEC) No 1010/86 (1) which are disposed of before that date in the Community, those Member States may compensate in the form of national measures the absence of production refunds within the limit of:

(a) the amount of the refund applicable on the day of the processing of the sugar or isoglucose, and

(b) the following quantity expressed as the case may be in white sugar or in dry matter:

— 7 500 tonnes of sugar for Austria,

— 2 100 tonnes of sugar for Sweden,

— zero tonnes of isoglucose for Finland,

— 4 500 tonnes of sugar for Finland.

The quantities concerned shall be counted against the normal carryover stock fixed for each Member State in Article 5 (1).

Article 2

The basic quantities of A and B isoglucose for Finland for the period from 1 January to 30 June 1995 shall be as follows, expressed in tonnes of dry matter:

— basic quantity A: 5 711,

— basic quantity B: 571.

Article 3

1. During the period from 1 January to 30 June 1995, the reduced levy referred to in Article 16a (2a) of Regulation (EEC) No 1785/81 shall be that determined, fixed and applied in accordance with paragraphs 3, 4 and 5 of the said Article 16a.

2. Applications for the certificates referred to in Article 16a (7) of Regulation (EEC) No 1785/81 must be accompanied by a declaration from the refiner in which he undertakes to refine the quantity of raw sugar concerned in Finland before 1 July 1995.

3. During the period referred to in paragraph 1, the adjustment aid arrangements covered in Article 9 (4c) of Regulation (EEC) No 1785/81 shall apply to the refining industry in Finland in respect of the quantities of raw sugar which are imported and refined within the limit of the quantity specified in Article 16a (2a) of that Regulation.

(1) OJ No L 94, 9. 4. 1986, p. 9.

Article 4

For the purposes of Articles 4 to 8 of this Regulation:

(a) 'sugar' shall mean:

— beet sugar and cane sugar, in solid form, falling wthin CN code 1701,

— sugar syrup falling wihtin CN codes 1702 60 90, 1702 90 90 and 2106 90 59;

(b) 'isoglucose' shall mean the product falling within CN codes 1702 30 10, 1702 40 10, 1702 60 10, 1702 90 30 and 2106 90 30;

(c) 'new Member States' shall mean Austria, Finland and Sweden.

Article 5

1. At 00.00 hours on 1 January 1995 the normal carry-over stock is fixed in respect of:

(a) sugar, expressed as white sugar, at:

— 294 177 tonnes for Austria,

— 145 250 tonnes for Finland,

— 304 792 tonnes for Sweden.

(b) isoglucose, expressed as dry matter, at 1 491 tonnes for Finland.

2. The normal carry-over stock referred to in paragraph 1 (a) shall not include the national strategic stocks which may possibly have been constituted by the new Member States. The latter shall inform the Commission of all changes made to such stocks together with the conditions governing the changes for the purposes of establishing the Community supply balance.

3. The reimbursement of storage costs provided for in Article 8 of Regulation (EEC) No 1785/81 shall apply to the quantities of sugar fixed in paragraph 1 in so far as the storage levy referred to in that Article is incurred from 1 January 1995 in accordance with Article 12 of Regulation (EEC) No 1998/78.

Article 6

1. The new Member States shall each undertake a survey of sugar and isoglucose stocks in free circulation in their respective territories at 00.00 hours on 1 January 1995.

2. For the application of paragraph 1, any person holding, in whatever capacity, a quantity of sugar or isoglucose of at least 3 000 kilograms, expressed, as the case may be, as white sugar or dry matter, in free circulation at 00.00 hours on 1 January 1995 must declare it to the competent authorities before 21 January 1995.

3. Quantities of raw sugar shall be expressed in terms of white sugar on the basis of yield determined in accordance with Article 1 of Regulation (EEC) No 431/68.

Quantities of sugar syrups shall be expressed in terms of white sugar on the basis of:

— the sucrose content of the syrup in question, where its purity is equal to or greater than 98 %, or

— the extractable sugar content of the syrup in question is determined in accordance with the second subparagraph of Article 1 (5) of Regulation (EEC) No 1443/82, when its purity is less than 98 %.

Article 7

1. Where the quantity of the sugar or isoglucose stocks recorded by the survey provided for in Article 6 exceeds, for a new Member State, the quantity laid down for the latter in Article 5 (1), that Member State shall ensure that a quantity equal to the difference between the quantity recorded and the quantity laid down is exported from the Community before 1 January 1996, either in the form of the products referred to in Article 1 of this Regulation or in the form of processed products within the meaning of Article 1 of Regulation (EC) No 1222/94. For the determination of the quantity to be exported, quantities of sugar and isoglucose may not be added together and the substitution of one for the other for export shall not be permitted.

2. The product in question must be exported pursuant to paragraph 1, without Community intervention before 1 January 1996, from the territory of the new Member State where stocks have been recorded as provided for in paragraph 1 and the product must have left the geographical territory of the Community before that date.

Article 8

1. The evidence of export as referred to in Article 7 (1) must be provided, except in cases of *force majeure*, before 1 March 1996 by the presentation of:

(a) export licences and certificates issued in accordance with Article 9 by the competent body in the new Member State concerned;

(b) the relevant document laid down in Articles 30 and 31 of Regulation (EEC) No 3719/88 for the release of the security.

2. If the evidence referred to in paragraph 1 is not provided before 1 March 1996, the quantity in question shall be considered as being disposed of on the Community internal market.

3. In cases of *force majeure*, the competent body in the new Member State in question shall adopt the measures which it considers necessary in the light of the circumstances.

Article 9

1. Applications for export licences and certificates and the licences and certificates themselves shall bear:

(a) in box 20, the following endorsement:

'for export in accordance with Article 7 of Regulation (EC) No 3300/94',

(b) and in the cases of sugar or isoglucose exported in the form of a processed product:

— in box 15, one of the following endorsements:

'sugar' or

'isoglucose',

— in boxes 17 and 18, the quantity expressed in net weight of white sugar or isoglucose used for the manufacture of the processed product; the exporter shall declare that quantity at the time of export and shall provide the competent body with all necessary documents and information in support of his declaration,

— in box 20, a description of the goods to be exported and the tariff headings or subheadings within which they fall.

2. Export licences and certificates shall bear the following endorsement in box 22:

'(quantity for which the licence is issued) kg, to be exported without any refund or levy, ... licence or certificate valid in ..... (new Member State of issue) only'.

3. The licence or certificate shall be valid from the date of issue until 31 December 1995.

4. The rate of the security for licences and certificates for sugar and isoglucose is fixed at ECU 0,25 per 100 kilograms net of sugar or per 100 kilograms net of isoglucose expressed as dry matter.

Article 10

1. For the quantities which are considered as being disposed of on the internal market in accordance with Article 8 (2), an amount shall be levied which is equal:

(a) in the case of sugar, per 100 kilograms, to the import levy in force on 31 December 1995 for white sugar;

(b) in the case of isoglucose, per 100 kilograms of dry matter, to one hundred times the basic amount of the import levy in force on 31 December 1995 for sugar syrups.

2. To convert the amounts referred to in paragraph 1 into national currencies, the agricultural conversion rate applicable shall be that in force on 31 December 1995 in the sugar sector for the new Member State concerned.

Article 11

1. The new Member States shall take all measures necessary for the application of this Regulation and shall lay down, in particular, all the verification procedures which prove necessary to conduct the survey provided for in Article 6 and to accomplish the export obligation referred to in Article 7 (1).

2. The new Member States shall notify the Commission, separately in respect of sugar and for isoglucose:

(a) before 11 February 1995 of their stocks recorded in accordance with Article 6 (1);

(b) before 1 April 1996, of the quantities which are considered in accordance with Article 8 (2), as being disposed of on the internal market and of the cases where Article 8 (3) is applied.

Article 12

This Regulation shall enter into force on the day of, and be subject to, the entry into force of the Treaty of Accession of Norway, Austria, Finland and Sweden.

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

Done at Brussels, 21 December 1994.

For the Commission

René STEICHEN

Member of the Commission

COMMISSION REGULATION (EC) No 3301/94

of 21 December 1994

amending Commission Regulation (EC) No 918/94 derogating from Regulation (EEC) No 778/83 laying down the quality standards for tomatoes, as regards tomatoes attached to the stalk (trusses of tomatoes)

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 Commission Regulation (EC) No 2753/94 [2], and in particular Article 2 (2) thereof,

Whereas Commission Regulation (EC) No 918/94 [3] derogates from Commission Regulation (EEC) No 778/83 [4], as last amended by Regulation (EEC) No 1657/92 [5], so as to authorize for a trial period the marketing of tomatoes attached to the stalk (trusses of tomatoes) during the 1994 marketing year; whereas the marketing year for tomatoes runs from 1 January to 31 December of a given year; whereas this trial period should be extended for a further marketing year so as to verify the results;

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

HAS ADOPTED THIS REGULATION:

Article 1

The first phrase in Article 1 (1) of Regulation (EC) No 918/94 is replaced by the following:

'1. Until the end of the 1995 marketing year . . .'.

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 January 1995.

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

Done at Brussels, 21 December 1994.

For the Commission

René STEICHEN

Member of the Commission

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[1] OJ No L 118, 20. 5. 1972, p. 1.
[2] OJ No L 292, 12. 11. 1994, p. 3.
[3] OJ No L 106, 27. 4. 1994, p. 5.
[4] OJ No L 86, 31. 3. 1983, p. 14.
[5] OJ No L 172, 27. 6. 1992, p. 53.

COMMISSION REGULATION (EC) No 3302/94

of 21 December 1994

amending Regulations (EEC) No 19/82 and (EEC) No 20/82 regarding adaptations in the sheepmeat and goatmeat sector in view of the accession of Norway, Austria, Finland and Sweden

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Norway, Austria, Finland and Sweden and in particular Article 169 (2) thereof,

Whereas by reason of the accession of Austria, Finland and Sweden Commission Regulation (EEC) No 19/82 of 6 January 1982 laying down detailed rules for applying Council Regulation (EEC) No 2641/80 with regard to imports of sheepmeat and goatmeat products originating in certain non-member countries [1], as last amended by Regulation (EC) No 3581/93 [2] should be adapted, and Commission Regulation (EEC) No 20/82 of 6 January 1982 on special detailed rules for applying the system of import and export licences for sheepmeat and goatmeat [3], as last amended by Regulation (EEC) No 3890/92 [4],

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 19/82 is hereby amended as follows:

1. The following indents are added to Article 7 (2):

'— Tuontimaksu rajoitettu 10 prosenttiin arvosta (Asetuksen (ETY) N:o 19/82 sovellus),

— Importavgiften begränsad till 10 % av värdet (tillämpning av förordning (EEG) nr 19/82).'

2. In Annex III point III is deleted.

Article 2

Austria is deleted from the second sentence of Article 1 of Regulation (EEC) No 20/82.

Article 3

This Regulation shall enter into force on the day of the entry into force of the Treaty of Accession of Norway, Austria, Finland and Sweden.

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

Done at Brussels, 21 December 1994.

For the Commission

René STEICHEN

Member of the Commission

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[1] OJ No L 3, 7. 1. 1982, p. 18.
[2] OJ No L 326, 28. 12. 1993, p. 21.
[3] OJ No L 3, 7. 1. 1982, p. 26.
[4] OJ No L 391, 31. 12. 1992, p. 51.

COMMISSION REGULATION (EC) No 3303/94

of 21 December 1994

introducing transitional measures for imports of bananas into Austria, Finland and Sweden in the first quarter of 1995

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Norway, Austria, Finland and Sweden, and in particular Article 149 (1) thereof [1],

Having regard to Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organization of the market in bananas [2], as amended by Regulation (EC) No 3518/93 [3],

Whereas Commission Regulation (EEC) No 1442/93 of 10 June 1993 laying down detailed rules for the application of the arrangements for importing bananas into the Community [4], as last amended by Regulation (EC) No 2444/94 [5], establishes the detailed rules for the operation of the Community market in bananas;

Whereas, to facilitate the transition from the arrangements existing in the new Member States before their accession to those resulting from the application of the common organization of the market in bananas, operators established in those countries should be authorized to import in the first quarter of 1995, as a transitional measure, a specific quantity of bananas originating in third countries; whereas this quantity should be determined on the basis of the average quantity that each operator imported to supply these markets in the reference period used for determining the rights of the operators under the tariff quota arrangements; whereas this allocation must not, however, predetermine the allocation of the reference quantity to be employed subsequently for 1995 pursuant to Article 6 of Regulation (EEC) No 1442/93;

Whereas bananas which were already in transit to these new Member States before 20 December 1994 but which were imported only on 1 January 1995 or on subsequent days must be exempted from the licensing arrangements; whereas in the absence of such licensing arrangements at the beginning of 1995, imports in the first quarter of 1995 should also be managed and monitored under transitional arrangements;

Whereas, as a transitional measure, for imperative reasons of management and inspection, provision should be made to have bananas imported into the Community pursuant to this Regulation released for free circulation in the new Member State that authorized importation; whereas the requisite detailed modifications between the new Member States and the Commission should also be provided for;

Whereas, pursuant to Article 2 (3) of the Treaty of Accession, the institutions of the Union may adopt before accession the measures arising from Article 149 (1) of the Act, which measures must enter into force subject to and on the date of the entry into force of the said Treaty;

Whereas the Management Committee for Bananas has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

An import licence will not be required for bananas which were dispatched from the country of production before 20 December 1994 and which were imported into Austria, Finland or Sweden between 1 and 7 January 1995.

The importers concerned shall provide proof that the consignment of bananas meets the above requirements by providing:

— in the case of transport by sea or waterway, the bill of lading showing that loading took place before 20 December 1994,

— in the case of transport by rail, the consignment note accepted by the railways of the expediting country before 20 December 1994,

— in the case of transport by road, the TIR carnet presented to the first customs office before 20 December 1994,

— in the case of transport by air, the air consignment note showing that the airline received the products before 20 December 1994.

Article 2

If the quantities of bananas imported into Austria, Finland or Sweden during the month of December 1994, minus the quantities re-exported, exceed to an appreciable extent the quantities imported into these same

[1] OJ No C 241, 29. 8. 1994, p. 21.
[2] OJ No L 47, 25. 2. 1993, p. 1.
[3] OJ No L 320, 22. 12. 1993, p. 15.
[4] OJ No L 142, 12. 6. 1993, p. 6.
[5] OJ No L 261, 11. 10. 1994, p. 3.

Member States in the corresponding period in 1991, 1992 and 1993, a decision may be taken, in accordance with the procedure laid down in Article 27 of Regulation (EEC) No 404/93, to count the excess as imports under the tariff quota for 1995.

Article 3

The competent authorities in the new Member States shall notify the Commission :

— of the quantities of bananas in transit as referred to in Article 1, by 7 February 1995, at the latest,

— the quantities imported into the Member State in question in the month of December 1994 and up to 7 January 1995, by 7 February 1995 at the latest.

Article 4

1. For the first quarter of 1995, the competent authorities of Austria, Finland and Sweden shall authorize the operators established on their territory who have imported bananas in 1991 and/or 1992 and/or 1993 to import bananas originating in third countries up to a limit of 35 785 tonnes in Austria, 22 606 tonnes in Finland and 47 532 tonnes in Sweden, respectively.

The authorization referred to in the first subparagraph shall be granted upon application by the operators in question submitted by 7 January 1995 at the latest. This application shall specify the origin of the product to be imported.

Each operator's authorization to import may not cover a quantity greater than 30 % of the average of the annual quantities imported by him in the years 1991, 1992 and 1993.

This authorization shall not predetermine the reference quantity to be allocated to the operator in question for 1995 pursuant to Article 6 of Regulation (EEC) No 1442/93.

2. The bananas referred to in paragraph 1 shall be released into free circulation in the Member State which granted authorization by 7 April 1995 at the latest.

3. The competent authorities of the new Member States shall notify the Commission :

— of the quantities of bananas for which authorization has been granted pursuant to paragraph 1, by 17 January 1995 at the latest,

— of the quantities actually released into free circulation pursuant to the authorization referred to in paragraph 1, by 5 May 1995 at the latest.

The notifications shall specify the origin of the products imported.

Article 5

The competent authorities of the new Member States shall adopt, in so far as they are necessary, additional provisions to insure that imports of bananas into their territory under this Regulation are checked and monitored.

Article 6

This Regulation shall enter into force subject to and on the date of the entry into force of the Treaty of Accession of Norway, Austria, Finland and Sweden.

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

Done at Brussels, 21 December 1994.

For the Commission

René STEICHEN

Member of the Commission

COMMISSION REGULATION (EC) No 3304/94

of 21 December 1994

amending certain Regulations on cereals and rice on account of the Accession of Austria, Finland and Sweden

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Norway, Austria, Finland and Sweden [1], and in particular Article 169 (2) thereof,

Whereas the Accession of Austria, Finland and Sweden makes it necessary to repeal Commission Regulation (EEC) No 479/88 of 22 February 1988 setting operating rules for an annual Community tariff quota of 2 500 tonnes of unroasted malt of combined nomenclature code 1107 10 99 originating in, and conveyed from Finland [2] and amendments to the following Regulations:

— Commission Regulation (EEC) No 2145/92 of 29 July 1992 redefining the destination zones for export refunds, export levies and certain export licences for cereals and rice [3],

— Commission Regulation (EEC) No 1533/93 of 22 June 1993 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals [4], as last amended by Regulation (EC) No 120/94 [5],

— Commission Regulation (EEC) No 1621/93 of 25 June 1993 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 regarding the system for fixing the import levies for cereals [6], as last amended by Regulation (EC) No 795/94 [7];

Whereas pursuant to Article 2 (3) of the Treaty of Accession [8] the institutions of the European Union may adopt before accession the measures referred to in Article 169 of the Act of Accession, which measures shall enter into force subject to and on the date of the entry into force of the Treaty,

HAS ADOPTED THIS REGULATION:

Article 1

1. Regulation (EEC) No 479/88 is hereby repealed.

2. The words 'Sweden' and 'Finland' are deleted from Zone II (c) in the Annex to Regulation (EEC) No 2145/92.

3. The word 'Austria' is deleted from Article 14a of Regulation (EEC) No 1533/93.

4. The references to Sweden and Finland in Annex I to Regulation (EEC) No 1621/93 are deleted.

Article 2

This Regulation shall enter into force subject to and on the date of the entry into force of the Treaty of Accession of Norway, Austria, Finland and Sweden.

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

Done at Brussels, 21 December 1994.

For the Commission

René STEICHEN

Member of the Commission

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[1] OJ No C 241, 29. 8. 1994, p. 21.
[2] OJ No L 49, 23. 2. 1988, p. 8.
[3] OJ No L 214, 30. 7. 1992, p. 20.
[4] OJ No L 151, 23. 6. 1993, p. 15.
[5] OJ No L 21, 26. 1. 1994, p. 1.
[6] OJ No L 155, 26. 6. 1993, p. 36.
[7] OJ No L 92, 9. 4. 1994, p. 17.
[8] OJ No C 241, 29. 8. 1994, p. 9.

COMMISSION REGULATION (EC) No 3305/94

of 23 December 1994

laying down detailed rules for the application of Council Regulation (EC) No 3072/94 with regard to the import arrangements for frozen beef falling within CN code 0202 and products falling within CN code 0206 29 91

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/94 of 12 December 1994 opening and providing for the administration of a Community tariff quota for frozen meat of bovine animals falling within CN code 0202 and products falling within CN code 0206 29 21 (first semester 1995) [1], and in particular Article 3 thereof,

Whereas Regulation (EC) No 3072/94 lays down the method for administering the Community tariff quota for frozen beef falling within CN code 0202 and for products falling within CN code 0206 29 91 and splits that quota into two parts, one of 21 200 tonnes apportioned between traditional importers and the other of 5 300 tonnes apportioned between operators who have been engaged in trade in beef with third countries;

Whereas, in order to ensure a smooth switchover from arrangements based on national administration to Community-administered arrangements, while bearing in mind the special aspects of trade in the products in question, provision should be made for the allocation of the first part on the one hand to traditional importers in proportion to the quantities imported under the same type of quota in the years 1992, 1993 and 1994 and, on the other hand, to importers in the new Member States; whereas in the case of imports made by the latter, with a view to establishing the reference quantities, a coefficient corresponding to the Community level of traditional imports for GATT purposes compared to total imports of frozen beef should be applied;

Whereas, on the basis of the submission of applications from interested parties and subject to their acceptance by the Commission up to a certain limit, importers who can demonstrate the genuine nature of their business and who apply for quantities of some significance should be granted access to the second part; whereas verification of these criteria requires that applications be submitted in the Member State in which the importer is registered;

Whereas operators no longer engaged in trade in beef and veal at 1 January 1995 should be barred access to the quota in order to prevent speculation;

Whereas Commission Regulation (EEC) No 3719/88 [2], as last amended by Regulation (EC) No 2746/94 [3], lays down common detailed rules for the application of the system of import and export licences and advance-fixing certificates for agricultural products; whereas Commission Regulation (EEC) No 2377/80 [4], as last amended by Regulation (EC) No 1084/94 [5], lays down special detailed rules for applying the system of import licences for beef and veal;

Whereas restricting the arrangements in question to the first six months shortens the time limit for imports; whereas this time limit should be extended by one month as a transitional measure;

Whereas the effective management of this quota and in particular the prevention of fraud require that the licences used are returned to the competent authorities in order that they may verify that the quantities shown therein are correct; whereas, to that end, an obligation should be imposed on the competent authorities to carry out such verification; whereas the amount of the security to be lodged on the issue of the licences should be fixed in such a way as to ensure that the licences are used and returned to the competent authorities;

Whereas provision should be made for the Member States to forward information on the import arrangements in question;

Whereas the Management Committee for Beef and Veal has not delivered an opinion wihtin the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

1. For the purposes of applying Article 2 (a) of Regulation (EC) No 3072/94, the 21 200 tonnes shall be allocated between the importers referred to in the first and second indent as follows:

— in proportion to their eligible quantities imported under Council Regulations (EEC) No 3667/91 [6], (EEC) No 3392/92 [7] and (EC) No 130/94 [8] in the case of the importers referred to in the first indent,

[1] OJ No L 325, 17. 12. 1994, p. 3.
[2] OJ No L 331, 2. 12. 1988, p. 1.
[3] OJ No L 290, 11. 11. 1994, p. 6.
[4] OJ No L 241, 13. 9. 1980, p. 5.
[5] OJ No L 120, 11. 5. 1994, p. 30.
[6] OJ No L 349, 18. 12. 1991, p. 1.
[7] OJ No L 346, 27. 11. 1992, p. 3.
[8] OJ No L 22, 27. 1. 1994, p. 3.

— in proportion to their eligible quantities imported multiplied by a coefficient of 0,54 in the case of the importers referred to in the second indent of the aforementioned Article 2 (a).

2. For the purposes of applying Article 2 (b) of Regulation (EC) No 3072/94, the quantity of 5 300 tonnes shall be reserved:

(a) for operators in the Community of Twelve who can furnish proof of having:

— imported at least 160 tonnes of beef in the period 1 January 1993 and 31 December 1994 not subject to the quota referred to in Regulations (EEC) No 3392/92 and (EC) No 130/94, or

— exported at least 300 tonnes of beef in the same period to third countries; and

(b) for operators in the new Member States who can furnish proof of having:

— imported at least 160 tonnes of beef in the period 1 July 1992 to 30 June 1994 other than the quantities referred to in paragraph 1 to which the coefficient referred to therein has been applied, or

— exported at least 300 tonnes to beef to third countries in the period 1 July 1992 to 30 June 1994.

For this purpose 'beef' means products falling wihtin CN codes 0201, 0202 and 0206 29 91, and the minimum reference quantities shall be expressed in terms of product weight.

3. The 5 300 tonnes referred to in paragraph 2 shall be allocated in proportion to the quantities applied for by eligible operators.

4. Proof of import and export shall be furnished solely by means of customs documents of release for free circulation or export documents. However, with the Commission's authorization, the new Member States may, if appropriate, accept alternative forms of proof.

Article 2

1. Operators who are no longer engaged in trade in beef and veal on 1 January 1995 shall not qualify under the arrangements provided for in this Regulation. The Member States shall ensure that this provision is complied with when submitting applications to participate.

2. Companies arising from mergers where each part has rights pursuant to Article 1 (1) shall enjoy the same rights as the companies from which they are formed.

Article 3

1. Import applications may be submitted only in the Member State in which an applicant is registered.

2. For the purposes of Articles 1 (1), importers shall submit applications to participate together with the proof referred to in Article 1 (4) to the competent authorities by 13 January 1995 at the latest. Where an applicant submits more than one application, all such applications shall be inadmissible.

After verification of the documents submitted, Member States shall forward to the Commission by 3 February 1995 at the latest a list of importers complying with the conditions for acceptance and containing in particular their names and addresses and the quantities of eligible meat imported under the quota in question during each reference year.

3. For the purposes of Article 1 (2), applications to participate from operators shall be lodged together with the proof referred to in Article 1 (4) by 13 January 1995 at the latest.

Where an applicant submits more than one application, all such applications shall be inadmissible.

Applications shall relate to an overall quantity of no more than 50 tonnes of frozen meat in product weight.

After verification of the documents represented, Member States shall forward to the Commission by 3 February 1995 at the latest a list of applicants and quantities applied for.

Article 4

1. The Commission shall decide as soon as possible to what extent applications may be accepted.

2. Where the quantities covered by applications to participate exceed the quantities available, the Commission shall reduce the quantities applied for by a fixed percentage.

Article 5

1. Imports of quantities allocated shall be subject to presentation of an import licence.

2. Licence applications may be lodged solely in the Member State in which the applicant is registered.

3. Following decisions on allocation by the Commission, import licences shall be issued as soon as possible on application and in the names of the operators who have obtained rights to import.

4. Licence applications and licences shall contain :

(a) one of the following indications, in Section 20 :

— Carne de vacuno congelada [Reglamento (CE) n° 3305/94],

— Frosset oksekød (forordning (EF) nr. 3305/94),

— Gefrorenes Rindfleisch (Verordnung (EG) Nr. 3305/94),

— Κατεψυγμένο βόειο κρέας (κανονισμός (ΕΚ) αριθ. 3305/94),

— Frozen meat of bovine animals (Regulation (EC) No 3305/94),

— Viande bovine congelée [règlement (CE) n° 3305/94],

— Carni bovine congelate [regolamento (CE) n. 3305/94],

— Bevroren rundvlees (Verordening (EG) nr. 3305/94),

— Carne de bovino congelada [Regulamento (CE) nº 3305/94] ;

(b) the country of origin, in Section 8 ;

(c) one of the following indications, in Section 24 :

— Exacción reguladora suspendida para ... (cantidad para la que se haya extendido el certificado) kg,

— Suspension af importafgift for ... (den mængde licensen er udstedt for) kg,

— Aussetzung der Abschöpfung für ... kg (Menge, für die die Lizenz erteilt wurde),

— Αναστέλλεται η εισφορά για ... χιλιόγραμμα (ποσότητα για την οποία χορηγήθηκε το πιστοποιητικό),

— Levy suspended for ... (quantity for which the licence was issued) kg,

— Prélèvement suspendu pour ... (quantité pour laquelle le certificat a été délivré) kg,

— Prelievo sospeso per ... (quantitativo per il quale è stato rilasciato il certificato) kg,

— Heffing geschorst voor ... (hoeveelheid waarvoor het certificaat is afgegeven) kg,

— Direito nivelador suspenso para ... kg (quantidade para a qual foi emitido o certificado) ;

(d) one of the following groups of subheadings of the combined nomenclature, in Section 16 :

— 0202 10 00, 0202 20,

— 0202 30, 0206 29 91.

5. Norwithstanding Article 8 (4) of Regulations (EEC) No 3719/88, the levy fixed in accordance with Article 12 of Council Regulation (EEC) No 805/68 [1] and the Common Customs Tariff duty of 20 % shall be charged on all quantities exceeding those indicated on the import licence.

Article 6

For the purpose of applying the arrangements provided for in Regulation (EC) No 3072/94 imports of frozen meat into the customs territory of the Community shall be subject to the conditions laid down in Article 17 (2) (f) of Council Directive 72/462/EEC [2].

Article 7

1. Regulations (EEC) No 2377/80 and (EEC) No 3719/88 shall apply, subject to the provisions of this Regulation.

2. Import licences issued pursuant to this Regulation shall expire on 31 July 1995.

3. The security relating to the import licences shall be ECU 30 per 100 kg net weight. It shall be lodged when the import licence is issued.

4. Where an import licence is submitted with a view to the release of the security, the competent authorities shall verify that the quantities shown on the licence returned are the same as those shown on the licence at the time of issue. Where a licence is not returned Member States shall carry out an investigation in order to establish who has used it and to what extent. Member States shall inform the Commission at the earliest opportunity of the results of such investigation.

Article 8

This Regulation shall enter into force on 1 January 1995.

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

Done at Brussels, 23 December 1994.

For the Commission

René STEICHEN

Member of the Commission

[1] OJ No L 148, 28. 6. 1968, p. 24.
[2] OJ No L 302, 31. 12. 1972, p. 28.

COMMISSION REGULATION (EC) No 3306/94

of 28 December 1994

amending Regulation (EC) No 2120/94 and increasing to 1 513 357 tonnes the amount of cereals held by the French intervention agency for which a standing invitation to tender for resale on the internal market has been opened

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 last amended by Regulation (EC) No 1866/94 [2], and in particular Article 5 thereof,

Whereas Commission Regulation (EEC) No 2131/93 [3], as last amended by Regulation (EC) No 120/94 [4], lays down the procedures and conditions governing the offer for sale of cereals held by intervention agencies;

Whereas Commission Regulation (EC) No 2120/94 [5], as last amended by Regulation (EC) No 3016/94 [6], opened a standing invitation to tender for the resale on the internal market of 1 259 357 tonnes of cereals held by the French intervention agency;

Whereas in the present situation on the market the quantity of cereals held by the French intervention agency put up for sale on the internal market of the Community should be increased to 1 513 357 tonnes;

Whereas the Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 1 of Regulation (EC) No 2120/94 '600 000 tonnes of maize' is replaced by '704 000 tonnes of maize' and '300 000 tonnes of bread-making wheat' is replaced by '450 000 tonnes of bread-making wheat'.

Article 2

This Regulation shall enter into force on the day of 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, 28 December 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 197, 30. 7. 1994, p. 1.
(3) OJ No L 191, 31. 7. 1993, p. 76.
(4) OJ No L 21, 26. 1. 1994, p. 1.
(5) OJ No L 224, 30. 8. 1994, p. 10.
(6) OJ No L 320, 13. 12. 1994, p. 15.

COMMISSION REGULATION (EC) No 3307/94

of 29 December 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, with regard to Turkey and the Maghreb countries, the provisions of this Regulation should be without prejudice to the additional amount to be determined in accordance with the agreements between the Community and these 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 26 and 27 December 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 30 December 1994.

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

Done at Brussels, 29 December 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) Turkey : ECU 11,48 (*) 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) Algeria, Tunisia and Morocco : 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.

(*) These amounts may be increased by an additional amount to be determined by the Community and the third countries in question.

(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 3308/94

of 29 December 1994

fixing the production refund for olive oil used in the manufacture of certain preserved foods

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],

Having regard to Council Regulation (EEC) No 591/79 of 26 March 1979 laying down general rules relating to the production refund for olive oil used in the manufacture of certain preserved foods [3], as last amended by Regulation (EEC) No 2903/89 [4], and in particular Articles 3 and 5 thereof,

Whereas Article 2 of Council Regulation (EEC) No 591/79 provides for the granting of a production refund for olive oil used in the preserving industry;

Whereas under Article 3 of the abovementioned Regulation, without prejudice to the second subparagraph of Article 7 of the said Regulation, the Commission shall fix this refund every two months;

Whereas, by virtue of Article 5 of the Regulation cited above, where the tender system is employed for fixing the levy, the production refund shall be fixed on the basis of the minimum levies determined under the said system for oils falling within subheading 1509 90 00 of the combined nomenclature and the export refunds valid for those same oils; whereas, however, if the oil employed for manufacture of the preserves was produced within the Community, the amount referred to above shall be increased by a sum equal to the consumption aid in force on the day the said refund is applied;

Whereas application of the above criteria results in the refund being fixed as shown below,

HAS ADOPTED THIS REGULATION:

Article 1

For the months of January and February 1995, the amount of the production refund referred to in Article 2 of Regulation (EEC) No 591/79 shall be:

— ECU 51,50 per 100 kilograms for olive oil produced in the Community,

— ECU 41,50 per 100 kilograms for olive oil other than that referred to in the preceding indent.

Article 2

This Regulation shall enter into force on 1 January 1995.

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

Done at Brussels, 29 December 1994.

For the Commission

René STEICHEN

Member of the Commission

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[1] OJ No 172, 30. 9. 1966, p. 3025/66.
[2] OJ No L 285, 20. 11. 1993, p. 9.
[3] OJ No L 78, 30. 3. 1979, p. 2.
[4] OJ No L 280, 29. 9. 1989, p. 3.

COMMISSION REGULATION (EC) No 3309/94

of 29 December 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 last amended by Regulation (EC) No 1866/94 [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 (EC) No 3035/94 [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 28 December 1994, as regards floating currencies, should be used to calculate the levies;

Whereas it follows from applying the detailed rules contained in Regulation (EC) No 3035/94 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 30 December 1994.

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

Done at Brussels, 29 December 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 197, 30. 7. 1994, p. 1.
[3] OJ No L 387, 31. 12. 1992, p. 1.
[4] OJ No L 320, 22. 12. 1993, p. 32.
[5] OJ No L 321, 14. 12. 1994, p. 28.

ANNEX

to the Commission Regulation of 29 December 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	82,39 (2) (3)
0712 90 19	82,39 (2) (3)
1001 10 00	2,52 (1) (5) (11)
1001 90 91	51,84
1001 90 99	51,84 (9) (11)
1002 00 00	107,59 (6)
1003 00 10	81,88
1003 00 90	81,88 (9)
1004 00 00	91,42
1005 10 90	82,39 (2) (3)
1005 90 00	82,39 (2) (3)
1007 00 90	86,25 (4)
1008 10 00	31,41 (9)
1008 20 00	32,62 (4) (9)
1008 30 00	0 (5)
1008 90 10	(7)
1008 90 90	0
1101 00 00	110,51 (9)
1102 10 00	187,90
1103 11 10	36,79
1103 11 90	132,58
1107 10 11	103,16
1107 10 19	79,83
1107 10 91	156,63 (10)
1107 10 99	119,78 (9)
1107 20 00	137,79 (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 or Hungary under the Agreements concluded between those countries and the Community and under the Interim Agreement between the Czech Republic, the Slovak Republic, Bulgaria and Romania and the Community and in respect of which EUR.1 certificates issued in accordance with amended Regulation (EC) No 121/94 or (EC) No 335/94 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.

(11) The levy for the products falling within this code in accordance with Regulation (EC) No 774/94 is restricted under the conditions of this Regulation.

COMMISSION REGULATION (EC) No 3310/94

of 29 December 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 last amended by Regulation (EC) No 1866/94 [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 (EC) No 1938/94 [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 28 December 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 30 December 1994.

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

Done at Brussels, 29 December 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 197, 30. 7. 1994, p. 1.
[3] OJ No L 387, 31. 12. 1992, p. 1.
[4] OJ No L 320, 22. 12. 1993, p. 32.
[5] OJ No L 198, 30. 7. 1994, p. 39.

ANNEX

to the Commission Regulation of 29 December 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
	12	1	2	3
0709 90 60	0	0	0	0
0712 90 19	0	0	0	0
1001 10 00	0	0	0	0
1001 90 91	0	16,35	13,85	12,34
1001 90 99	0	16,35	13,85	12,34
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	0	0	0
1005 90 00	0	0	0	0
1007 00 90	0	0	0	0
1008 10 00	0	0	0	0
1008 20 00	0	0	0	0
1008 30 00	0	0	0	0
1008 90 90	0	0	0	0
1101 00 00	0	22,06	19,38	17,27
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
	12	1	2	3	4
1107 10 11	0	29,10	24,65	21,97	21,97
1107 10 19	0	21,75	18,42	16,41	16,41
1107 10 91	0	0	0	0	0
1107 10 99	0	0	0	0	0
1107 20 00	0	0	0	0	0

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 19 December 1994

concerning the conclusion of a Cooperation Agreement between the European Community and the Republic of South Africa

(94/822/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 113 and 130y, in conjunction with the first sentence of Article 228 (2) and the first subparagraph of paragraph 3 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament [1],

Whereas the general guidelines issued by the European Council on 29 October 1993, the decision of the Council of 25 May 1993 on future development cooperation with South Africa and Council Decision 93/678/CFSP of 6 December 1993 on a joint action adopted by the Council on the basis of Article J.3 of the Treaty on European Union concerning support for the transition towards a democratic and multi-racial South Africa [2] provide for the creation of an appropriate cooperation framework to consolidate the economic and social foundations of this transition;

Whereas at its meeting on 18 and 19 April 1994 the Council decided to adopt a package of measures for South Africa, including an offer to conclude an agreement quickly;

Whereas the Community should approve, for the attainment of its aims in the sphere of external relations, the Cooperation Agreement negotiated with South Africa,

HAS DECIDED AS FOLLOWS:

Article 1

The Cooperation Agreement between the European Community and the Republic of South Africa is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall, on behalf of the Community, give the notification provided for in Article 8 of the Agreement.

Article 3

This Decision shall be published in the *Official Journal of the European Communities.*

Done at Brussels, 19 December 1994.

For the Council

The President

K. KINKEL

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[1] Opinion delivered on 30 November 1994 (not yet published in the Official Journal).

[2] OJ No L 316, 17. 12. 1993, p. 45.

COOPERATION AGREEMENT

between the European Community and the Republic of South Africa

THE COUNCIL OF THE EUROPEAN UNION,

of the one part,

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA,

of the other part,

CONSIDERING the links of friendship between the Member States of the European Community and the Republic of South Africa;

MINDFUL of the common will of the European Community, hereinafter referred to as the 'Community' and the Republic of South Africa, hereinafter referred to as 'South Africa' to step up cooperation in all the fields which are within the bounds of their respective powers;

NOTING with satisfaction the successful transition towards a democratic and multiracial society in South Africa, and the importance attached to human rights;

TAKING ACCOUNT of the need to promote economic cooperation in the Southern African region to contribute to its harmonious and sustainable economic and social development and to encourage the smooth and gradual integration of South Africa into the world economy;

RECOGNIZING that relations between the Community and South Africa may further be enhanced by future arrangements and without prejudging the contents of those possible contractual arrangements;

BEARING IN MIND the importance of beginning discussions immediately regarding future relations with South Africa, which would also cover trade, in accordance with the Council Decision of 19 April 1994 which included an offer to negotiate a comprehensive and long-term relationship with South Africa, should the new government so request,

HAVE DECIDED to conclude this Agreement and to this end have designated as their plenipotentiaries:

THE COUNCIL OF THE EUROPEAN UNION:

Sir Leon BRITTAN

Member of the Commission of the European Communities

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA:

Thabo Mvuyelwa Mbeki

Executive Deputy President

WHO, having exchanged their full powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

Article 1

Relations between the Community, of the one part, and South Africa, of the other part, as well as this Agreement itself, shall be based on respect of human rights and democratic principles which guide the internal and international policy of the Contracting Parties and constitute an essential element of this Agreement.

Article 2

The Contracting Parties desire to strengthen their relations with a view to promoting harmonious, balanced and sustainable social and economic development and, to this end, they hereby agree to step up cooperation in all areas within their respective spheres of competence, including trade.

Article 3

The Contracting Parties do not intend that this Agreement will in any way prejudice discussions or negotiations between them regarding other possible contractual arrangements.

Article 4

The Contracting Parties will, within the limits of their available financial means and within the framework of their respective procedures and instruments, make

available funds to facilitate the achievement of the aims set out in this Agreement.

Article 5

This Agreement shall apply, on the one hand, to the territory of South Africa, and, on the other, to the territories in which the Treaties establishing the European Communities are applied and under the conditions laid down in those Treaties.

Article 6

No provision in this Agreement may conflict with any other agreement which exists between either of the Contracting Parties and the countries of the Southern African region. The Contracting Parties furthermore agree that they shall seek ways in which their cooperation could harmonize with, and enhance, the interests of the Southern African region and intra-regional cooperation.

Article 7

1. The Contracting parties shall take any general or specific measures required to fulfil their obligations under this Agreement. They shall see to it that the objectives set out in this Agreement are attained.

2. If either Party considers that the other Party has failed to fulfil an obligation under this Agreement, it may take appropriate measures. Before doing so, except in circumstances of special urgency, it shall supply the other Party with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties. In the selection of measures, priority must be given to those which least disturb the functioning of this Agreement. These measures shall be notified immediately to the other Party and shall be the subject of consultations if the other Party so requests.

Article 8

This Agreement shall enter into force on the first day of the month following that during which the Contracting Parties have notified each other of the completion of the necessary procedures. It shall be valid for an indefinite period and may be denounced by either of the Contracting Parties if a new agreement enters into force or if one year's notice is given following the entry into force of a new agreement or with prior notification of one year.

Article 9

This Agreement is drawn up in duplicate in the Danish, Dutch, English, French, German, Greek, Italian, Portuguese and Spanish languages, each text being equally authentic.

En fe de lo cual, los abajo firmantes suscriben el presente Acuerdo.

Til bekræftelse heraf har undertegnede underskrevet denne aftale.

Zu Urkund dessen haben die Unterzeichneten dieses Abkommen unterschrieben.

Σε πίστωση των ανωτέρω, οι υπογράφοντες έθεσαν την υπογραφή τους κάτω από την παρούσα συμφωνία.

In witness whereof the undersigned have signed this Agreement.

En foi de quoi, les soussignés ont apposé leur signature au bas du présent accord.

In fede di che, i sottoscritti hanno firmato il presente accordo.

Ten blijke waarvan de ondergetekenden hun handtekening onder deze overeenkomst hebben gesteld.

Em fé do que, os abaixo-assinados apuseram as suas assinaturas no final do presente Acordo.

Hecho en Pretoria, el diez de octubre de mil novecientos noventa y cuatro.

Udfærdiget i Pretoria den tiende oktober nitten hundrede og fire og halvfems.

Geschehen zu Pretoria am zehnten Oktober neunzehnhundertvierundneunzig.

Έγινε στην Πραιτώρια, στις δέκα Οκτωβρίου χίλια εννιακόσια ενενήντα τέσσερα.

Done at Pretoria on the tenth day of October in the year one thousand nine hundred and ninety-four.

Fait à Prétoria, le dix octobre mil neuf cent quatre-vingt-quatorze.

Fatto a Pretoria, addì dieci ottobre millenovecentonovantaquattro.

Gedaan te Pretoria, de tiende oktober negentienhondert vierennegentig.

Feito em Pretória, em dez de Outubro de mil novecentos e noventa e quatro.

Por la Comunidad Europea

For Det Europæiske Fællesskab

Für die Europäische Gemeinschaft

Για την Ευρωπαϊκή Κοινότητα

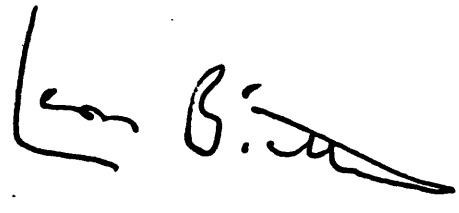
For the European Community

Pour la Communauté européenne

Per la Comunità europea

Voor de Europese Gemeenschap

Pela Comunidade Europeia



Por la República de Sudáfrica

For Den Sydafrikanske Republik

Für die Republik Südafrika

Για τη Δημοκρατία της Νοτίου Αφρικής

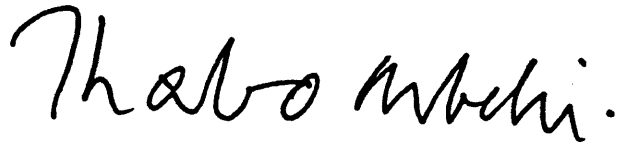
For the Republic of South Africa

Pour la République d'Afrique du Sud

Per la Repubblica sudafricana

Voor de Republiek Zuid-Afrika

Pela República da África do Sul



COMMISSION

COMMISSION DECISION

of 12 December 1994

relating to a proceeding under Article 85 of the EC Treaty and Article 53 of the EEA Agreement

(Case No IV/34.891 — Fujitsu AMD Semiconductor)

(Only the English text is authentic)

(Text with EEA relevance)

(94/823/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 2, 6 and 8 thereof,

Having regard to Article 53 and to Protocol 21 of the Agreement on the European Economic Area,

Having regard to the application for negative clearance of a joint venture agreement and five related agreements, and the notification for exemption thereof, submitted by Fujitsu Limited, pursuant to Articles 2 and 4 of Regulation No 17, on 21 October 1993,

Having regard to the request made by the parties on 11 February 1994 to extend the application and notification to Article 53 of the EEA Agreement,

Havinf regard to the summary of the application and notification published [2] pursuant to Article 19 (3) of Regulation 17 and to Article 3 of Protocol 21 of the EEA Agreement,

After consultation with the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas :

A. THE FACTS

I. The notification

(1) On 21 October 1993, Fujitsu Limited notified a joint venture agreement and five related agreements it had entered into with Advanced Micro Devices, Inc.

The related agreements include : a technology cross-licence agreement, a joint development agreement, a joint venture licence agreement and reciprocal investments agreements.

The notification has been made unilaterally by Fujitsu Limited with the consent and cooperation of Advanced Micro Devices, Inc. The Commission has been asked to issue a negative clearance or to grant an individual exemption pursuant to Article 85 (3) of the EC Treaty.

Following the entry into force of the EEA Agreement, the parties requested the Commission on 11 February 1994 to extend the notification so as to cover Article 53 of the EEA Agreement.

(2) The joint venture company, Fujitsu AMD Semiconductor Limited ('the JV'), has been created under Japanese law and will design, construct and operate a plant in Japan to produce semiconductor wafers of certain types of non-volatile memory ('NVM'), namely Electrically Programmable Read Only Memories ('Eproms') and flash memories.

[1] OJ No 13, 21. 2. 1962, p. 204/62.
[2] OJ No C 153, 4. 6. 1994, p. 11.

II. The parties

(3) Fujitsu Limited ('Fujitsu') is the ultimate parent of a group of companies that manufacture and sell information-processing equipment, telecommunications equipment, and electronic devices.

The consolidated turnover of the Fujitsu group in the fiscal year 1992 was approximately US $ 29,8 billion. Although an important producer of Eproms, Fujitsu sold practically no flash memory before 1993, for which calendar year it had a very limited turnover in this market segment.

(4) Advanced Micro Devices, Inc. ('AMD') is a US company specialized in the production and sale of semiconductors and related devices, particularly known for its production of Intel 386 (and recently 486) 'clone' microprocessors. AMD's 1992 turnover was approximately US $ 1,5 billion.

III. The agreements

The Joint Venture Agreement

(5) The JV will be a company with limited liability established under Japanese law. Fujitsu will hold 50,5 % and AMD 49,95 % of the JV's capital stock. The maximum authorized capital of the JV will be ¥ 40 billion (approximately ECU 325 million).

Fujitsu will hold a majority of the seats on the board of directors. Most decisions require a simple majority vote : however, some major business decisions [...](1) require qualified majority approval.

(6) The parties may not sell their shares in the JV for five years. Thereafter, if either party sells its shares, it must grant the other party the right of first refusal to purchase them. So long as the parties hold shares in the JV, they will be precluded from manufacturing NVMs that are or may be competitive with the JV, or employing or soliciting for employment any person employed by the JV.

(7) The agreement will be valid for so long as the JV remains in existence, unless terminated earlier by mutual agreement. If either party breaches the agreement, becomes insolvent, changes ownership/management, or ceases to be a one-third shareholder of the JV, the other party will have the option, among other things, of purchasing the first party's shares, dissolving the JV, or terminating the JV agreement and either or both of the investment agreements.

(8) The JV, which is expected to come on-line by 1995, will produce in Japan wafers of Eproms and flash memories through processes with geometries of 0,5 micron or less (meaning that the finest line on the circuits are 5/10 000 000 of a metre in width or less, corresponding to 1/200 of a human hair) that will be used by the JV or the parties to make NVM devices. In fact, wafers are unfinished products which must be cut into chips (dice) which (i) are assembled into packaged devices that are then incorporated into electronics equipment or (ii) are incorporated into memory cards. These NVM devices (the packaged devices and the memory cards) will be produced either by the JV or by the parent companies (or their subsidiaries). Each party shall be entitled to purchase 45 % of JV's total production. The remaining 10 % is to be allocated by the board of directors of the JV which may decide to sell it directly on the market; in that case, according to the JV Licence Agreement (see recital 17 below), the JV can sell its production only in certain Asian countries. The parent companies (or their subsidiaries) will sell NVM devices to OEMs or will use them for their own production of information technology and electronic consumer goods. According to the notification, wafers account for more than half of the final product price.

(9) Although both Eproms and flash memory are existing products, the highest performance wafer currently in commercial use is produced through processes with geometries of 0,8 micron. Therefore, the product of the JV will be a new generation of product.

(10) For the entire duration of the agreement, the parties are prohibited from competing with the JV. The agreement also contains an *ex-post* non-competition provision. According to this provision, if either party sells its shares in the JV for any reason within 10 years from the date on which the JV Agreement becomes effective, that party will be precluded for two years following the date of such sale from (i) engaging in manufacturing any NVM that is, or may be competitive, with the JV and that embodies, incorporates or is subject to any intellectual property right owned by the other party or developed pursuant to the Joint Development

(1) In the published version of the Decision, some information has hereinafter been omitted, pursuant to the provisions of Article 21 of Regulation No 17 concerning non-disclosure of business secrets.

Agreement or the Joint Venture Licence Agreement, or (ii) employing or soliciting for employment any person employed by the JV. Nonetheless, under the terms of the Technology Cross-Licence Agreement, the party will be able to continue its research and development effords based on the licensed technology, which it can use to manufacture NVMs after the two-year period has passed.

(11) The notification contains five supplemental agreements related to the establishment of the JV.

Technology Cross-Licence Agreement

(12) The parties grant each other reciprocal non-exclusive and non-transferable licences under their respective intellectual property rights ('IPRs') to make and dispose in any possible way of semiconductive materials and semiconductor products anywhere in the world, with the exception of NVMs and memory cards. For these latter products, the parties grant each other reciprocal licences to make, assemble, package, test, or use them worldwide; but the reciprocal licence to sell, lease or otherwise dispose of them is limited to certain specified territories. In Europe, for five years from the first sale in the EEA market of each new NVM or memory card, Fujitsu is granted a licence to sell in the United Kingdom and Ireland, and AMD to sell in the rest of the EEA. Unsolicited sales are allowed. After the five-year period each party can sell throughout the EEA. Outside the EEA territory, the Asian countries are essentially reserved to Fujitsu and the American countries to AMD.

(13) This agreement remains in effect for the longer of 10 years or until the date of any of the following 'transitional events':

— termination or expiration of the Joint Venture Agreement,

— dissolution of the JV,

or

— Fujitsu or AMD ceasing to be a shareholder of the JV.

Upon the occurrence of a 'transitional event', the agreement automatically terminates and the licences relating to NVMs and memory cards will become worldwide licences.

The parties are also given the right to terminate this Agreement on grounds of non-performance, insolvency, or a change in control of the other party.

Joint Development Agreement

(14) Through a Joint Development Committee the parties will collaborate in the development of product and process technologies necessary to manufacture NVMs. Each party will bear its costs of joint development. The IPR developed by either or both of the parties under the Joint Development Agreement will be jointly owned by the parties. If either party independently develops patented IPR, without access to confidential information of the other party, that party will solely own that IPR. That party will grant the JV and, where appropriate, the other party a licence to use the IPR developed under the Joint Development Agreement, whether jointly or individually owned.

(15) The Joint Development Agreement will terminate automatically on the termination of the Joint Venture Licence Agreement or on the occurrence of a 'transitional event'. Each party is also given the option to terminate if the other party breaches the Agreement, becomes insolvent, changes ownership/management, or ceases to be a one-third shareholder of the JV.

(16) Upon termnination of the Agreement for any reason, the parties will continue to own jointly the jointly developed IPR and to have the unlimited right to use and license that IPR. Although the parties may freely license the jointly-developed technology after termination of the JV, they may not assign their ownership interests in the jointly-developed IPR without permission from the other party.

Joint Venture Licence Agreement

(17) Fujitsu and AMD each grant the JV a non-exclusive, non-transferable licence to use their IPR to make, have made, and use NVMs anywhere in the world and to sell, lease or otherwise dispose of NVMs in certain Asian countries and, in the case of AMD's licence to the JV, in Japan.

Fujitsu and AMD will be paid by the JV a royalty of [...]% on net sales (to them) of the JV's products.

The JV grants the parties a non-exclusive, non-transferable, worldwide licence to use its IPR.

(18) The Agreement will terminate on the occurrence of a 'transitional event'. Each party has the option to terminate the Agreement if the other party breaches the Agreement, becomes insolvent, changes management/ownership, or ceases to be a one-third shareholder of the JV.

Reciprocal Investments Agreements

(19) Fujitsu and AMD will enter into reciprocal investment agreements. under the terms of these agreements, Fujitsu is obligated to purchase direct from AMD a certain number of AMD shares, not to exceed 5 % of AMD's outstanding common stock. AMD for its part must purchase a much smaller amount of Fujitsu stock on the open market. The parties are free to sell their reciprocal investments after [...] years.

IV. The market

The relevant product market

(20) According to the parties, wafers do not constitute a separate market from the market for semiconductor devices because they are products rarely put on the market before being cut into chips and incorporated into NVM devices. Therefore, they claim that the relevant product market in this case is the market for NVM devices which is composed of Eprom and flash memory devices. This question may remain open since the assessment of this case would not change if wafers constituted a separate market.

(21) An Eprom is a non-volatile semiconductor memory device that is programmable electrically and erasable using ultraviolet light. Flash memory, on the other hand, is a non-volatile semiconductor memory device that is both electrically programmable and electrically erasable, permitting speedier erasure than is the case with an Eprom. As indicated above, the JV's products will be produced using a new-generation product technology, the 0,5 micron (or less) technology. This process technology will narrow the space between various circuit elements in the wafer, allowing it to hold more transistors and, therefore, to store more information and to process it faster.

(22) The main characteristic of NVMs is their ability to retain stored data even after the power supply is cut. Among NVMs, flash memory devices have advantages over Eproms because they are erased more quickly, without removing the memory device from the system. For the time being the price of flash memory is considerably higher than that of Eprom. This is why flash memory is currently used only in the high end of the product market using NVMs.

The relevant geographical market

(23) Generally speaking, NVM devices are freely traded in substantial volumes all over the world. There are neither particular price differences nor national barriers to entry. Costs of transport are negligible. Therefore, the relevant geographical market for this case should be considered the world as a whole.

The existing structure of the market

(24) The worldwide value of the segment for Eproms was US $ 1 358 million in 1991 and 1 253 million in 1992. For flash memory there are no data available for 1991 (or before); for 1992 the worldwide value was US $ 239 million, but this segment is expected to grow almost 10 times by 1996 (see recital 26 below). The values of the European submarkets in 1992 were US $ 293 million for Eproms and US $ 71 million for flash memory respectively.

(25) Revenues in 1991 and 1992 and worldwide market shares of the major companies active in the two market segments under consideration are summarized in the following tables (source : Dataquest Inc., 24 May 1993):

Table 1

Eproms

Company	Revenue (US $ million)		Market share (%)	
	1991	1992	1991	1992
AMD	**225**	**207**	**16,6**	**16,5**
Intel	205	122	15,1	9,7
SGS-Thomson	158	180	11,6	14,4
Texas Instrument	136	197	10,0	15,7
Fujitsu	**86**	**71**	**6,3**	**5,7**
Mitsubishi	67	56	4,9	4,5
Toshiba	68	48	5,0	3,8

Table 2

Flash memory

Company	Revenue (US $ million)		Market share (%)	
	1991	1992	1991	1992
Intel	NA	167	NA	69,9
AMD	**NA**	**46**	**NA**	**19,2**
Mitsubishi	NA	3	NA	1,3
SGS-Thomson	NA	2	NA	0,8
Texas Instrument	NA	2	NA	0,8
Toshiba	NA	1	NA	0,4

On the European market, the situation is as follows (source : *idem*) :

Table 3

Eproms

Company	Revenue (US $ million)		Market share (%)	
	1991	1992	1991	1992
SGS-Thomson	74	75	24,4	25,6
AMD	**53**	**56**	**17,5**	**19,1**
Intel	55	37	18,2	12,6
Texas Instrument	33	39	10,9	13,3
National Semiconductor	21	23	6,9	7,8
Fujitsu	**9**	**9**	**3,0**	**3,1**

Table 4

Flash memory

Company	Revenue (US $ million)		Market share (%)	
	1991	1992	1991	1992
Intel	NA	55	NA	77,5
AMD	**NA**	**11**	**NA**	**15,5**
SGS-Thomson	NA	2	NA	2,8

Dynamic characteristics of the market

(26) During the next three to four years, the market for NVMs is forecast to be a very dynamic one; the gradual process of shifting away from Eproms towards flash memory initiated by Intel in late 1991 will be followed at a much faster rate by all producers of semiconductors.

According to the trade press, the worldwide demand for flash memory is double the current manufacturing capacity, due to explosive growth in markets for products requiring this technology such as cellular phones, computer disk drives, mobile and desktop personal computers and others.

According to Dataquest, the worldwide sales are expected to grow from US $ 239 million in 1992 to 2,5 billion by 1996, the year in which flash is expected to outnumber Eproms.

Intel is clearly leading this contest to meet the shortage of flash memories. By the end of 1994, Intel expects to have increased eight-fold its production capacity of flash memories. Intel recently entered into alliances concerning flash memories with Sharp and Nippon Steel Semiconductor.

To follow Intel, even aside from Fujitsu and AMD, several companies have formed JVs in the flash memory market: Mitsubishi and SGS-Thomson; IBM and Toshiba; Toshiba and National Semiconductor; Toshiba and Samsung; Hitachi and Mitsubishi; Sanyo and Silicon Storage Technology; and SunDisk and Matsushita.

According to market analysts, this widespread effort to increase production capacity of flash memory will possibly generate overall over-capacity in about five years if not before. This extra capacity will bring the prices down, contributing to the spread of the use of this product to the manufacturing of less expensive electronic consumer goods, such as cameras.

V. Observations from interested third parties

(27) The Commission has received no observations from interested third parties following the publication of the notice pursuant to Article 19 (3) of Regulation No 17.

B. LEGAL ASSESSMENT

I. Article 85 (1) of the EC Treaty and Article 53 (1) of the EEA Agreement

(28) Article 85 (1) and Article 53 (1) prohibit, *inter alia*, all agreements between undertakings which may affect trade between Member States (contracting parties under the EEA Agreement) and which have as their object or effect the prevention, restriction or distortion of competition.

The establishment of the JV

(29) The establishment of the JV falls within the scope of Articles 85 (1) and 53 (1) because it has the effect of restricting competition among the parties, which are actual competitors in the NVM market. This is not altered by the fact that Fujitsu has an insignificant part of the segment for flash memories. If it is true that Fujitsu — as it claims — has insufficient experience in designing flash memory devices, it is also true that it has sufficient financial, managerial and technical resources to increase its own production.

The fact that the JV restricts competition between competitors is not called in question either by AMD's supposed lack of sufficient resources to develop more cost-effective process technology so as to bring flash memories onto the market in a competitive time frame. In this respect it is sufficient to note that AMD (the JV not yet being active) increased its worldwide market share for this product by 40 % in 1993, which represented a growth in sales from US $ 46 million in 1992 to US $ 232 million for 1993 (Source: *Electronic Buyers News*, 7 March 1994).

(30) The JV will to a certain degree compete with its parent companies inasmuch as it can sell directly on the market up to 10 % of its total production. However, according to the Joint Venture Licence Agreement, the territory in which the JV is allowed to sell NVMs is limited to certain Asian countries. This territorial limitation takes on the form of a restriction of competition in so far as it represents a partition of the worldwide geographical market. However, it seems unlikely that — given the current undercapacity in flash memories — the JV will proceed to such sales until after the parent demand has been entirely satisfied (that is, possibly four to five years in the future). Considering the probably limited quantity of products involved, and the unlikelihood that this provision will appreciably affect trade within the EEA, the Commission

takes the view that this provision will not give rise to any appreciable restriction of competition within the meaning of Article 85 (1) and Article 53 (1). Therefore, Articles 85 (1) and 53 (1) are not applicable.

Restrictive provisions

(31) The Commission takes the view that the following provisions in the notified agreements are restrictive of competition.

1. Territorial partition of the EEA market

(32) Pursuant to the terms of Attachment B of the Technology Cross-Licence Agreement, in the EEA, Fujitsu is granted a non-exclusive licence to sell in the UK and Ireland, and AMD to sell in the rest of Europe. This territorial restriction is limited to active sales and only applies for five years from the first commercial sale of each new NVM chip or card in the EEA. The restriction does not apply to electronic products incorporating those NVMs.

This convenant constitutes a clear partition of the EEA market, prohibited by Article 85 (1) (b) and (c) and Article 53 (1) (b) and (c).

2. Non-competition clauses

(33) So long as the parties participate in the JV, they will be precluded from manufacturing any NVMs that are or may be competitive with those of the JV.

If either party sells its shares in the JV within the first 10 years of the life of the JV, that party will be precluded from manufacturing competing NVMs for two years.

(34) The first clause above is a restriction of competition which is ancillary to the JV in so far as it has to be considered necessary to the setting up and proper operation of the JV. In view of the difficulties, risks and costs involved in successfully developing NVMs, this non-competition clause is necessary to allow each party to obtain the benefit of its investment. Since the JV will require substantial investment of financial and technological resources from both parties, the parties would not enter into the JV agreement if they could also be subjected to competition from their partner. This is particularly true in this case, where the businesses of the JV's parent companies are highly complementary in nature : on the one hand, Fujitsu has limited experience in designing flash memory devices but disposes of a substantial production technology and expertise, whereas AMD, on the other hand, has the necessary expertise to design the next generation of flash memories but lacks sufficient resources to develop more cost-effective fine-process technology so as to bring these devices onto the market in a competitive time frame, and lacks the resources required to design and bring onto the market the product variations required by the market.

(35) Using the same test, the Commission is of the opinion that the second clause too (*ex-post* competition ban) may be seen as ancillary to the JV because :

— the 10-year period during which, if one party leaves the JV it will be bound by the two-year competition ban, starts to run from the date of the JV agreement that is, at least two years before the first commercial sale of the JV's products,

— an effective protection from competition during a maximum of seven to eight years seems necessary in order to compensate for the very significant investment of financial and technological resources, and to offset the risks involved in successfully developing NVMs, particularly in view of the complementary areas of expertise of Fujitsu and AMD.

3. Assignment of jointly-developed IPRs

(36) Neither party may assign its ownership interests in the jointly-developed IPRs without permission from the other party. Such jointly-developed technology being based in large part on a combination of existing technology belonging to either party, the parties would never contribute the rights to the JV if they were not allowed to control the ownership of those rights after termination. Therefore, this clause has to be considered ancillary to the JV.

Appreciability of the restrictions

(37) The inter-parent restrictions of competition stemming from the creation and operation of the JV will be appreciable because the field of activity of the JV falls entirely within those of both the parties : as far as the manufacturing of wafers (but not assembly or marketing of final products) is concerned, the JV will entirely supplant potential activities of both parties in the manufacture of essential components for NVM devices.

(38) The agreements will affect trade within the EEA in that the relevant products are traded in large volumes across the whole territory of the EEA.

Non-restrictive provisions

(39) The Commission considers the following provisions in the notified agreements as non-restrictive of competition.

1. Indefinite duration of the technology cross-licence

The cross-licence will remain in force for 10 years or the life of the JV whichever is the longer. Therefore, the licences for the different technologies are of a potentially indefinite duration. However, as they are non-exclusive licences, the Commission considers that their indefinite duration is not caught by Articles 85 (1) and 53 (1).

2. Cross-investment Agreements

The provisions of the Cross Investment Agreements fall outside the scope of Article 85 (1) and Article 53 (1) because they will not allow either party to take control or to influence the competitive behaviour of the other. The parties' investment in each other is minimal: Fujitsu will not own more than 5 % of AMD's outstanding shares and AMD will own only about 0,5 % of Fujitsu's outstanding shares. These acquisitions of minority interests in each other are not accompanied by any form of cross-representation in the boards of directors.

3. Territorial partition of the market outside the EEA

The Commission takes the view that, since the contractual provisions defining the parties' respective sales territories outside the EEA do not limit the parties' ability to trade on the EEA market for the products which are the subject of the agreements, they do not restrict competition and/or affect trade within the EEA. Therefore Articles 85 (1) and 53 (1) are not applicable.

II. Articles 85 (3) EC Treaty and 53 (3) EEA Agreement

(40) As has been demonstrated above, the Joint Venture agreement and the territorial provision included in the Technology Cross-Licence Agreement are caught by the prohibition in Article 85 (1) and Article 53 (1).

However, the Commission considers that these agreements fulfil the conditions governing the applicability of Article 85 (3) and Article 53 (3).

Improvement of production of goods or of promotion of technical or economic progress and benefits for the consumers

(41) The wafers produced by the JV will be used either by the JV or by the parties (or their subsidiaries) to produce highly sophisticated new semiconductor devices, which will in turn make possible the development of increasingly smaller, faster, more reliable, and more energy-efficient electronic system products, ranging from computers to consumer products such as portable telephones and voice electronic mail. This will lead to technical and economic progress that will directly benefit consumers through the dissemination of higher-performance innovative products.

Indispensability of the restrictions

(42) In the semiconductor industry, success with new products largely depends on timely entry into the market. New product lines require considerable investment. This investment is risky, considering the short lives of these products. The JV will allow each parent substantially to reduce these costs and risks. In its turn, this sharing of costs and risks will allow both parents to continue to invest part of their financial and technical resources in the development of a variety of semiconductor products other than NVMs. This continued production is essential for the overall success of the parties in the semiconductor market. Therefore, the Commission takes the view that the restriction of competition inherent in the formation of the JV is indispensable in so far as it represents the most efficient and quick way to bring to the market a new generation of high-technology products which combines the parties' complementary areas of expertise. Furthermore, the Commission takes the view that the cooperation between Fujitsu and AMD does not extend further than is necessary to obtain the benefits of the JV. Each of the parties will continue to compete in a range of other product markets, limiting their cooperative efforts to the development and manufacture of the NVMs. The conditions of competition in these markets rule out the possibility of any coordination of competitive behaviour between the parties.

(43) As for the independent territorial restriction (see recital 12) it has to be noted that it is not absolute. Although the parties may only engage in active sales in their licensed territories for five years from the date of the first commercial sale, unsolicited sales, leases and other dispositions of NVMs and memory cards are allowed throughout the EEA at any time. Moreover, customers are completely free to export NVMs, memory cards, and all other products that are the subject matter of the licences anywhere in the world. This means that customers from outside the territory can engage purchasing organizations and agents within the territory to purchase NVMs for export anywhere in the world. Customers from outside the territory can also travel to the territory to purchase NVMs and memory cards for export. Finally, customers from outside the EEA are free to export to the EEA for sale here.

In the light of the foregoing, and considering that the customers of the parties will be major manufacturers of electronic products having facilities in several countries, such passive sales are a real possibility, thereby minimizing the anticompetitive effect of the ban on active sales.

(44) Furthermore, the Commission accepts the parties' claim that limiting for an initial period the parties' active sales territories to those where they already have an established infrastructure (Fujitsu is particularly strong on the United Kingdom and Irish markets where it has manufacturing facilities; AMD has a strong presence in the rest of Europe), will increase the chances of success in what is, in effect, a new product introduction, in that they will be able to offer customers faster deliveries, better service and lower cost.

In particular, as far as memory cards are concerned, the Commission agrees with the parties that, at least at the beginning, Fujitsu and AMD will have to invest a significant amount of effort in tailoring these products for their customers. These products will be sold to a variety of manufacturers which will incorporate them as components in their own electronic products. For this to be done successfully, the customers will need advice, back-up and some adaptation of the products. This can be done more efficiently by Fujitsu and AMD in the areas where they have established after-sales networks.

Accordingly, in the circumstances the restrictions can be justified as being necessary to ensure the successful launch of the products and thus the success of the parties' overall investment.

No substantial elimination of competition

(45) In accordance with Article 85 (3) (b) and Article 53 (3) (b), the JV will not afford AMD and Fujitsu the opportunity to eliminate competition in a substantial part of the market for NVMs. By the time the JV is expected to come on line, flash memory devices will have replaced Eproms for many applications. This segment of the market is currently dominated by Intel. The appearence on the market of the JV's products will increase the competition on the market. In addition, the parties will also face strong competition from other recent alliances. Neither AMD nor *a fortiori* Fujitsu is likely to acquire, as a result of the JV, a dominant position in the EEA market for flash memories.

C. DURATION OF THE EXEMPTION

(46) Pursuant to Article 8 of Regulation No 17, a decision under Article 85 (3) of the Treaty is to be issued for a specified period. Pursuant to Article 6 of that Regulation, the date from which such a decision takes effect cannot be earlier than the date of notification. The same principles apply for the decisions under Article 53 (3) of the EEA Agreement. In accordance with those Articles, in the present case, the decision, in so far as it grants exemption, should take effect from the date of notification and last for 10 years, that is from 21 October 1993 to 20 October 2003,

HAS ADOPTED THIS DECISION:

Article 1

On the basis of the information at its disposal, the Commission has no grounds for action under Article 85 (1) of the EC Treaty or Article 53 (1) of the EEA Agreement in respect of the following notified agreements entered into by Fujitsu and AMD:

— the Joint Development Agreement dated 26 March 1993,

— the Joint Venture Licence Agreement dated 16 April 1993,

— the Investment Agreement of Fujitsu Limited investing in Advanced Micro Devices, Inc. dated 26 March 1993,

— the Investment Agreement of Advanced Micro Devices, Inc. investing in Fujitsu Limited, dated 26 March 1993,

— the Technology Cross-Licence Agreement dated 26 March 1993, with the exception of the territorial provision concerning the EEA contained in its Attachment B.

Article 2

In accordance with Article 85 (3) of the EC Treaty and Article 53 (3) of the EEA Agreement, the provisions of Article 85 (1) and Article 53 (1) are hereby declared inapplicable for the period from 21 October 1993 to 20 October 2003 to the Joint Venture Agreement entered into by Fujitsu and AMD on 30 March 1993 and to the territorial provision concerning the EEA included in Attachment B of the Technology Cross-Licence Agreement entered into by Fujitsu and AMD on 26 March 1993.

Article 3

This Decision is addressed to:

1. Fujitsu Limited,
   1015 Kamikodanaka,
   Nakahara-ku,
   Kawasaki-shi,
   Kanagawa-ken 211,
   JAPAN.
2. Advanced Micro Devices, Inc.,
   901 Thompson Place,
   PO Box 3453,
   Sunnyvale,
   California 940088-3453,
   USA.

Done at Brussels, 12 December 1994.

For the Commission

Karel VAN MIERT

Member of the Commission

CORRIGENDA

Corrigendum to Commission Regulation (EC) No 3151/94 of 21 December 1994 introducing a further derogation from the detailed rules for the delivery by producers of the table wine they are required to deliver for compulsory distillation in respect of the 1993/94 wine year

(Official Journal of the European Communities No L 332 of 22 December 1994)

On page 32 in Article 1, paragraph 1, seventh line:

for: '... 120 days ...',

read: '... 140 days ...'.