ISSN 0378-6978

Official Journal of the European Communities

L 312

Volume 38

23 December 1995

English edition

Legislation

Contents

I *Acts whose publication is obligatory*

* **Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests** 1

* **Council Regulation (EC) No 2989/95 of 19 December 1995 amending Regulation (EEC) No 1765/92 establishing a support system for producers of certain arable crops** 5

* **Council Regulation (EC) No 2990/95 of 18 December 1995 regulating compensation for appreciable reductions in the agricultural conversion rates before 1 July 1996** 7

* **Commission Regulation (EC) No 2991/95 of 19 December 1995 amending Regulation (EEC) No 334/93 laying down detailed implementing rules for the use of land set aside for the Community of products not primarily intended for human or animal consumption** 9

* **Commission Regulation (EC) No 2992/95 of 19 December 1995 modifying Regulation (EEC) No 1863/90 laying down detailed rules for the application of Council Regulation (EEC) No 4045/89 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund and repealing Directive 77/435/EEC** 11

* **Commission Regulation (EC) No 2993/95 of 19 December 1995 amending Regulation (EC) No 1518/95 laying down detailed rules for the application of Council Regulations (EEC) No 1418/76 and (EEC) No 1766/92 as regards the import and export system for products processed from cereals and rice and amending Regulation (EC) No 1162/95 laying down special detailed rules for the application of the system of import and export licences for cereals and rice** 25

* **Commission Regulation (EC) No 2994/95 of 19 December 1995 amending Regulation (EEC) No 3846/87 establishing an agricultural product nomenclature for export refunds** 26

Price : ECU 18

(Continued overleaf)

EN

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)

* **Commission Regulation (EC) No 2995/95 of 19 December 1995 amending Regulation (EC) No 3254/93 as regards the specific supply arrangements for certain fruits and vegetables for the benefit of the smaller Aegean islands for 1996** 28

* **Commission Regulation (EC) No 2996/95 of 19 December 1995 amending Regulation (EEC) No 3846/87 establishing an agricultural product nomenclature for export refunds for fruit and vegetables** 31

* **Commission Regulation (EC) No 2997/95 of 20 December 1995 imposing a provisional anti-dumping duty on imports of unwrought magnesium originating in Russia and Ukraine** 37

* **Commission Regulation (EC) No 2998/95 of 20 December 1995 amending Regulations (EEC) No 1912/92, No 1913/92, No 2254/92, No 2255/92, No 2312/92 and No 1148/93 laying down detailed implementing rules for the specific measures for supplying the Canary Islands, the Azores, Madeira and the French overseas departments with beef and veal** 50

Commission Regulation (EC) No 2999/95 of 22 December 1995 amending Regulation (EEC) No 391/92 setting the amounts of aid for the supply of cereals products from the Community to the French overseas departments 59

Commission Regulation (EC) No 3000/95 of 22 December 1995 amending Regulation (EEC) No 1832/92 setting the amounts of aid for the supply of cereals products from the Community to the Canary Islands 61

Commission Regulation (EC) No 3001/95 of 22 December 1995 amending Regulation (EEC) No 1833/92 setting the amounts of aid for the supply of cereals products from the Community to the Azores and Madeira 63

Commission Regulation (EC) No 3002/95 of 22 December 1995 setting the amounts of aid for the supply of rice products from the Community to the Canary Islands 65

Commission Regulation (EC) No 3003/95 of 22 December 1995 setting the amounts of aid for the supply of rice products from the Community to the Azores and Madeira 67

Commission Regulation (EC) No 3004/95 of 22 December 1995 amending the export refunds on poultrymeat 69

Commission Regulation (EC) No 3005/95 of 22 December 1995 determining the percentage of quantities covered by applications for export licences for poultrymeat which may be accepted 71

Commission Regulation (EC) No 3006/95 of 22 December 1995 fixing the export refunds on rice and broken rice 72

Commission Regulation (EC) No 3007/95 of 22 December 1995 fixing the refunds applicable to cereal and rice sector products supplied as Community and national food aid 74

Commission Regulation (EC) No 3008/95 of 22 December 1995 establishing the standard import values for determining the entry price of certain fruit and vegetables 76

EN

(Continued on inside back cover)

Contents (continued)

II *Acts whose publication is not obligatory*

Council

95/550/EC, Euratom, ECSC:

★ **Council Decision of 18 December 1995 appointing members of the Court of Auditors of the European Communities** 78

Commission

95/551/EC:

★ **Commission Decision of 29 November 1995 relating to a proceeding pursuant to Article 85 of the EC Treaty (IV/34.179, 34.202, 216 — Stichting Certificatie Kraanverhuurbedrijf and the Federatie van Nederlandse Kraanverhuurbedrijven)** 79

EN

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC, EURATOM) No 2988/95
of 18 December 1995
on the protection of the European Communities financial interests

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 Treaty establishing the European Atomic Energy Community, and in particular Article 203 thereof,

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

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

Whereas the general budget of the European Communities is financed by own resources and administered by the Commission within the limit of the appropriations authorized and in accordance with the principle of sound financial management; whereas the Commission works in close cooperation with the Member States to that end;

Whereas more than half of Community expenditure is paid to beneficiaries through the intermediary of the Member States;

Whereas detailed rules governing this decentralized administration and the monitoring of their use are the subject of differing detailed provisions according to the Community policies concerned; whereas acts detrimental to the Communities' financial interests must, however, be countered in all areas;

Whereas the effectiveness of the combating of fraud against the Communities' financial interests calls for a common set of legal rules to be enacted for all areas covered by Community policies;

Whereas irregular conduct, and the administrative measures and penalties relating thereto, are provided for in sectoral rules in accordance with this Regulation;

Whereas the aforementioned conduct includes fraudulent actions as defined in the Convention on the protection of the European Communities' financial interests;

Whereas Community administrative penalties must provide adequate protection for the said interests; whereas it is necessary to define general rules applicable to these penalties;

Whereas Community law has established Community administrative penalties in the framework of the common agricultural policy; whereas such penalties must be established in other fields as well;

Whereas Community measures and penalties laid down in pursuance of the objectives of the common agricultural poilcy form an integral part of the aid systems; whereas they pursue their own ends which do not affect the assessment of the conduct of the economic operators concerned by the competent authorities of the Member States from the point of view of criminal law; whereas their effectiveness must be ensured by the immediate effect of Community rules and by applying in full Community measures as a whole, where the adoption of preventive measures has not made it possible to achieve that objective;

Whereas not only under the general principle of equity and the principle of proportionality but also in the light of the principle of *ne bis in idem,* appropriate provisions must be adopted while respecting the *acquis communautaire* and the provisions laid down in specific Community rules existing at the time of entry into force of this Regulation, to prevent any overlap of Community financial penalties and national criminal penalties imposed on the same persons for the same reasons;

(1) OJ No C 216, 6. 8. 1994, p. 11.
(2) OJ No C 89, 10. 4. 1995, p. 83 and opinion delivered on 30 November 1995 (not yet published in the Official Journal).

Whereas, for the purposes of applying this Regulation, criminal proceedings may be regarded as having been completed where the competent national authority and the person concerned come to an arrangement;

Whereas this Regulation will apply without prejudice to the application of the Member States' criminal law;

Whereas Community law imposes on the Commission and the Member States an obligation to check that Community budget resources are used for their intended purpose; whereas there is a need for common rules to supplement existing provisions;

Whereas the Treaties make no provision for the specific powers necessary for the adoption of substantive law of horizontal scope on checks, measures and penalties with a view to ensuring the protection of the Communities' financial interests; whereas recourse should therefore be had to Article 235 of the EC Treaty and to Article 203 of the EAEC Treaty;

Whereas additional general provisions relating to checks and inspections on the spot will be adopted at a later stage,

HAS ADOPTED THIS REGULATION:

TITLE I

General principles

Article 1

1. For the purposes of protecting the European Communities' financial interests, general rules are hereby adopted relating to homogenous checks and to administrative measures and penalties concerning irregularities with regard to Community law.

2. 'Irregularity' shall mean any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.

Article 2

1. Administrative checks, measures and penalties shall be introduced in so far as they are necessary to ensure the proper application of Community law. They shall be effective, proportionate and dissuasive so that they provide adequate protection for the Communities' financial interests.

2. No administrative penalty may be imposed unless a Community act prior to the irregularity has made provision for it. In the event of a subsequent amendment of the provisions which impose administrative penalties and are contained in Community rules, the less severe provisions shall apply retroactively.

3. Community law shall determine the nature and scope of the administrative measures and penalties necessary for the correct application of the rules in question, having regard to the nature and seriousness of the irregularity, the advantage granted or received and the degree of responsibility.

4. Subject to the Community law applicable, the procedures for the application of Community checks, measures and penalties shall be governed by the laws of the Member States.

Article 3

1. The limitation period for proceedings shall be four years as from the time when the irregularity referred to in Article 1 (1) was committed. However, the sectoral rules may make provision for a shorter period which may not be less than three years.

In the case of continuous or repeated irregularities, the limitation period shall run from the day on which the irregularity ceases. In the case of multiannual programmes, the limitation period shall in any case run until the programme is definitively terminated.

The limitation period shall be interrupted by any act of the competent authority, notified to the person in question, relating to investigation or legal proceedings concerning the irregularity. The limitation period shall start again following each interrupting act.

However, limitation shall become effective at the latest on the day on which a period equal to twice the limitation period expires without the competent authority having imposed a penalty, except where the administrative procedure has been suspended in accordance with Article 6 (1).

2. The period for implementing the decision establishing the administrative penalty shall be three years. That period shall run from the day on which the decision becomes final.

Instances of interruption and suspension shall be governed by the relevant provisions of national law.

3. Member States shall retain the possibility of applying a period which is longer than that provided for in paragraphs 1 and 2 respectively.

TITLE II

Administrative measures and penalties

Article 4

1. As a general rule, any irregularity shall involve withdrawal of the wrongly obtained advantage:

— by an obligation to pay or repay the amounts due or wrongly received,

— by the total or partial loss of the security provided in support of the request for an advantage granted or at the time of the receipt of an advance.

2. Application of the measures referred to in paragraph 1 shall be limited to the withdrawal of the advantage obtained plus, where so provided for, interest which may be determined on a flat-rate basis.

3. Acts which are established to have as their purpose the obtaining of an advantage contrary to the objectives of the Community law applicable in the case by artificially creating the conditions required for obtaining that advantage shall result, as the case shall be, either in failure to obtain the advantage or in its withdrawal.

4. The measures provided for in this Article shall not be regarded as penalties.

Article 5

1. Intentional irregularities or those caused by negligence may lead to the following administrative penalties:

(a) payment of an administrative fine;

(b) payment of an amount greater than the amounts wrongly received or evaded, plus interest where appropriate; this additional sum shall be determined in accordance with a percentage to be set in the specific rules, and may not exceed the level strictly necessary to constitute a deterrent;

(c) total or partial removal of an advantage granted by Community rules, even if the operator wrongly benefited from only a part of that advantage;

(d) exclusion from, or withdrawal of, the advantage for a period subsequent to that of the irregularity;

(e) temporary withdrawal of the approval or recognition necessary for participation in a Community aid scheme;

(f) the loss of a security or deposit provided for the purpose of complying with the conditions laid down by rules or the replenishment of the amount of a security wrongly released;

(g) other penalties of a purely economic type, equivalent in nature and scope, provided for in the sectoral rules adopted by the Council in the light of the specific requirements of the sectors concerned and in compliance with the implementing powers conferred on the Commission by the Council.

2. Without prejudice to the provisions laid down in the sectoral rules existing at the time of entry into force of this Regulation, other irregularities may give rise only to those penalties not equivalent to a criminal penalty that are provided for in paragraph 1, provided that such penalties are essential to ensure correct application of the rules.

Article 6

1. Without prejudice to the Community administrative measures and penalties adopted on the basis of the sectoral rules existing at the time of entry into force of this Regulation, the imposition of financial penalties such as administrative fines may be suspended by decision of the competent authority if criminal proceedings have been initiated against the person concerned in connection with the same facts. Suspension of the administrative proceedings shall suspend the period of limitation provided for in Article 3.

2. If the criminal proceedings are not continued, the suspended administrative proceedings shall be resumed.

3. When the criminal proceedings are concluded, the suspended administrative proceedings shall be resumed, unless that is precluded by general legal principles.

4. Where the administrative procedure is resumed, the administrative authority shall ensure that a penalty at least equivalent to that prescribed by Community rules is imposed, which may take into account any penalty imposed by the judicial authority on the same person in respect of the same facts.

5. Paragraphs 1 to 4 shall not apply to financial penalties which form an integral part of financial support systems and may be applied independently of any criminal penalties, if and in so far as they are not equivalent to such penalties.

Article 7

Community administrative measures and penalties may be applied to the economic operators referred to in Article 1, namely the natural or legal persons and the other entities on which national law confers legal capacity who have committed the irregularity and to those who are under a duty to take responsibility for the irregularity or to ensure that it is not committed.

TITLE III

Checks

Article 8

1. In accordance with their national laws, regulations and administrative provisions, the Member States shall take the measures necessary to ensure the regularity and reality of transactions involving the Communities' financial interests.

2. Measures providing for checks shall be appropriate to the specific nature of each sector and in proportion to the objectives pursued. They shall take account of existing administrative practice and structures in the Member States and shall be determined so as not to entail excessive economic constraints or administrative costs.

The nature and frequency of the checks and inspections on the spot to be carried out by the Member States and the procedure for performing them shall be determined as necessary by sectoral rules in such a way as to ensure uniform and effective application of the relevant rules and in particular to prevent and detect irregularities.

3. The sectoral rules shall include the provisions necessary to ensure equivalent checks through the approximation of procedures and checking methods.

Article 9

1. Without prejudice to the checks carried out by the Member States in accordance with their national laws, regulations and administrative provisions and without prejudice to the checks carried out by the Community institutions in accordance with the EC Treaty, and in particular Article 188c thereof, the Commission shall, on its responsibility, have checks carried out on :

(a) the conformity of administrative practices with Community rules ;

(b) the existence of the necessary substantiating documents and their concordance with the Communities' revenue and expenditure as referred to in Article 1 ;

(c) the circumstances in which such financial transactions are carried out and checked.

2. In addition, it may carry out checks and inspections on the spot under the conditions laid down in the sectoral rules.

Before carrying out such checks and inspections, in accordance with the rules in force, the Commission shall inform the Member State concerned accordingly in order to obtain any assistance necessary.

Article 10

Additional general provisions relating to checks and inspections on the spot shall be adopted later in accordance with the procedures laid down in Article 235 of the EC Treaty and Article 203 of the EAEC Treaty.

Article 11

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, 18 December 1995.

For the Council

The President

J. BORRELL FONTELLES

COUNCIL REGULATION (EC) No 2989/95

of 19 December 1995

amending Regulation (EEC) No 1765/92 establishing a support system for producers of certain arable crops

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 42 and 43 thereof,

Having regard to the proposal from the Commission,

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

Whereas Regulation (EEC) No 1765/92 [2], provides for the application of extraordinary set-aside by producers benefiting from the general scheme of compensation in order to bring the production of arable crops down to a level in line with the outlets for those products, taking account of a basic set-aside requirement;

Whereas areas voluntarily set aside over and above the requirement for compulsory set-aside contribute to the control of arable crop production; whereas, however, areas voluntarily set aside do not ensure a reduction in production comparable to the reduction resulting from compulsory set-aside; whereas, therefore, account should be taken of this fact by deducting, for the purposes of calculating extraordinary set-aside, only part of the areas voluntarily set aside;

Whereas voluntary set-aside is not always distinguished from compulsory set-aside in aid application forms; whereas the Member States must take the necessary measures to obtain data concerning the areas set aside under voluntary set-aside; whereas time should be allowed for this adjustment;

Whereas exceptional climatic conditions may have the effect of lowering average yields and be the reason for the base areas being exceeded; whereas, in those circumstances, it would be fair to exempt the regions affected partially or totally from extraordinary set-aside;

Whereas the present situation on the market for arable crops is such that an overshoot in the regional base area by less than 1 % may be regarded as *de minimis;* whereas in such a situation the penalty laid down in the second indent of Article 2 (6) of Regulation (EEC) No 1765/92 should not be applied;

Whereas it is therefore necessary to amend Regulation (EEC) No 1765/92;

Whereas in Austria before accession durum wheat was cultivated over relatively limited areas; whereas that production, which is well established in certain regions, represents an important part of the cereal economy of those regions; whereas it is therefore desirable to protect that production by paying a supplement,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1765/92 is hereby amended as follows:

1. In Article 2, paragraph 6 shall be replaced by the following:

'6. In the case of a regional base area, and when the sum of the individual areas for which aid is claimed under the arable producers' scheme, including the set-aside provided for under that scheme, land counted as being set-aside pursuant to Article 7 (2) and by virtue of the scheme to set-aside land in accordance with Council Regulation (EEC) No 2328/91 of 15 July 1991 on improving the efficiency of agricultural structures [*], is in excess of the regional base area, the following will be applied in the region in question:

— during the same marketing year, the eligible area per farmer will be reduced proportionately for all the aids granted under this Title,

— in the following marketing year, producers in the general scheme will be required to make, without compensation, a special set-aside. The percentage rate for extraordinary set-aside shall be equal to the percentage by which the regional base area is exceeded, established by deducting 85 % of the area set aside under voluntary set-aside in accordance with Article 7 (6). This shall be additional to the set-aside requirement given in Article 7.

In the event that exceptional climatic conditions have affected production in a marketing year, or it is found that the regional base area has been exceeded, which have had the effect of lowering average yields to a level considerably below the normal and of causing the excess in question, the Commission may, pursuant to the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, exempt the regions affected totally or partially from the extraordinary set-aside.

[1] OJ No C 308, 20. 11. 1995.
[2] OJ No L 181, 1. 7. 1992, p. 12. Regulation as last amended by Regulation (EC) No 1460/95 (OJ No L 144, 28. 6. 1995, p. 1).

However, if the excess in the regional base area leads to a level of extraordinary set-aside being applied in respect of the 1996 harvest below 1 %, the extraordinary set-aside shall not be applied.

Areas which are the subject of a special set-aside in accordance with the second indent of the first subparagraph shall not be taken into account in applying this paragraph.

(*) OJ No L 218, 6. 8. 1991, p. 1. Regulation as last amended by Regulation (EC) No 2843/94 (OJ No L 302, 25. 11. 1994, p. 1).'

2. In Article 4 (5) the following subparagraph shall be added :

'In Austria, the aid referred to in the first subparagraph shall be granted up to a maximum of 5 000 ha in regions where production of that crop is well established.'

Article 2

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

Article 1 (1) shall apply for the purposes of deducting voluntary set-aside when calculating the percentage of extraordinary set-aside to be carried out as a result of applications for compensation submitted as from the 1996/97 marketing year. However, provided a Member State communicates to the Commission detailed information on the areas voluntarily set aside in light of the 1995 harvest, the Commission shall authorize the said Member State to advance it by a marketing year.

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

Done at Brussels, 19 December 1995.

For the Council

The President

L. ATIENZA SERNA

COUNCIL REGULATION (EC) No 2990/95

of 18 December 1995

regulating compensation for appreciable reductions in the agricultural conversion rates before 1 July 1996

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the proposal from the Commission,

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

Whereas Council Regulation (EC) No 1527/95 of 29 June 1995 regulating compensation for reductions in the agricultural conversion rates of certain national currencies [2] lays down special rules applicable between 23 June 1995 and 1 January 1996 to currencies which experience during that period an appreciable reduction in their agricultural conversion rate; whereas the risk of an appreciable reduction in the agricultural conversion rates has arisen in the case of the Finnish markka and the Swedish krona since monetary gaps of more than 5 % have occurred for those currencies; whereas this situation could lead to an appreciable reduction in the agricultural conversion rates after the period referred to in Regulation (EC) No 1527/95;

Whereas Article 9 of Regulation (EEC) No 3813/92 provides for the Council to take all necessary measures in the event of an appreciable revaluation, which, primarily to comply with obligations under the GATT Agreement and budgetary discipline, may involve derogations from the provisions of the said Regulation concerning aid and the amount by which the monetary gaps are dismantled, without, however, resulting in the threshold being extended; whereas the measures provided for in Articles 7 and 8 of the said Regulation cannot be applied as they stand; whereas it is necessary to take steps at Community level to prevent distortions of monetary origin affecting the implementation of the common agricultural policy;

Whereas on the basis of the information available it is impossible to know what the situation will be after 30 June 1996; whereas application of the rules laid down in Regulation (EC) No 1527/95 would be justified in similar cases up to that time; whereas the amounts of the aid provided for in Regulation (EC) No 1527/95 must be determined using the criteria employed when that Regulation was adopted, and in particular by reference to the most recent data available; whereas, in order to reflect the most recent data available, the amount of the aid must be fixed for those Member States, such as Finland and Sweden at present for which there is a risk of an appreciable reduction in the agricultural conversion rate,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation shall apply in the event of significant reductions in agricultural conversion rates in accordance with Article 4 of Regulation (EEC) No 3813/92 up to 30 June 1996.

Article 2

1. Provided an amount is fixed for the purpose in paragraph 2, in the event of a reduction in an agricultural conversion rate as referred to in Article 1, the Member State affected may make compensatory payments to farmers in three successive tranches lasting twelve months each, starting with the month following the relevant reduction in the agricultural conversion rate. These compensatory payments shall not take the form of aid linked to production during a stipulated period prior to introduction of the compensation scheme; they shall not favour any particular type of production or be dependent on production subsequent to the period stipulated.

2. In the case of Sweden the overall amount of compensation allocated for the first 12-month tranche may not exceed ECU 10,8 million multiplied by the fall in the agricultural conversion rate referred to in Article 1 expressed as a percentage and reduced, in the case of the first appreciable reduction, by 1,564 points if the reduction occurs before 13 January 1996 or by 1,043 points if it occurs thereafter.

In the case of Finland the overall amount of compensation allocated for the first 12-month tranche may not exceed ECU 14,6 million multiplied by the fall in the agricultrual conversion rate referred to in Article 1 expressed as a percentage and reduced, in the case of the first appreciable reduction, by 1,119 points if the reduction occurs before 21 January 1996 or by 0,746 points if it occurs thereafter.

The amounts paid out under the second and third tranches shall be reduced, *vis-à-vis* the previous tranche, by at least a third of the amount paid out in the first tranche.

[1] OJ No L 387, 31. 12. 1992, p. 1. Regulation as last amended by Regulation (EC) No 150/95 (OJ No L 22, 31. 1. 1995, p. 1).
[2] OJ No L 148, 30. 6. 1995, p. 1.

3. The Community contribution to financing these compensatory payments shall be 50 % of the amounts that may be paid out.

For the purposes of the financing of the common agricultural policy, this contribution shall be considered as forming part of the assistance designed to regularize agricultural markets. The Member State may withdraw from national participation in financing the aid.

4. The Commission shall, in accordance with the procedure laid down in Article 12 of Regulation (EEC) No 3813/92, adopt detailed rules for applying this Article and in particular, in cases where the Member State does not participate in financing the aid, lay down the conditions for paying that aid.

Article 3

1. In cases as referred to in Article 1, the agricultural conversion rates applicable, on the date of the appreciable reduction, to the amounts referred to in Article 7 of Regulation (EEC) No 3813/92 shall remain unchanged until 1 January 1999.

2. Articles 7 and 8 of Regulation (EEC) No 3813/92 shall not apply to the reductions in agricultural conversion rates referred to in Article 1 of this Regulation.

Article 4

Before the end of the third period during which the compensation is granted, the Commission shall examine the effects on agricultural income of the reductions in agricultural conversion rates as referred to in Article 1.

Where it is established that income losses are likely to continue, the Commission may, in accordance with the procedure laid down in Article 12 of Regulation (EEC) No 3813/92, extend the possibility of granting compensation as provided for in Article 2 of this Regulation by a maximum of 2 additional 12-month tranches, the maximum amount per tranche being equal to that granted in the third tranche.

Article 5

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, 18 December 1995.

For the Council

The President

L. ATIENZA SERNA

COMMISSION REGULATION (EC) No 2991/95

of 19 December 1995

amending Regulation (EEC) No 334/93 laying down detailed implementing rules for the use of land set aside for the Community of products not primarily intended for human or animal consumption

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops [1], as last amended by Regulation (EC) No 2800/95 [2], in particular Article 12 thereof,

Whereas experience has shown that, when a collector who has lodged a security subsequently delivers the raw material under contract to a first processor, as it is the first processor, not the collector, who will process the raw material into its end product it would be more appropriate to enable that security to be released if the first processor has lodged an equivalent security with his competent authority;

Whereas Commission Regulation (EC) No 1870/95 [3] amending Regulation (EEC) No 334/93 [4] changed certain of the implementing rules in relation to the use of set-aside land for non-food purposes; whereas the Regulation came into force on 5 August 1995; whereas it is however appropriate that its provisions should apply to all contracts made in respect of the 1996 and subsequent harvests; whereas for contracts made before the coming into force of the Regulation only those provisions should apply which do not disadvantage the parties to such contracts; whereas, for reasons of administrative control it is necessary that the whole of the security be lodged by 15 April 1996, whether contracts made in respect of the 1996 harvest were made before or after the coming into force of the Regulation;

Whereas it has been ascertained that as certain raw materials have no possibility of being used for human or animal consumption, such raw materials should be subject to simplified controls;

Whereas it is therefore necessary to amend Regulation (EEC) No 334/93;

Whereas certain language versions are incorrect; whereas it is therefore necessary to correct those language versions;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Joint Management Committee for Cereals, Oils and Fats and Dried Fodder, and Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 334/93 is amended as follows:

1. Article 3 shall be amended as follows:

   (a) in paragraph 1, in the first sentence, 'Annex II' is replaced by 'Annex III';

   (b) at the end of paragraph 3, 'Annex II' is replaced by 'Annex III'.

2. In Article 8 (4):

   — point (a) is replaced by the following:

   '(a) The collector or the first processor who has received the raw material from the claimant shall inform their competent authority of the quantity of raw material received, specifying the species and variety as well as the name and address of the contracting party who has delivered the raw material and the place of delivery by a date to be fixed by Member States so as to ensure that the compensation can be paid within the period specified in Article 10 of Regulation (EEC) No 1765/92.',

   — in point (b), the following is added:

   'The first processor shall, in turn, inform his competent authority of the name and address of the collector who has delivered the raw material, the quantity and type of raw material received and the date of delivery, within 40 working days of receipt by that first processor.'

3. Article 9 shall be amended as follows:

   — at the end of paragraph 1 the following shall be added:

[1] OJ No L 181, 1. 7. 1992, p. 12.
[2] OJ No L 291, 6. 12. 1995, p. 1.
[3] OJ No L 179, 29. 7. 1995, p. 40.
[4] OJ No L 38, 16. 2. 1993, p. 12.

'However, in relation to contracts made before 5 Agusut 1995 in respect of the 1995 harvest where the collector or the first processor, as the case may be, has lodged, or was obliged to lodge, at least half of the security with the competent authority within 20 working days following the signature of the contract, that party shall lodge the balance of the security within 20 working days after reception of the raw material under contract, or if that period has elapsed, within 20 working days after the entry into force of Commission Regulation (EC) No 2991/95 (*).

(*) JO No L 312, 23. 12. 1995, p. 9.',

— at the end of paragraph 2 the following shall be added:

'Without prejudice to the first subparagraph, where the collector lodged the security, that security shall be released after the raw material in question is delivered to the first processor, provided that the collector's competent authority has proof that the first processor has lodged an equivalent security with its competent authority.'

4. Article 10 shall be amended as follows:

— in paragraph 2, the second sentence is replaced by:

'Processing into one or more of the end products mentioned in Annex III shall take place by 31 July of the second year following the year of delivery of the raw material by the claimant to the collector or the first processor.',

— in paragraph 2, the following shall be added at the end of the first subparagraph:

'However, in relation to contracts made before 5 August 1995, such processing shall take place within a maximum of three years from the date of delivery of the raw material to the first processor.'

— in paragraph 6, in the first and last sentences, 'Annex II' is replaced by 'Annex III'.

5. The following Article 25 is added:

'Article 25

Except where the contrary is stated in this Regulation, the amendments made to this Regulation by Regulation (EEC) No 1870/95 shall apply to all contracts made in respect of the 1996 and subsequent harvests. However, Member States may apply some or all of the provisions of those amendments to contracts made in respect of the 1995 harvest in so far as they do not disadvantage the parties to those contracts.'

6. In Annex I, 'CN code 0602 99 59, Other outdoor plants (e.g. *Kenaf Hibiscus Cannabinus* L. and *Chenopodium*)' is replaced by 'CN code ex 0602 99 59, other outdoor plants (eg *Kenaf Hibiscus Cannabinus* L. and *Chenopodium*) with the exception of *Euphorbia lathyris, Calendula officinalis, Sylibum marianum* and *Isatis tinctoria*.'

7. In Annex II, the following is added:

'CN code ex 0602 99 59, *Euphorbia lathyris, Calendula officinalis, Sylibum marianum* and *Isatis tinctoria*.'

Article 2

Regulation (EEC) No 334/93 is corrected as follows:

1. In Article 6 (1) (c) of the German language version, 'Flurstücksnummer' is replaced by 'Flächenidentifizierung'.

2. In Article 8 (5) of the German language version, the last sentence of the first subparagraph shall be deleted.

3. At the end of Article 9 (2) of the German language version, the following shall be added:

'Where the contract has been amended or rescinded prior to the claimant marking an area aid application or on the conditions set out in Article 7 (2), the security lodged shall be reduced in accordance with the reduction in area.'

4. In the Swedish language version Article 21 is replaced by:

'Article 21

Raw materials cultivated on set-aside land and for which compensation is paid, and the products derived from such raw materials may not benefit from the measures financed by the European Agricultural Guidance and Guarantee Fund, Guarantee Section, or from the Community aid provided for in Council Regulation (EEC) No 2078/92 and (EEC) No 2080/92.'

Article 3

This Regulation shall enter into force on the seventh 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, 19 December 1995.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 2992/95

of 19 December 1995

modifying Regulation (EEC) No 1863/90 laying down detailed rules for the application of Council Regulation (EEC) No 4045/89 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund and repealing Directive 77/435/EEC

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 4045/89 [1] of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund and repealing Directive 77/435/EEC, as last amended by Regulation (EC) No 3235/94 [2], and in particular Article 19 thereof,

Whereas Regulation (EC) No 4045/89 requires Member States to send to the Commission a detailed annual report on the application of the Regulation, an annual programme of scrutinies, and a list of undertakings established in a third country for which payments have or should have been made or received, and to send to Member States concerned as well as to the Commission a list of undertakings established in a Member State other than that in which payments have or should have been made or received;

Whereas the standardization of the form and content of such communications would facilitate their use and ensure a uniformity of approach;

Whereas it is therefore appropriate to adopt detailed rules as to their form and content;

Whereas Regulation (EEC) No 1863/90 [3] of the Commission laying down detailed rules for the application of Regulation (EEC) No 4045/89 should therefore be amended;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1863/90 is amended as follows:

1. Article 1 is replaced by the following text:

   'Article 1

   This Regulation lays down detailed rules for the application of Regulation (EEC) No 4045/89.';

2. The following title and subtitle are inserted before Article 2:

   'TITLE I

   The system of Community financing';

3. The following title, subtitle and Articles are added after Article 4:

   'TITLE II

   The content of documents

   Article 4a

   1. The annual report referred to in Article 9 (1) of Regulation (EEC) No 4045/89 shall contain detailed information on at least each of the aspects of the application of Regulation (EEC) No 4045/89 listed in Annex II of this Regulation, set out in clearly identified sections under the headings referred to.

   2. The annual programme of scrutinies referred to in Article 10 of Regulation (EEC) No 4045/89 shall be drawn up in accordance with the specimen form set out in Annex III.

   3. The list of undertakings referred to in Article 7 (2) of Regulation (EEC) No 4045/89 shall be drawn up in accordance with the specimen form set out in Annex IV.

   4. The list of undertakings referred to in Article 7 (3) of Regulation (EEC) No 4045/89 shall be drawn up in accordance with the specimen form set out in Annex V.

   5. A request by a Member State for a priority inspection of an undertaking in another Member State, as referred to in Articles 7 (2) and 7 (4) of Regulation (EEC) No 4045/89, shall be drawn up in accordance with the specimen form set out in Annex VI.

   Article 4b

   The information to be submitted under Article 4a may be communicated in documentary form or on computer file in a format to be agreed between the sender and the recipient.'

4. The Annex shall be numbered Annex I, and Annexes A, B, C, D and E to the present Regulation shall be added as Annexes II to VI respectively.

Article 2

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

[1] OJ No L 388, 30. 12. 1989, p. 18.
[2] OJ No L 338, 28. 12. 1994, p. 16.
[3] OJ No L 170, 3. 7. 1990, p. 23.

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

Done at Brussels, 19 December 1995.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX A

'ANNEX II

Information to be provided in the annual report submitted by Member States under Article 9 (1) of Regulation (EEC) No 4045/89 ('the Regulation').

1. **Administration of the Regulation**

The administration of the Regulation, including changes to the organizations responsible for controls and to the special department responsible for monitoring the application of the Regulation as referred to in Article 11, and to the competences of those organizations.

2. **Legislative changes**

Any national legislative changes relevant to the application of the Regulation that have intervened since the previous annual report.

3. **Amendments to the scrutiny programme**

A description of any amendments or modifications that were made to the scrutiny programme submitted to the Commission under Article 10 (2) of the Regulation since the date of submission of that programme.

4. **Execution of the scrutiny programme**

The execution of the programme of scrutinies for the period ending on 30 of June preceding the latest date for submission of this report, as referred to in Article 9 (1) of the Regulation, including, both in total and broken down by control body (where more than one carries out controls under the Regulation):

(a) the number of scrutinies carried out,

(b) the number of scrutinies still in the course of being carried out,

(c) the number of scrutinies planned for the period in question that were not carried out,

(d) the reasons why the scrutinies referred to in (c) above were not carried out,

(e) the breakdown, by amounts received by or paid to, and by measure, of the scrutinies referred to in (a), (b) and (c) above,

(f) any actions which may have been taken as a result of the scrutinies referred to in (a) above, where irregularities were not detected,

(g) the results of those scrutinies carried out pursuant to the scrutiny period prior to that covered by the present report, for which the results were not available at the time of submission of the report for that scrutiny period,

(h) any difficulties encountered in the carrying out of the scrutinies referred to in (a) and (b) above, and,

(i) an indication of the average duration of scrutinies in person-days, indicating, where practicable, the time spent on planning, preparation, execution of controls, and reporting.

5. **Mutual assistance**

Mutual assistance requests made and received under Article 7 of the Regulation, including the results of scrutinies carried out as a matter of priority under Articles 7 (2) and 7 (4), and a summary of the lists both sent and received under Articles 7 (2) and 7 (3).

6. **Resources**

Details of the resources available for the carrying out of the scrutinies under the Regulation, including:

(a) the number of staff; expressed in person/years, allocated to scrutinies under the Regulation, by control body, and, where appropriate, region;

(b) training received by staff working on scrutinies under the Regulation, with an indication of the proportion of the staff referred to in paragraph (a) above who have received such training, and the nature of the training itself, and,

(c) computer equipment and tools at the disposal of staff working on scrutinies under the Regulation.

7. **Difficulties in applying the Regulation**

Any difficulties encountered in the application of the Regulation, and the measures taken to overcome them or proposals to this end.

8. **Suggestions for improvement**

Where appropriate, any suggestions for improvement, either in the application of the Regulation, or in the Regulation itself.'

ANNEX B

'ANNEX III

SHEET A

PROPOSED SCRUTINY PROGRAMME FOR THE PERIOD .....

(Article 10 of Regulation (EEC) No 4045/89)

1. The criterion for calculation of the minimum number of undertakings required to be controlled = not less than half of the number of undertakings whose receipts or payments, or the sum thereof, amounted to more than ECU 100 000 for the EAGGF financial year .....

i.e.: [ ] × ½ = [ ]

2. For measures for which risk analysis has not been used as the main selection criterion:

The number of undertakings having received or made payments under the system of financing by the Guarantee Section of the EAGGF in the financial year ..... was as follows:

A (1) Total number	Total number whose receipts or payments, or the sum thereof, were in the following categories	
	A (2) Exceeding ECU 300 000	A (3) ECU 300 000 or less, but not less than ECU 30 000
[ ]	[ ]	[ ]

The number of undertakings in each of the above categories which it is intended to scrutinize in ..... are:

[ ]	[ ]	[ ]

3. Total number of undertakings proposed for scrutiny in .....:

A (4) Total number	A (5) Total based upon risk analysis	A (6) < ECU 30 000
[ ]	[ ]	[ ]

Notes on boxes:

A (2) It is compulsory to scrutinize undertakings in this category which were not scrutinized in accordance with this Regulation during the two scrutiny periods preceding this scrutiny period, unless the payments that they received were under a measure or measures for which risk analysis techniques of selection have been adopted.

A (6) Undertakings in this category are to be scrutinized only for specific reasons which are to be indicated in sheet D of this Annex.

SHEET B

PROPOSED SCRUTINY PROGRAMME FOR THE PERIOD .....

(Article 10 of Regulation (EEC) No 4045/89)

Scheme of control in relation to EAGGF Guarantee Fund budget headings

B (1) EAGGF Budget Article or Item No	B (2) Number of scrutinies planned	Only for measures where risk analysis will not be applied				B (5) Scrutinies planned to undertakings whose receipts or payments, or the sum thereof were less than ECU 30 000 during the EAGGF financial year ...		B (6) Total expenditure by EAGGF budget heading to be controlled during the period ... (ECU)	B (7) Total expenditure by EAGGF budget heading during the EAGGF financial year ... (ECU)
		B (3) Scrutinies planned to undertakings whose receipts or payments, or the sum thereof exceeded ECU 300 000 during the EAGGF financial year ...		B (4) Scrutinies planned to undertakings whose receipts or payments, or the sum thereof were in the range ECU 30 000 to ECU 300 000 during the EAGGF financial year ...					
		(i) number of undertakings	(ii) expenditure thereby controlled (ECU)	(i) number of undertakings	(ii) expenditure thereby controlled (ECU)	(i) number of undertakings	(ii) expenditure thereby controlled (ECU)		

SHEET C

PROPOSED SCRUTINY PROGRAMME FOR THE PERIOD .....

(Article 10 of Regulation (EEC) No 4045/89)

Criteria adopted in drawing up the programme in the area of export refunds and other sectors where risk analysis selection techniques have been adopted where these differ from those included in the proposals for risk analysis sent to the Commission under Article 2 (2) of Regulation (EEC) No 4045/89

Sector where scrutiny is proposed (show EAGGF budget heading as set out in column B (1) of Sheet B of this Annex)	Comments on risk and selection criteria adopted (give brief details — e.g. detected irregularities or exceptional increase in expenditure)

SHEET D

PROPOSED SCRUTINY PROGRAMME FOR THE PERIOD .....

(Article 10 of Regulation (EEC) No 4045/89)

Proposed scrutinies, if any, of undertakings whose receipts or payments, or the sum thereof, were less than ECU 30 000 during the EAGGF financial year ....

EAGGF budget heading (as set out in column B (1) of Sheet B)	Number of undertakings that it is proposed to scrutinize	Specific reason for scrutiny

SHEET E

PROPOSED SCRUTINY PROGRAMME FOR THE PERIOD .....

(Article 10 of Regulation (EEC) No 4045/89)

Control body (breakdown by region and office)	Number of controls planned	Aggregate number of controller/years allocated to controls under Regulation (EEC) No 4045/89 (where controllers work only part-time on controls under Regulation (EEC) No 4045/89, only this fraction of their working year should be included).'

ANNEX C

'ANNEX IV

LIST OF UNDERTAKINGS ESTABLISHED IN A MEMBER STATE OTHER THAN THAT IN WHICH PAYMENT OF THE AMOUNT IN QUESTION HAS OR SHOULD HAVE BEEN MADE OR RECEIVED

(Article 7 (1) and (2) of Regulation (EEC) No 4045/89)

Member State in which payment was made or received .....

Member State in which undertaking is established .....

Date of dispatch of the list

(1) Name and address		(2) Nature of expenditure (show each payment separately by EAGGF budgetary line and type of payment)	(3) Amount (in national currency) per individual payment which during the EAGGF financial year was :		(4) Indicate whether inspection of the undertaking requested in accordance with Article 7 (2) (see note A)
(i) of undertaking in Member State where established	(ii) to which payment made or from which payment received		(i) paid to undertaking	(ii) paid by undertaking	

Notes :

A. If so a specific request should be sent, using the the specimen form set out in Annex V, including all the information needed to enable the recipient to correctly identify the undertaking concerned.

B. A copy of this list must be sent to the Commission (DG VI-G-3).

C. Where are no undertakings established in other Member States as far as your country is concerned, it is requested that this fact is communicated to all other Member States and to the Commission (DG VI-G-3).

D. If a request for inspection of an undertaking in accordance with Article 7 (2) is made subsequent to the dispatch of this list, a copy of the request, in accordance with Annex VI, should nonetheless be sent to the Commission (DG VI-G-3).'

ANNEX D

'ANNEX V

LIST OF UNDERTAKINGS ESTABLISHED IN THIRD COUNTRY FOR WHICH PAYMENT OF THE AMOUNT IN QUESTION HAS OR SHOULD HAVE BEEN MADE OR RECEIVED IN THAT MEMBER STATE

(Article 7 (3) of Council Regulation (EEC) No 4045/89)

Member State in which payment was made or received ..... Date of dispatch of this list

Third Country in which undertaking is established .....

(1) Name and address		(2) Nature of expenditure (show each payment separately by EAGGF budgetary line and type of payment)	(3) Amount (in national currency) per individual payment which during the EAAGF financial year was :		(4) Additional comments (e. g. itemize any difficulties in control, suspicion of irregularity analysis of risk, etc.)
(i) of undertaking in third country where established	(ii) to which payment made or from which payment received		(i) paid to undertaking	(ii) paid by undertaking	

Note :

If there are no undertakings established in other third countries as far as your country is concerned, it is requested that this Annex should be returned to the Commission (DG VI-G-3) clearly indicating this to be the case.'

ANNEX E

'ANNEX VI

REQUEST FOR INSPECTION UNDER ARTICLE 7 (2) OR 7 (4) OF REGULATION (EEC) No 4045/89

Items marked with an asterisk should be completed in all cases; other items should be completed where appropriate

This request is based upon : Article 7 (2) ☐

Article 7 (4) ☐

A (*) 1. Requesting Member State .....

(*) 2. Name of special department .....

(*) 3. Address .....

(*) 4. Telephone number .....

5. Fax number .....

6. Telex number .....

7. Responsible official .....

8. Name of control organization responsible .....

9. Address .....

10. Telephone number .....

11. Fax number .....

12. Telex number .....

13. Responsible official .....

B (*) 1. Requested Member State .....

(*) 2. Organization .....

C (*) 1. Date of request .....

(*) 2. Scrutiny programme .....

D Beneficiary data

(*) 1. Name

(a) in requesting Member State .....

(b) in requested Member State .....

(*) 2. Reference number .....

(*) 3. Address :

(a) in requesting Member State .....

(b) in requested Member State .....

E For requests under Article 7 (2) only

Payment data

(*) 1. Paying agency .....

(*) 2. Payment reference number .....

(*) 3. Payment type .....

(*) 4. Amount (specific currency) .....

(*) 5. Accounting date .....

(*) 6. Payment date .....

(*) 7. EAGGF budget code (chapter — article — post — line) .....

(*) 8. Marketing year or period to which payment applies .....

(*) 9. EU Regulation serving as legal base for payment .....

F Transaction details

1. (Export) declaration or application number .....
2. Contract :
   — number .....
   — date .....
   — quantity .....
   — value .....
3. Invoice :
   — number .....
   — date .....
   — quantity .....
   — value .....
4. Date of acceptance of declaration .....
5. Authorizing office .....
6. Certificate or licence number .....
7. Certificate or licence date .....

For storage schemes

8. Tender number .....
9. Tender date .....
10. Price per unit .....
11. Entry date .....
12. Exit date .....
13. Increase or reduction in quality .....

For export refunds

14. Claim number (if different from export declaration number) .....
15. Customs office of taking into customs control .....
16. Date of customs control .....
17. Prefinancing (code) .....
18. Export refund code (11 digits) .....
19. Destination code .....
20. Prefixed rate .....
   — in ecus .....
   — in national currency .....
21. Date of prefixation .....

G Risk Analysis

(*) 1. Rating — high .....
— medium .....
— low .....

(*) 2. Narrative justification for rating .....

.....

(continue on separate sheet if necessary) .....

.....

.....

H Scope and objective of control

1. Proposed scope .....

2. Objectives and their supporting technical details .....

.....

(continue on separate sheet if necessary) .....

I (*) List of supporting documents supplied .....

.....

(continue on separate sheet if necessary) .....'

COMMISSION REGULATION (EC) No 2993/95

of 19 December 1995

amending Regulation (EC) No 1518/95 laying down detailed rules for the application of Council Regulations (EEC) No 1418/76 and (EEC) No 1766/92 as regards the import and export system for products processed from cereals and rice and amending Regulation (EC) No 1162/95 laying down special detailed rules for the application of the system of import and export licences for cereals and rice

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 1863/95 [2], and in particular Articles 11, 13 and 16 thereof,

Whereas Commission Regulation (EC) No 1518/95 [3] lays down detailed rules for the application of Council Regulations (EEC) No 1418/76 [4], as last amended by Regulation (EC) No 1530/95 [5], and (EEC) No 1766/92 as regards the import and export system for products processed from rice and cereals respectively;

Whereas Commission Regulation (EC) No 2448/95 [6] amends, with effect from 1 January 1996, Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff [7], as regards certain cereal products falling within CN code 1104;

Whereas Regulation (EC) No 1518/95 must be amended to take account of those amendments with effect from 1 January 1996;

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

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 1518/95 is hereby amended as follows:

1. Product code '1104 22 10 100' is replaced by product code '1104 22 20 100'.

2. Product code '1104 22 99 100' and the particulars relating thereto are deleted.

Article 2

This Regulation shall enter into force on 1 January 1996.

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

Done at Brussels, 19 December 1995.

For the Commission

Franz FISCHLER

Member of the Commission

---

[1] OJ No L 181, 1. 7. 1992, p. 21.
[2] OJ No L 179, 29. 7. 1995, p. 1.
[3] OJ No L 147, 30. 6. 1995, p. 55.
[4] OJ No L 166, 25. 6. 1976, p. 1.
[5] OJ No L 148, 30. 6. 1995, p. 5.
[6] OJ No L 259, 30. 10. 1995, p. 1.
[7] OJ No L 256, 7. 9. 1987, p. 1.

COMMISSION REGULATION (EC) No 2994/95

of 19 December 1995

amending Regulation (EEC) No 3846/87 establishing an agricultural product nomenclature for export refunds

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 1863/95 [2], and in particular Article 13 thereof,

Whereas Commission Regulation (EC) No 2448/95 of 10 October 1995 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff [3], provides for amendments with effect from 1 January 1996 in respect of certain cereal products falling within CN code 1104 such as hulled (shelled or husked) grains of oats or clipped grains of oats;

Whereas Commission Regulation (EEC) No 3846/87 [4], as last amended by Regulation (EC) No 2838/95 [5], establishes, on the basis of the combined nomenclature, an agricultural product nomenclature for export refunds; whereas it should be adapted to the aforementioned amendments with effect from 1 January 1996;

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

HAS ADOPTED THIS REGULATION:

Article 1

Sector 3 in the Annex to Regulation (EEC) No 3846/87 is hereby amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 1 January 1996.

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

Done at Brussels, 19 December 1995.

For the Commission

Franz FISCHLER

Member of the Commission

---

[1] OJ No L 181, 1. 7. 1992, p. 21.
[2] OJ No L 179, 29. 7. 1995, p. 1.
[3] OJ No L 259, 30. 10. 1995, p. 1.
[4] OJ No L 366, 24. 12. 1987, p. 1.
[5] OJ No L 296, 9. 12. 1995, p. 1.

ANNEX

1. CN code ex 1104 22 10 and the particulars relating thereto are replaced by the following product code and the following information :

CN code	Description	Product code
ex 1104 22 20	– – – Hulled (shelled or husked) : – – – – Of an ash content, referred to dry matter, not exceeded 2,3 % by weight of tegument content not exceeding 0,5 %, of a moisture content not exceeding 11 % and of which the peroxidase is virtually inactivated (2)	1104 22 20 100

2. CN code ex 1104 22 99 and the particulars relating thereto are deleted.

COMMISSION REGULATION (EC) No 2995/95

of 19 December 1995

amending Regulation (EC) No 3254/93 as regards the specific supply arrangements for certain fruits and vegetables for the benefit of the smaller Aegean islands for 1996

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2019/93 of 19 July 1993 introducing specific measures for the smaller Aegean islands concerning certain agricultural products [1], as last amended by Commission Regulation (EC) No 2417/95 [2], and in particular Article 4 thereof,

Whereas Commission Regulation (EEC) No 2958/93 [3], as last amended by Regulation (EC) No 1802/95 [4], lays down common detailed rules for the application of the arrangements for supplying the smaller Aegean islands with certain agricultural products and determines, pursuant to Article 3 (2) of Regulation (EEC) No 2019/93, the amount of the aid for such supply according to the island-group which includes the island in which the product is disposed of; whereas, pursuant to Article 2 of Regulation (EEC) No 2019/93, the forecast supply balances for the smaller Aegean islands for fruit and vegetables from the rest of the Community should be established for 1996;

Whereas Commission Regulation (EC) No 3254/93 [5], as last amended by Regulation (EC) No 997/95 [6], should therefore be amended;

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

Annexes I and II of Regulation (EC) No 3254/93 are replaced by the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 1 January 1996.

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

Done at Brussels, 19 December 1995.

For the Commission

Franz FISCHLER

Member of the Commission

---

[1] OJ No L 184, 27. 7. 1993, p. 1.
[2] OJ No L 248, 14. 10. 1995, p. 39.
[3] OJ No L 267, 28. 10. 1993, p. 4.
[4] OJ No L 174, 26. 7. 1995, p. 27.
[5] OJ No L 293, 27. 11. 1993, p. 34.
[6] OJ No L 101, 4. 5. 1995, p. 16.

ANNEX

'ANNEX I

Forecast supply balance for 1996 for the smaller Aegean islands belonging to Group A (1)

(tonnes)

Description	CN code	Quantity
Potatoes	0701 10 00 0701 90 51 0701 90 59 0701 90 90	3 000
Vegetables	0702 to 0709 (*)	1 000
Citrus fruit, fresh	ex 0805	2 000
Grapes	0806 10	
Apples	0808 10 31 to 0808 10 89	
Pears	0808 20 31 to 0808 20 39	
Apricots, cherries, peaches, plums and sloes, fresh	0809	
Strawberries	0810 10	
Melons, water melons	0807 11 00 and 0807 19 00	
Figs, fresh	0804 20 10	
Kiwi fruit	0810 50 00	

(*) Not including vegetables falling within CN codes 0709 60 91, 0709 60 95, 0709 60 99 (with the exception of edible peppers), 0709 90 31, 0709 90 39 and 0709 90 60.

(1) The smaller islands belonging to Group A are defined in Annex I to Regulation (EEC) No 2958/93.

ANNEX II

Forecast supply balance for 1996 for the smaller Aegean islands belonging to Group B (1)

(tonnes)

Description	CN code	Quantity
Potatoes	0701 10 00 0701 90 51 0701 90 59 0701 90 90	10 000
Vegetables	0702 to 0709 (*)	5 300
Citrus fruit, fresh	ex 0805	7 518
Grapes	0806 10	
Apples	0808 10 31 to 0808 10 89	
Pears	0808 20 31 to 0808 20 39	
Apricots, cherries, peaches, plums and sloes, fresh	0809	
Strawberries	0810 10	
Melons, water melons	0807 11 00 and 0807 19 00	
Figs, fresh	0804 20 10	
Kiwi fruit	0810 50 00	

(*) Not including vegetables falling within CN codes 0709 60 91, 0709 60 95, 0709 60 99 (with the exception of edible peppers), 0709 90 31, 0709 90 39 and 0709 90 60.

(1) The smaller islands belonging to Group B are defined in Annex II to the Regulation (EEC) No 2958/93.'

COMMISSION REGULATION (EC) No 2996/95

of 19 December 1995

amending Regulation (EEC) No 3846/87 establishing an agricultural product nomenclature for export refunds for fruit and vegetables

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 1363/95 [2], and in particular Article 30 (4) thereof,

Whereas Commission Regulation (EC) No 2448/95 of 10 October 1995 amending Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff [3] provides for changes as regards oranges falling within CN code 0805 10 ;

Whereas Commission Regulation (EEC) No 3846/87 [4], as last amended by Regulation (EC) No 2994/95 [5], introduces an agricultural product nomenclature for export refunds based on the combined nomenclature ; whereas the former should be amended to bring it into line with the abovementioned changes ;

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

Sector 11 of the Annex to Regulation (EEC) No 3846/87 is hereby replaced by the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 1 January 1996.

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

Done at Brussels, 19 December 1995.

For the Commission

Franz FISCHLER

Member of the Commission

---

[1] OJ No L 118, 20. 5. 1972, p. 1.
[2] OJ No L 132, 16. 6. 1995, p. 8.
[3] OJ No L 259, 30. 10. 1995, p. 1.
[4] OJ No L 366, 24. 12. 1987, p. 1.
[5] See page 26 of this Official Journal.

ANNEX

'11. **Fruit and vegetables**

CN code	Description of goods	Product code
ex 0702 00	Tomatoes, fresh or chilled :	
ex 0702 00 15	– From 1 January to 31 March :	
	– – "Extra" Class, Class I and Class II (1)	0702 00 15 100
ex 0702 00 20	– From 1 to 30 April :	
	– – "Extra" Class, Class I and Class II (1)	0702 00 20 100
ex 0702 00 25	– From 1 to 14 May :	
	– – "Extra" Class, Class I and Class II (1)	0702 00 25 100
ex 0702 00 30	– From 15 to 31 May :	
	– – "Extra" Class, Class I and Class II (1)	0702 00 30 100
ex 0702 00 35	– From 1 June to 30 September :	
	– – "Extra" Class, Class I and Class II (1)	0702 00 35 100
ex 0702 00 40	– From 1 to 31 October :	
	– – "Extra" Class, Class I and Class II (1)	0702 00 40 100
ex 0702 00 45	– From 1 November to 20 December :	
	– – "Extra" Class, Class I and Class II (1)	0702 00 45 100
ex 0702 00 50	– From 21 to 31 December :	
	– – "Extra" Class, Class I and Class II (1)	0702 00 50 100
ex 0802	Other nuts, fresh or dried, whether or not shelled or peeled :	
	– Almonds :	
ex 0802 12	– – Shelled :	
0802 12 90	– – – Other :	0802 12 90 000
	– Hazelnuts (*Corylus* spp.) :	
0802 21 00	– – In shell	0802 21 00 000
0802 22 00	– – Shelled	0802 22 00 000
	– Walnuts :	
0802 31 00	– – In shell	0802 31 00 000
ex 0805	Citrus fruits, fresh or dried :	
ex 0805 10	– Oranges :	
	– – Sweet oranges, fresh :	
	– – – From 1 January to 31 March :	
ex 0805 10 01	– – – – Sanguines and semi-sanguines :	
	– – – – – "Extra" Class, Class I and Class II (2)	0805 10 01 200
	– – – – Other :	
ex 0805 10 05	– – – – – Navels, Navelines, Navelates, Salustianas, Vernas, Valencia lates, Maltese, Shamoutis, Ovalis, Trovita and Hamlins :	
	– – – – – – "Extra" Class, Class I and Class II (2)	0805 10 05 200
ex 0805 10 09	– – – – – Other :	
	– – – – – – "Extra" Class, Class I and Class II (2)	0805 10 09 200
	– – – From 1 to 30 April :	
ex 0805 10 11	– – – – Sanguines and semi-sanguines :	
	– – – – – "Extra" Class, Class I and Class II (2)	0805 10 11 200
	– – – – Other :	

CN code	Description of goods	Product code
ex 0805 10 15	– – – – – Navels, Navelines, Navelates, Salustianas, Vernas, Valencia lates, Maltese, Shamoutis, Ovalis, Trovita and Hamlins :	
	– – – – – – "Extra" Class, Class I and Class II (2)	0805 10 15 200
ex 0805 10 19	– – – – – Other :	
	– – – – – – "Extra" Class, Class I and Class II (2)	0805 10 19 200
	– – – From 1 to 15 May :	
ex 0805 10 21	– – – – Sanguines and semi-sanguines :	
	– – – – – "Extra" Class, Class I and Class II (2)	0805 10 21 200
	– – – – Other :	
ex 0805 10 25	– – – – – Navels, Navelines, Navelates, Salustianas, Vernas, Valencia lates, Maltese, Shamoutis, Ovalis, Trovita and Hamlins :	
	– – – – – – "Extra" Class, Class I and Class II (2)	0805 10 25 200
ex 0805 10 29	– – – – – Other :	
	– – – – – – "Extra" Class, Class I and Class II (2)	0805 10 29 200
	– – – From 16 May to 31 May :	
ex 0805 10 31	– – – – Sanguines and semi-sanguines :	
	– – – – – "Extra" Class, Class I and Class II (2)	0805 10 31 200
	– – – – Other :	
ex 0805 10 33	– – – – – Navels, Navelines, Navelates, Salustianas, Vernas, Valencia lates, Maltese, Shamoutis, Ovalis, Trovita and Hamlins :	
	– – – – – – "Extra" Class, Class I and Class II (2)	0805 10 33 200
ex 0805 10 35	– – – – – Other :	
	– – – – – – "Extra" Class, Class I and Class II (2)	0805 10 35 200
	– – – From 1 June to 30 September :	
ex 0805 10 37	– – – – Sanguines and semi-sanguines :	
	– – – – – "Extra" Class, Class I and Class II (2)	0805 10 37 200
	– – – – Other :	
ex 0805 10 38	– – – – – Navels, Navelines, Navelates, Salustianas, Vernas, Valencia lates, Maltese, Shamoutis, Ovalis, Trovita and Hamlins :	
	– – – – – – "Extra" Class, Class I and Class II (2)	0805 10 38 200
ex 0805 10 39	– – – – – Other :	
	– – – – – – "Extra" Class, Class I and Class II (2)	0805 10 39 200
	– – – From 1 October to 15 October :	
ex 0805 10 42	– – – – Sanguines and semi-sanguines :	
	– – – – – "Extra" Class, Class I and Class II (2)	0805 10 42 200
	– – – – Other :	
ex 0805 10 44	– – – – – Navels, Navelines, Navelates, Salustianas, Vernas, Valencia lates, Maltese, Shamoutis, Ovalis, Trovita and Hamlins :	
	– – – – – – "Extra" Class, Class I and Class II (2)	0805 10 44 200
ex 0805 10 46	– – – – – Other :	
	– – – – – – "Extra" Class, Class I and Class II (2)	0805 10 46 200
	– – – From 16 October to 30 November :	
ex 0805 10 51	– – – – Sanguines and semi-sanguines :	
	– – – – – "Extra" Class, Class I and Class II (2)	0805 10 51 200
	– – – – Other :	
ex 0805 10 55	– – – – – Navels, Navelines, Navelates, Salustianas, Vernas, Valencia lates, Maltese, Shamoutis, Ovalis, Trovita and Hamlins :	
	– – – – – – "Extra" Class, Class I and Class II (2)	0805 10 55 200

CN code	Description of goods	Product code
ex 0805 10 59	– – – – – Other :	
	– – – – – – "Extra" Class, Class I and Class II (2)	0805 10 59 200
	– – – From 1 December to 31 December :	
ex 0805 10 61	– – – – Sanguine and semi-sanguines :	
	– – – – – "Extra" Class, Class I and Class II (2)	0805 10 61 200
	– – – – Other :	
ex 0805 10 65	– – – – – Navels, Navelines, Navelates, Salustianas, Vernas, Valencia lates, Maltese, Shamoutis, Ovalis, Trovita and Hamlins :	
	– – – – – – "Extra" Class, Class I and Class II (2)	0805 10 65 200
ex 0805 10 69	– – – – – Other :	
	– – – – – – "Extra" Class, Class I and Class II (2)	0805 10 69 200
ex 0805 30	– Lemons (*Citrus limon, Citrus limonum*) and lines (*Citrus aurantifolia*) :	
	– – Lemons (*Citrus limon, Citrus limonum*) :	
ex 0805 30 20	– – – From 1 January to 31 May :	
	– – – – Fresh, ("Extra" Class, Class I and Class II) (2)	0805 30 20 100
ex 0805 30 30	– – – From 1 June to 31 October :	
	– – – – Fresh, ("Extra" Class, Class I and Class II) (2)	0805 30 30 100
ex 0805 30 40	– – – From 1 November to 31 December :	
	– – – – Fresh, ("Extra" Class, Class I and Class II) (2)	0805 30 40 100
ex 0806	Grapes, fresh or dried :	
ex 0806 10	– fresh :	
	– – Table grapes :	
	– – – From 1 January to 14 July :	
ex 0806 10 21	– – – – Of the variety Empereur (*Vitis vinifera* c.v.), from 1 to 31 January :	
	– – – – – "Extra" Class and Class I (3)	0806 10 21 200
ex 0806 10 29	– – – – Other :	
	– – – – – "Extra" Class and Class I (3)	0806 10 29 200
ex 0806 10 30	– – – From 15 July to 20 July :	
	– – – – "Extra" Class and Class I (3)	0806 10 30 200
ex 0806 10 40	– – – From 21 July to 31 October :	
	– – – – "Extra" Class and Class I (3)	0806 10 40 200
ex 0806 10 50	– – – From 1 to 20 November :	
	– – – – "Extra" Class and Class I (3)	0806 10 50 200
	– – – From 21 November to 31 December :	
ex 0806 10 61	– – – – Of the variety Emperor (*Vitis vinifera* c.v.), from 1 to 31 December :	
	– – – – – "Extra" Class and Class I (3)	0806 10 61 200
ex 0806 10 69	– – – – Other :	
	– – – – – "Extra" Class and Class I (3)	0806 10 69 200
ex 0808	Apples, pears and quinees, fresh :	
ex 0808 10	– Apples :	
	– – Other :	
	– – – From 1 January to 31 March :	
ex 0808 10 51	– – – – Of the variety Golden Delicious :	
	– – – – – Cider apples	
	– – – – – Other :	
	– – – – – – "Extra" Class, Class I and Class II (2)	0808 10 51 910

CN code	Description of goods	Product code
ex 0808 10 53	– – – – Of the variety Granny Smith :	
	– – – – – Cider apples	
	– – – – – Other :	
	– – – – – – "Extra" Class, Class I and Class II (2)	0808 10 53 910
ex 0808 10 59	– – – – Other :	
	– – – – – Cider apples	
	– – – – – Other :	
	– – – – – – "Extra" Class, Class I and Class II (2)	0808 10 59 910
	– – – From 1 April to 30 June :	
ex 0808 10 61	– – – – Of the variety Golden Delicious :	
	– – – – – Cider apples	
	– – – – – Other :	
	– – – – – – "Extra" Class, Class I and Class II (2)	0808 10 61 910
ex 0808 10 63	– – – – Of the variety Granny Smith :	
	– – – – – Cider apples :	
	– – – – – Other :	
	– – – – – – "Extra" Class, Class I and Class II (2)	0808 10 63 910
ex 0808 10 69	– – – – Other :	
	– – – – – Cider apples	
	– – – – – Other :	
	– – – – – – "Extra" Class, Class I and Class II (2)	0808 10 69 910
	– – – From 1 to 31 July :	
ex 0808 10 71	– – – – Of the variety Golden Delicious :	
	– – – – – Cider apples	
	– – – – – Other :	
	– – – – – – "Extra" Class, Class I and Class II (2)	0808 10 71 910
ex 0808 10 73	– – – – Of the variety Granny Smith :	
	– – – – – Cider apples	
	– – – – – Other :	
	– – – – – – "Extra" Class, Class I and Class II (2)	0808 10 73 910
ex 0808 10 79	– – – – Otrher :	
	– – – – – Cider apples	
	– – – – – Other :	
	– – – – – – "Extra" Class, Class I and Class II (2)	0808 10 79 910
	– – – From 1 August to 31 December :	
ex 0808 10 92	– – – – Of the variety Golden Delicious :	
	– – – – – Cider apples, other than those under 0808 10 10	
	– – – – – Other :	
	– – – – – – "Extra" Class, Class I and Class II (2)	0808 10 92 910
ex 0808 10 94	– – – – Of the variety Granny Smith :	
	– – – – – Cider apples, other than those under 0808 10 10	
	– – – – – Other :	
	– – – – – – "Extra" Class, Class I and Class II (2)	0808 10 94 910
ex 0808 10 98	– – – – Other :	
	– – – – – Cider apples, other than those falling within 0808 10 10	
	– – – – – Other :	
	– – – – – – "Extra" Class, Class I and Class II (2)	0808 10 98 910

CN code	Description of goods	Product code
ex 0809	Apricots, cherries, peaches (including nectarines), plums and sloes, fresh :	
ex 0809 30	– Peaches, including nectarines	
	– – From 1 January to 10 June :	
ex 0809 30 11	– – – Nectarines :	
	– – – – "Extra" Class, Class I and Class II (4)	0809 30 11 100
ex 0809 30 19	– – – Other :	
	– – – – "Extra" Class, Class I and Class II (4)	0809 30 19 100
	– – From 11 to 20 June :	
ex 0809 30 21	– – – Nectarines :	
	– – – – "Extra" Class, Class I and Class II (4)	0809 30 21 100
ex 0809 30 29	– – – Other :	
	– – – – "Extra" Class, Class I and Class II (4)	0809 30 29 100
	– – From 21 June to 31 July :	
ex 0809 30 31	– – – Nectarines :	
	– – – – "Extra" Class, Class I and Class II (4)	0809 30 31 100
ex 0809 30 39	– – – Other :	
	– – – – "Extra" Class, Class I and Class II (4)	0809 30 39 100
	– – From 1 August to 30 September :	
ex 0809 30 41	– – – Nectarines :	
	– – – – "Extra" Class, Class I and Class II (4)	0809 30 41 100
ex 0809 30 49	– – – Other :	
	– – – – "Extra" Class, Class I and Class II (4)	0809 30 49 100
	– – From 1 October to 31 December :	
ex 0809 30 51	– – – Nectarines :	
	– – – – "Extra" Class, Class I and Class II (4)	0809 30 51 100
ex 0809 30 59	– – – Other :	
	– – – – "Extra" Class, Class I and Class II (4)	0809 30 59 100

(1) In accordance with Commission Regulation (EEC) No 778/83 (OJ No L 86, 31. 3. 1983, p. 14).
(2) In accordance with Commission Regulation (EEC) No 920/89 (OJ No L 97, 11. 4. 1989, p. 19).
(3) In accordance with Commission Regulation (EEC) No 1730/87 (OJ No L 163, 23. 6. 1987, p. 25).
(4) In accordance with Commission Regulation (EEC) No 3596/90 (OJ No L 350, 14. 12. 1990, p. 38).'

COMMISSION REGULATION (EC) No 2997/95

of 20 December 1995

imposing a provisional anti-dumping duty on imports of unwrought magnesium originating in Russia and Ukraine

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community [1], as last amended by Regulation (EC) No 1251/95 [2], and in particular Article 23 thereof,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community [3], as last amended by Regulation (EC) No 552/94 [4] and in particular Article 11 thereof,

After consulting the Advisory Committee,

Whereas:

I. PROCEDURE

(1) On 15 January 1994, the Commission nounced by a notice published in the *Official Journal of the European Communities* [5], the initiation of an anti-dumping proceeding concerning imports into the Community of unwrought magnesium originating in Kazakhstan, Russia and Ukraine, and commenced an investigation.

(2) The proceeding was initiated as a result of a complaint lodged by the Comité de Liaison des Industries de Ferro-Alliages on behalf of a producer in the Community, namely Péchiney Electrometallurgie, France ('PEM').

After the closure of the magnesium production of Societa Italiana per il magnesio e leghe di magnesio SPA ('SAIM'), in Bolzano, Italy, at the beginning of 1992, PEM is allegedly the only producer of unwrought magnesium remaining operational in the Community.

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

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

A number of producers in the countries concerned and several importers made their views known in writing. Several parties requested a hearing.

(5) The Commission sent questionnaires to parties known to be concerned and received detailed information from the complaining Community producer, from one Kazakh producer, from two Russian producers, from two Ukrainian producers and from three independent importers located in the Community.

(6) The Commission sought and verified all information it deemed necessary for the purposes of a preliminary determination and carried out investigations at the premises of the following:

(a) complaining Community producer:

— PEM;

(b) producer located in the analogue country:

— Hydro Magnesium, Porsgrunn, Norway;

(c) independent importers in the Community:

— Ayrton & Partners, London, UK,

— Deutsche Erz- und Metall-Union GmbH, Hannover, Germany,

— Sassoon Metals & Chemicals, Brussels, Belgium.

(7) The investigation of dumping covered the period from 1 January 1993 to 31 December 1993 ('the investigation period').

(8) Owing to problems arising in the establishment of normal value based on the situation in an analogue country, the investigation has exceeded the normal time period of one year.

[1] OJ No L 349, 31. 12. 1994, p. 1.
[2] OJ No L 122, 2. 6. 1995, p. 1.
[3] OJ No L 209, 2. 8. 1988, p. 1.
[4] OJ No L 66, 10. 3. 1994, p. 10.
[5] OJ No C 11, 15. 1. 1994, p. 4.

II. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(9) The product covered by the complaint and the notice of initiation is unwrought magnesium. Unwrought magnesium is marketed in different degrees of purity that is, as alloyed magnesium with an additional content of aluminium and zinc, up to purer forms containing minor quantities of impurities. Unwrought magnesium falls within CN codes 8104 11 00 and 8104 19 00.

(10) There are two main types of process used in the production of magnesium :

— the thermic process, and

— the electrolytic process.

In both of these processes, a variety of raw materials can be used, e.g. dolomite, carnallite, sea water or a mixture of these in order to produce unwrought magnesium. The differences in the raw material used and in the production process used have no effect on the physical characteristics or uses of the finished products.

Unwrought magnesium is generally sold in ingots. The weight of these ingots can vary from a few hundred grams to hundreds of kilograms.

(11) Unwrought magnesium is mainly used, in decreasing order of importance, in

— production of aluminium as an alloy element (for such a use unwrought magnesium can be used either in pure or alloyed form),

— structural applications (for such a use unwrought magnesium can be used either in pure or alloyed form),

— desulphurization of blast-furnace castings,

— chemical reduction, or

— spheroidal casting processes.

(12) Despite certain differences in composition and physical appearance, the various kinds of unwrought magnesium have the same use, are to a great extent interchangeable and thus compete with each other and cannot be differentiated.

(13) It has been concluded on the basis of the investigation that all unwrought magnesium produced and exported originating in Kazakhstan, Russia and Ukraine falls, in general, into the category of unwrought magnesium as described above.

It was found that the unwrought magnesium exported to the Community from the exporting countries has basic technical characteristics and uses identical or similar unwrought magnesium produced and sold in the Community and is, therefore, a like product.

(14) As to whether unwrought magnesium sold on the domestic market forms a like product with the unwrought magnesium exported to the Community from the exporting countries or sold in the Community by the Community industry, the investigation confirmed that the unwrought magnesium sold on the domestic analogue market (see recital 20) constituted a like product with the unwrought magnesium sold by the Community industry. This conclusion was reached despite certain differences in the shape and impurities of the unwrought magnesium sold on the two markets because, overall, the unwrought magnesium was identical or similar in physical characteristics, marketing and use to the unwrought magnesium produced and sold by the Community industry.

(15) Accordingly, the Commission considers that unwrought magnesium produced and sold in the Community constitutes a 'like product' within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88 (hereinafter referred to as the Basic Regulation), relative to the product sold in the analogue country and the product exported to the Community from the countries under investigation.

III. DUMPING

A. Kazakhstan

(16) As far as exports from Kazakhstan are concerned, the Commission has established on the basis of Community Eurostat statistics that imports from that country were made in quantities representing a Community market share of substantially less than 1 %. At the same time, the producer located in Kazakhstan which cooperated in the anti-dumping proceeding has submitted information indicating that it did not sell any unwrought magnesium for export to the Community. Furthermore, the Commission collected information in the framework of the present anti-dumping proceeding indicating that the producer had substantially reduced its production of unwrought magnesium due to the general economic situation prevailing in that country. On this basis, and despite contradictory information concerning export quantities provided by this producer and import statistics, the Commission considers the imports originating in Kazakhstan as *de minimis*. Consequently and in conformity with usual Community practice no dumping calculation was made with regard to imports of magnesium originating in that country.

B. Russia and Ukraine

1. *Normal value*

(17) Since neither Russia nor Ukraine are regarded as market economy countries for the purposes of the present anti-dumping proceeding, the normal values to be compared with the respective export

prices were established by the Commission on the basis of the normal value established for an analogue country having a market economy in accordance with Article 2 (5) on the Basic Regulation.

(18) As an analogue country, the complainant had suggested Japan and had claimed that it was a reasonable choice since the domestic market had a representative size as compared to the exports allegedly being dumped. Furthermore, the complainant claimed that prices and costs on the Japanese markets were the results of normal market forces, as the Japanese market for this product could be considered open to imports and competitive. However, the Commission had requested the complainant to provide additional information on alternative analogue countries, as it was considered that Japan was not comparable to Russia and the Ukraine with respect to the access to raw materials and the technology used for the production of unwrought magnesium and consequently did not appear to be an appropriate choice.

(19) As alternatives, the notice published upon initiation of the proceeding mentioned Canada and the United States of America.

The Commission requested information from all known producers located in the above alternative analogue countries. Despite it having established contact with one producer located in the USA, the producer ultimately decided not to cooperate in the present proceeding.

One producer located in Canada was willing to cooperate in the proceeding. However, the volume of its domestic sales transactions was not considered representative if compared to the exports from the countries concerned and, furthermore, the production process used by this producer differed considerably from the production process used by the producers located in the exporting countries concerned. Consequently, neither Canada nor the USA could be chosen as appropriate analogue countries.

(20) Following the initiation of the proceeding, the Commission also considered a fourth producing country, Norway. Although Norway was not explicitly mentioned in the notice of initiation as a possible analogue country, the Commission took the view that on the basis of general industrial information available that country appeared to serve as a further alternative.

The sole known Norwegian producer agreed to cooperate in the present investigation. On the basis of an analysis of the various aspects concerned in the choice of an analogue country, such as comparability of access to raw materials and production technology as well as the size of the domestic sales operations, the Commission determined that Norway was an appropriate analogue country at the provisional stage.

With regard to the analysis conducted, it should be noted that, worldwide, there is only a limited number of magnesium producers, with the consequence that all producers and their respective production processes and production technologies are known within the industry.

The choice of Norway, as analogue country is supported by the following factors:

— there is a substantial domestic market for the product concerned,

— the volume of this market is representative as compared to the export quantities originating in Russia or the Ukraine, representing substantially more than 5 % of these exports,

— there are significant imports of unwrought magnesium from third countries into Norway with the consequence that there is a competitive environment in this market,

— the producer concerned in Norway is of considerable size and has a high efficient production process at all stages of production and has continuously invested in this production over the years,

— the basic production technology used by the domestic producer is comparable to the one used in Russia and the Ukraine, and

— the situation with respect to access to raw materials in Norway is very similar, if not more advantageous, as compared to the situation in Russia and the Ukraine, in that the main raw material (dolomite and sea water) is sourced in Norway, where there is also a significant supply of electric energy from low-cost sources. The production plant is well located with respect to the transport of both raw material and finished product.

As stated in recital 14 there were minor differences in the shape and impurity-content of the magnesium produced in Norway as compared with the magnesium exported from the exporting countries concerned; nevertheless, in view of the above considerations, the Commission considers it appropriate on balance to take Norway as the analogue country for the two exporting countries concerned in this specific anti-dumping investigation.

(21) The use of the same analogue country for both exporting countries is justified by the fact that the production plants in Russia and the Ukraine were set up during the existence of the USSR and still operate using the same production technology. This has been confirmed by the information submitted.

(22) In order to establish the normal value, the Commission first established whether the total domestic sales of unwrought magnesium by the Norwegian producer were representative for the purposes of the exports to the Community from each of the exporting countries.

This assessment revealed that the Norwegian producer had in both cases a domestic sales volume substantially in excess of 5 % of the export sales concerned.

(23) The Commission further assessed whether this producer's domestic sales overall were made in the ordinary course of trade — that is, if they were made at a profitable level and at arm's-length conditions.

It was established that the producer concerned had not made profitable sales of the product concerned in sufficient quantities during the investigation period on the domestic market.

Consequently, the normal value was constructed in accordance with Article 2 (3) (b) (ii) of the Basic Regulation, based on the producer's costs incurred in the ordinary course of trade — namely this producer's variable and fixed manufacturing costs, to which an amount for selling, administrative and other general expenses as well as a reasonable profit (was added). The investigation showed, that the company had operated at a substantially reduced production level during the investigation period as a result of a deterioration of market conditions after the exporting countries concerned in the present anti-dumping proceeding had substantially increased their exports to the Norwegian market as well. Therefore, and in order to determine the company's cost of production as incurred in the ordinary course of trade, the Commission adjusted the company's cost of production.

(24) Since as explained above, the company concerned had no profitable sales in sufficient quantities, being the only magnesium producer operating in Norway, and as no data were available for the same business sector, the Commission had to determine the relevant profit rate on 'any reasonable basis' in accordance with Article 2 (3) (b) (ii) of the Basic Regulation. For the reasons explained in recital 76, the Commission considered that a profit margin of 5 % was appropriate and reflected the profitability requirements in light of the continuing investment needs.

2. *Export price*

(a) General

(25) One particular characteristic of the unwrought magnesium trade in general during the investigation period was that the harbour of Rotterdam served as a hub for world trade and, in particular, the Community market. The investigation has shown that a number of purchasers, in particular traders, buy the product from a bonded warehouse in Rotterdam or put the product into bonded warehouses there after having purchased it on an FOB-exporting country basis.

Depending on market demand, these purchasers then sell the product to their customers in, and outside, the Community from the bonded warehouse. The producers and exporters of the exporting countries concerned who have cooperated in the present proceeding have stated that on a number of occasions they have sold to customers which were located in or outside the Community without knowing the ultimate destination of the product they sold (see recital 30 to 33).

(26) Furthermore, it has been alleged by the exporters and producers located in the exporting countries concerned that another peculiarity of the magnesium market during the investigation period consisted in sales of unwrought magnesium coming from strategic stockpiles kept by the authorities in the former USSR. After the dissolution of the USSR and the creation of a number of independent states on its former territory, full central control over the strategic stockpile of unwrought magensium ceased to exist and part of the stockpiled material was sold for export. It has been further alleged by the same interested parties that sales of such magnesium were made at very low prices as the material was often of inferior quality and as sales frequently occurred through non traditional sales channels. However, sales of this type of magnesium into the Community were marginal because the economic use of such magnesium was very limited in the Community. The individual ingots of the stockpiled material were protected against oxidization with paraffin and wrapping during stockage. Before such material can be used it has to be cleaned, a process which is very labour intensive and costly in the Community. For this reason, none of the cooperating importers had pruchased any such material.

(27) In order to determine the export prices from both Russia and Ukraine, the Commission took account of the arguments put forward in particular by the exporters located in Russia and by the Russian authorities. They claimed that in the present case any adverse effect on the Community market caused by imports of unwrought magnesium coming from the stockpiles should be disregarded by the Commission as such exports were presently again under control.

Furthermore, those parties claimed that any past negative effects of exports of stockpile material should not adversely affect the future prospects of the producers of unwrought magnesium located in Russia which had not participated in such activity. In support of this claim the parties argued that such exports had been made by persons not traditionally operating in the sector.

Although the Commission is not able to assess the reliability of the above statement, in particular because certain claims relate to developments having occurred after the investigation period, an

attempt to assess the particular impact, if any, of exports of unwrought magnesium taken from the strategic stockpiles kept in former USSR has been made. On the basis of Eurostat import statistics, an analysis of the flow of imports into the Community of unwrought magnesium from all countries which are today situated on the territory of the former USSR has shown that imports were made into the Community and declared as originating in countries which, according to information available, do not have any production of the product concerned. The volume of these imports into the Community amounted to around 1 000 tons at an average price of around 1 700 ECU/t. From the same source of information it was determined that the average import prices of magnesium originating in either Russia or Ukraine were substantially higher.

The main exporting countries, accounting for more than 90 % of imports from non-producing countries mentioned above during the investigation period were Estonia, Latvia and Lithuania. This quantity represents about 11 % of total imports into the Community from countries on the territory of the former USSR. There was, however, no indication that the said imports were wholly or substantially made up of stockpile material, as the import volumes concerned were substantial, whereas the use for such material in the Community as mentioned in recital 26 appeared very limited. Given also that by far the greater part of those exports was declared as originating in the three Baltic States through which the Russian producers have, according to the producers' replies, also channeled part of their sales to the Community, it appeared possible that they were exports of newly produced material merely trans-shipped through the non-producing countries.

On the other hand, the information collected during the investigation confirmed that, in general, the stockpiled magnesium attracted a price discount. In that respect the differential between import prices of the non-producing countries mentioned above and the exporting countries concerned by the present anti-dumping proceeding would indicate that material from non-producing countries could be stockpile material.

(28) The Commission has provisionally concluded that exports declared as originating from non-producing countries should not be taken into account in establishing export prices for the exporting countries concerned. Given the low unit prices for such imports and their unclear origin, it appears possible that the products concerned derive from the stockpile. As has been stated, the level of stockpiled magnesium has been substantially reduced and, as such sales represented only a temporary phenomenon, this approach was considered to be the most reasonable.

(b) Russia

(29) In order to assess exports of unwrought magnesium originating in Russia, the Commission analysed information from Eurostat statistics and information supplied by the cooperating Russian producers on exports made to the Community. This analysis revealed a substantial discrepancy between the two sets of information : Eurostat information showed substantially higher import volumes than the exports reported by the Russian producers. The Commission therefore assessed the reasons for such a discrepancy. In particular, the Commission investigated whether exports of magnesium from the strategic stockpile reserves could explain the discrepancy. As it had been established with respect to stockpile material that such magnesium is typically sold at considerably lower prices than newly produced magnesium (see recital 26) and as the Eurostat import statistics contain export prices (around 1 900 ECU/t) close to the prices reported by the cooperating Russian producers, the Commission did not consider it realistic to suppose that the above discrepancy was due to imports of unwrought magnesium from stockpile.

(30) The Commission further noted that one Russian producer submitted information in the response to the questionnaire indicating that it had sold a substantial quantity of the product concerned to 2 purchasers located outside the Community, such sales accounting for all its exports. While for all these export transactions the related product shipments were made into bonded warehouse in Rotterdam, this producer invoiced the corresponding sales transactions to purchasers located outside the Community. In those circumstances the producer concerned had considered the sales not to have been made for export to the Community and argued that the corresponding sales prices and volumes should not be taken into account in the determination of the export price or in the determination of export volume. From the information available, it can be concluded that both purchasers in question are trading companies which do not process the merchandise themselves but sell it on to other users ; the producer declared, however, that he did not know the final destination of the product sold to such companies.

The Commission found, however, that one of the companies concerned (which is located in Switzerland) was related to the Russian producer, so it appears justified to assume that the producer did have knowledge of the ultimate destination of those export sales. As the volume of the sales in question corresponds to the quantity by which the imports shown in the Eurostat statistics exceed the volume of imports declared by the Russian exporters, the Commission treated the sales by the Russian producer to the related company in Switzerland being made for export to the Community.

(31) In conclusion, the Commission considers it appropriate to determine the export prices and volumes on the basis of all the export transactions reported

by one of the Russian producers and on the basis of the sales transactions reported by the other producer as having been made to its related company located in Switzerland.

(c) Ukraine

(32) One Ukrainian producer argued that:

— it had sold magnesium to purchasers in the Community but claimed that for a substantial part of the sales it had not been known whether the product concerned had acutally been imported into the Community; and that,

— it had exported a substantial volume of magnesium to a purchaser located in a country outside the Community, claiming that the sales should not be considered exports to the Community as they were sold for export to a third country and as the producer had no control over the destination of the product concerned.

(33) In order to investigate the 2 claims put forward by this producer, the Commission examined the Eurostat import statistics for magnesium originating in the Ukraine. The import volume of around 3 000 tons during the investigation period was considerably higher than the sales volume which the Ukrainian exporters overall have submitted as being exported to customers for consumption in the Community.

Furthermore, the Commission determined on the basis of the information submitted by the Ukrainian producer concerned regarding its sales to the customer in a third country mentioned above, that although the goods had been invoiced to a third-country company, the actual shipment of the goods was made by the Ukrainian producer to end-user customers located in the Community. This indicated clearly that the Ukrainian producer was aware of the destination of the product concerned. From the information submitted by importers which cooperated in the framework of the investigation it was possible to confirm the above findings.

From the above, the Commission concluded that although the Ukrainian producer concerned sold substantial quantities of magnesium via a thrid country company, it had been fully aware at the time of sale that the sales were destined for export to the Community.

The same conclusions apply to this producer's sales to customers located in the Community for which it was claimed that the producer did not know the final destination of the product.

In these circumstances, the Commission determined the export volume and prices of this Ukrainian producer by considering all sales transactions for which the shipping address was a customer located in the Community as export sales to the Community. In this way the discrepancy between the data submitted by the Ukrainian producers and Eurostat figures became negligible, indicating that the approach taken reflects the actual export transactions for unwrought magnesium originating in Ukraine to the Community.

(d) Methodology

(34) As all exports were made to independent importers in the EC, export prices were determined on the basis of the prices actually paid or payable as reported by the cooperating producers located in the exporting countries. Where possible, those export prices were cross-checked with information received from cooperating importers.

3. *Comparison*

(35) A number of producers in the exporting countries claimed that the normal value established on the basis of a situation prevailing in an analogue country should be adjusted to take into account natural comparative advantages prevailling in the exporting countries in accordance with consistent Community practice.

While such claims have been granted in appropriate cases, it is clear that such natural comparative advantages cannot include advantages either in costs or prices by the non-market economy country companies. Indeed, in the framework of the present anti-dumping proceeding neither Russia nor Ukraine are considered to be market economy countries because neither domestic prices nor costs can form a reliable basis for the determination of the normal value given the structure of the respective domestic markets.

(36) On this basis a number of claims put forward by the exporters concerned cannot be accepted, as such claims relate to certain cost advantages, in particular with respect to

— production labour costs,

— depreciation costs,

— environmental costs,

— selling expenses, and

— raw material cost.

(37) As far as specific natural comparative advantages are concerned the producers have claimed that they benefit from advantages in:

— access to raw materials,

— energy efficiency of the production process, and

— l their level of support staff working in the companies concerned.

As a general comment on the above claims it should be noted that the producers concerned have put forward a number of claims without supplying the necessary detailed quantitative information in support of them. Two companies in particular have declined to disclose the exact level of their production on the grounds that this information was secret. Without such information however, the Commission considers it impossible to assess any advantages stemming from the size of the production. Furthermore, two producers submitted information relating to a period which did not coincide with the investigative period.

(38) Nevertheless, the Commission has analysed the situation of the producers located in the exporting countries taking into account also information compiled by industry analysts that is publicly available. This analysis led to the following conclusions :

— Unlike the Community producer, which produces magnesium using the thermic production process, which the producers in the exporting countries have claimed to be energy inefficient, the producer in the analogue country uses an electrolytic production process. The same production process is used by the producers in the exporting countries. Thus, cost advantages stemming from this production process are automatically taken into account for the benefit of the exporters concerned.

— Whereas the producers in the exporting countries use carnalite as their main feed stock for magnesium production, the analogue country producer uses dolomite and sea water. As far as the production process is concerned, on the basis of the technical information submitted during the present investigation, there is no clear efficiency advantage in the use of either as a raw material. As far as access to the raw material is concerned, the analogue country producer is supplied in dolomite from an open-cast mine located in the analogue country. The other source of feed stock, sea water, is readily available for the producer concerned as its production plant is on the sea shore. Any disadvantage in the use of dolomite is offset by the particularly easy access to sea water.

— As regards the energy efficiency of the production process in the analogue country as compared to the exporting countries, the Commission established, on the basis of the information submitted by the analogue country producer and by the producers in the exporting countries, that there was no disadvantage to the analogue country producer. On the contrary, it appeared that this producer operated a highly energy-efficient production process. It has to be recalled in this context that the analogue country producer uses the same basic production technology as the producers in the exporting country, namely the electrolytic process which is considered more energy efficient than the alternative basic process.

(39) In conclusion, the Commission finds that the various claims put forward by the producers in the exporting countries concerning specific natural comparative advantages have not been substantiated. Therefore, the Commission does not consider it justified to make any adjustment in determining the normal values concerned.

(40) The export prices as established above were adjusted by taking into consideration the actual transport, insurance, handling, loading and ancillary costs in accordance with Article 2 (9) and (10) of the Basic Regulation in order to establish the export prices at the ex-country frontier level, that is, at the same level as the normal value.

Certain exporting producers claimed that they did not make their export sales at the same level of trade as the analogue country producer made its domestic sales. The exporting producers claimed in particular that they made their sales to unrelated traders located in the Community whereas the analogue country producer sold its unwrought magnesium to end users.

Any differences have been taken into account in accordance with Article 2 (9) and (10) in constructing the normal value for the analogue country producer at distributor level.

4. *Dumping margin*

(41) The comparison between export price and normal value revealed that the ex-factory prices of all export transactions for the producers were below normal value, dumping being equal to the amounts by which the normal value exceeded the export price. Those amounts were aggregated for all export transactions and the total dumping, expressed as a percentage of the total cif EC border value, is as follows :

— 1. Russia : 55 %

— 2. Ukraine : 64 %.

IV. INJURY

A. Volume of the Community market

(42) According to the information supplied in the case of the present anti-dumping proceeding concerning sales of unwrought magnesium on the Community market and import statistics, total Community consumption of unwrought magnesium measured in metric tons shows the following pattern over 4 years :

1990	1991	1992	1993
54 000	48 000	52 000	46 000

B. Cumulation of the imports originating in the countries concerned

(43) Following the consistent practice of the Community institutions, the Commission examined whether the effect of the imports of unwrought magnesium from the two countries concerned with regard to the Community industry should be analysed cumulatively according to the following criteria :

— absolute and relative level of imports from the exporting countries concerned during the investigation period

— comparability of the products imported in terms of physical characteristics and interchangeability of end use, and

— similarity of market behaviour.

(44) As far as imports from the two exporting countries in the investigation period are concerned, for each country individually these were made in non-negligible quantities relative to the size of the Community market, as imports from Russia and Ukraine reached a market share of around 13 % and 7 % respectively.

Furthermore, the investigation revealed that the prices of the imports originating in the two countries were at a low level when compared to those of the Community industry.

Finally, the investigation confirmed that the unwrought magnesium originating in the countries concerned is a like product when compared to the unwrought magnesium sold by the Community industry, as established in recital 14.

(45) Therefore, the Commission considers that, in accordance with the normal practice of the Community institutions, the imports concerned should be cumulated.

C. Volume and Community market shares of the dumped imports

(46) Based on the assessment made in recitals 26 and 33 concerning the various import channels, the volume of dumped imports of unwrought magnesium originating in Russia and Ukraine into the Community, measured in metric tons show a significant increase from around 2 000 metric tons in 1991 to around 6 000 metric tons in 1992 ; ultimately rising to around 9 000 metric tons in the investigation period, an increase of 50 % since 1992 alone.

On the basis of the total apparent Community consumption, this development corresponds to a rise in market share held by dumped imports from 4 % in 1991 to 11 % in 1992 and to 20 % in the investigation period.

(47) The Commission considers the increase in total sales volumes and market share with such a short time to be an important element in the evaluation of the impact of these imports on the Community magnesium industry.

D. Prices of the dumped imports

(48) The prices of unwrought magnesium imported from Russia and Ukraine were at a consistently low level and undercut those of the Community industry by a substantial margin. A detailed evaluation of the export prices charged during the period of investigation as compared to prices charged by the Community producer at a comparable level of trade, and taking into account, where appropriate, differences in the quality of the products, revealed that the undercutting margins were between 30 % and 40 %. Such a comparison was done on the baisi of detailed transaction-by-transaction sales reports by the Russian and Ukrainian exporters and producers and the Community producer.

An assessment of the price development over a longer time span, from 1990 to 1993, was not possible on the basis of the data provided by the exporters concerned. An estimate made on the basis of data from EUROSTAT import statistics for 1990 and 1991 (using information relating to the USSR) and on the data provided by the exporters concerned for 1992 and 1993 showed the following trend for export prices in ECU per metric ton of unwrought magnesium, taking the 1990 price as a baseline :

1990	1991	1992	1993
100	95	94	91

E. Situation of the Community industry

(49) The total yearly output of the Community producer has dropped continuously since 1990, showing a particularly strong decrease from 1992 to the investigation period of 25,1 %, from 74 % to 56 % of the 1990 level.

(50) Furthermore, in line with production, the yearly sales volume of the Community producers to unrelated customers in the Community has also decreased since 1990. For the period from 1991 to 1992 the decrease was 41,7 % and from 1992 to the investigation period 36,9 %, from 50 to 32 between 1992 and the investigation period on an indexed basis (base : 1990 = 100).

(51) Even though production decreased substantially, the sales of the Community industry were even lower, with the result that the value of the Community industry's stocks rose from 1991 to 1992 by 129,1 % and a further 1,2 % to the investigation period.

(52) The decrease in sales volume resulted in a fall in market share of the Community producer from 17 % in 1991 to 9 % in 1992 and ultimately to 7 % in the investigation period.

(53) Due to the closure of the production facilities of one company located in the Community, the total production capacity of the Community industry was substantially reduced during the period from 1990 to 1993, by around 30 %.

Despite this reduction, the capacity utilization of the sole remaining Community producer decreased.

(54) The closure of one Community producer and the cuts in production made by the other Community producer in the face of the substantial increases in imports have resulted in a substantial loss of employment. Indeed, between 1990 and 1993, the employment level in the industry more than halved.

(55) The prices of the Community industry measured in index form have evolved in the following way since 1990 :

1990	1991	1992	1993
100	76	78	94

The above development of prices shows the attempt by the Community industry to reduce its financial losses after prices substantially decreased in 1991 and 1992 as compared with 1990. The price increase in 1993 led, however, to a further reduction in sales.

(56) The substantially reduced production and sales volume, the decrease in capacity utilization and the increase in the volume of product held in stock led to significant losses by the Community producers throughout the period from 1990 to the investigation period despite its efforts to reduce costs by a substantial reduction in employment, despite its attempt to improve its situation by increasing prices from 1992 to 1993 and despite certain technical adjustments made in order to improve the efficiency of the production process. This negative development in profitability has now reached a stage where the overall viability of the remaining producer is in danger.

That being so, it is concluded that the Community industry has been suffering material injury within the meaning of Article 4 (1) of the Basic Regulation.

V. CAUSATION OF INJURY

A. Effect of the dumped imports

(57) The rapid increase of dumped imports of unwrought magnesium originating in Russia and the Ukraine over a short time at prices which undercut those Community producers' prices substantially, coincides with the deterioration of the situation of the Community industry, in particular through the decrease of its market share and the depression of Community magnesium market prices between 1991 and the investigation period.

(58) Since magnesium is a commodity, its market is price sensitive and, consequently, price undercutting by certain vendors has generally, depressing effect on the market. When faced with low priced imports originating in the exporting countries concerned, the Community industry had the choice of maintaining its prices and losing sales, or of following the low prices of dumped imports regardless of the consequences for its profitability. The price trend of the Community industry in recital 55 shows that the industry did attempt to follow prices down in the years 1991 and 1992, resulting in a considerable loss of revenue. During the investigation period, the Community industry raised its prices in an attempt to improve its financial situation after it had carried out a restructuring programme but continued to incur heavy losses as a consequence of a drop in sales volume. It appears noteworthy that the sales prices of the Community industry during the investigation period for its sales to customers outside the Community were considerably higher. This price differential indicates that market prices in the Community were particularly depressed.

(59) The Russian producers have argued that no injury could have been caused to the Community industry by their sales to the Community as the Community industry sold to different segments of the magnesium market and consequently direct competition between the Community industry and the Russian producers was very limited.

(60) In this context the Commission notes that there are distinct uses of magnesium as outlined in recital 11. However, as concluded in this recital, unwrought magnesium used in its various applications cannot be distinguished.

Furthermore, the investigation has shown that the magnesium exported by the producers located in Russia and the Ukraine is of standard quality and is sold by the importers to clients operating in the same industry sectors as those of the Community industry.

(61) In particular the Russian exporters have argued that the complainant company, PEM, as part of a group of companies, supplies unwrought magnesium to other members of the group, with the consequence that for these sales it is insulated from competition due to imports from the two exporting countries concerned.

(62) With regard to this argument, it should be noted that all assessments of sales made in the present investigation relate to the situation in the Community industry with respect to its sales to unrelated customers. Given the extent of injury suffered by the Community industry in its sales to unrelated customers alone, which accounted for about half its sales, it was not deemed necessary to address the question whether or not sales transactions with companies belonging to the group were at arm's length.

(63) In any event it should be emphasized that, the market for unwrought magnesium being highly transparent, the impact of imports representing a considerable market share made at low prices undercutting those of the Community industry by a significant margin must be substantial on prices obtained in the market as a whole.

B. Other factors

(64) The Commission considered whether factors other than the dumped imports concerned, namely imports from other countries, the behaviour of the Community industry itself, the development of the Community market concerned or any other factors could have caused the injury suffered by the Community industry.

(65) As was stated in recital 42, the Community market for unwrought magnesium was characterized by volatility caused by a general downturn in the demand resulting in the overall contraction of the market.

While this general contraction in demand could be expected to have an influence on the Community industry's actual production and sales volume, the negative development of the Community industry's market share in particular shows a trend that cannot be explained by a mere contraction in demand. As far as price movements are concerned, the price disparity outline in recital 58 indicates that the price depression in the Community market was particularly strong.

(66) The producers located in Russia have argued that the injurious situation of the Community industry was entirely due to a cyclical downturn in the magnesium market. These exporters concluded that the injury cannot have been caused by exports originating in Russia.

(67) In this context, the Commission notes that while such downturn certainly contributed to the difficulties experienced by the Community industry, the difficulties were greatly exacerbated by the effects the dumped imports had on the Community magnesium market.

(68) Imports of unwrought magnesium from countries producing magnesium other than in Russia and Ukraine have entered the Community in the period from 1990 to the investigation period. The development of these imports, measured in metric tons by country, is summarized in the table below:

	1990	1991	1992	1993
Brazil	4	10	48	0
Canada	844	604	1 137	1 502
China	10	0	159	204
India	0	0	0	0
Israel	0	16	247	0
Norway	18 375	16 266	17 919	11 503
USA	13 082	7 332	8 953	7 180
(ex) Yugoslavia	3 526	3 126	2 765	366

These imports represent the following market shares:

	1990	1991	1992	1993
Brazil	0,0 %	0,0 %	0,1 %	0,0 %
Canada	1,6 %	1,3 %	2,2 %	3,2 %
China	0,0 %	0,0 %	0,3 %	0,4 %
India	0,0 %	0,0 %	0,0 %	0,0 %
Israel	0,0 %	0,0 %	0,5 %	0,0 %
Norway	34,3 %	34,2 %	34,3 %	24,9 %
USA	24,4 %	15,4 %	17,1 %	15,5 %
(ex) Yugoslavia	6,6 %	6,6 %	5,3 %	0,8 %

The figures show that overall imports from other countries have decreased, with the result that the market share held by other imports has also decreased overall. This also applies to individual countries with the exception of imports originating in Canada. However, import statistics show that the increase in Canadian imports is far less pronounced than that of imports originating in Russia and the Ukraine, while the market share reached by Canada is relatively moderate and its import prices are substantially higher than those of the exporters under investigation. Finally, no indications were available to the Commission to suggest that imports originating in Canada were made at dumped prices.

Therefore, the Commission concluded that imports from other countries could not be the cause for the injury sustained by the Community industry.

C. Conclusion

(69) The Commission has come to the conclusion that high volume, low-priced dumped imports of unwrought magnesium originating in Russia and the Ukraine, taken in isolation, have caused material injury to the Community industry. At the same time it has also been established that the Community industry has faced negative trends, owing to a downturn in the market for unwrought magnesium, triggered by a general downturn in the magnesium-using industries. However, the Commission notes that this does not alter the conclusion that dumped imports from the exporting countries have caused material injury to the Community industry.

VI. COMMUNITY INTEREST

(70) The purpose of anti-dumping measures is to remedy an unfair trading practice which has an injurious effect on a Community industry. Such a remedy should result in the re-establishment of effective competition which, as such, is in the interest of the Community.

(71) In the framework of the investigation it has been established that the Community industry is facing an injurious situation in the form of loss of sales and market share, decrease in production and a reduction in employment, which together have led to substantial financial losses. Without remedial action, the viability of the Community industry would be threatened, a consequence which has already been foreshadowed by termination of the production of one Community producer.

(72) The Russian producers have argued that the production capacity of the remaining Community producer was insufficient to supply the Community market and that therefore imports are necessary to satisfy the demand for unwrought magnesium in the Community.

Furthermore, the Russian exporters and Russian government representatives have claimed that the imposition of anti-dumping measures in the present proceeding would not be in the interest of the Community because it would reduce the competition on the Community market, in which only one producer is operating presently. Those interested Russian parties have claimed that such a situation was particularly likely to occur in the present market situation which after a downturn in the period of 1991 to the investigation period, is characterized by strong demand, while a number of producers wolrdwide have either already closed production or plan to do so, with the consequence of widening the shortfall between worldwide demand and supply of unwrought magnesium.

(73) With respect to the competitive situation in the Community market, the Commission considered whether the adoption of anti-dumping measures might lead to a situation in which effective competition might be significantly reduced. First of all, it appears unjustified to conclude that the imposition of anti-dumping measures would have the consequence of eliminating Russian and Ukrainian exporters from the Community market: other exporters who are not dumping are present on the market. Furthermore, the magnesium market of the Community has traditionally been supplied to a considerable extent by imports from third countries, notably from Norway and the USA. During the period starting at the beginning of 1991 up to the end of the investigation period a shift has occurred between exporting countries towards imports originating in the two exporting countries covered by the present investigation.

It can reasonably be assumed that the imposition of anti-dumping measures restoring fair trade conditions will not lead to a situation of reduced competition by allowing the Community industry to increase its market position unduly. It can, on the contrary, be expected that traditional suppliers located in exporting countries other than those subject to the present anti-dumping proceeding may start again or increase their exports to the Community market. While indeed production was cut in Japan, in the former Yugoslavia, in the Community and in the USA, a producer in Canada has started substantial production in recent years and it is planned to put into operation an entirely new production plant in Israel in 1996. Consequently, the Commission came to the conclusion that it does not appear to be realistic to foresee acute supply shortages in the market for unwrought magnesium nor in a reduction in the number of competitors. This conclusion is underlined by the fact that the main customer of the suppliers of unwrought magnesium industry, an industry made up of companies with a considerable negotiating power that can match that of the producers of unwrought magnesium.

(74) As far as the users of unwrought magnesium are concerned, none of them has submitted information to the Commission relating to the effect of anti-dumping measures on their situation. Nevertheless, it can be assumed that they may have benefited in the short term from the low prices of dumped imports. However, it must also be borne in mind that unwrought magnesium in its main applications, namely as an alloy element in aluminium production and in the desulphurization of blast-furnace castings, accounts only for a relatively small percentage of total production costs, which points to the conclusion that the effect, if any, of imposing anti-dumping measures in this proceeding on the users will be very limited.

On balance, the Commission does not consider therefore that the possible limited gain of the users, if the current situation is maintained, is sufficient to deny the Community industry protection against unfairly priced imports of unwrought magnesium.

(75) In conclusion, the Commission has established that it is in the interest of the Community to ensure the continued viability of the sole Community producer and consequently to impose anti-dumping measures.

VII. PROVISIONAL DUTY

(76) On the basis of the conclusions on dumping, injury, causation and Community interst set out above, the Commission considered the form and level anti-dumping measures should take in order to restore effective conditions of competition on the Community's unwrought magnesium market.

Accordingly, the level of prices was calculated at which the Community industry would be able to cover its costs and to obtain a reasonable return. In determining the cost of production, the Commission excluded certain costs incurred by the Community producer as a result of its restructuring efforts. This approach was considered reasonable as it ensured that costs not likely to recur in the future were not included in the target price. The Commission was satisfied that the Community producer, for its internal business and profitably projections left such extraordinary cost items out of account. With respect to a reasonable level for profit, the Commission used a rate of 5 % on turnover, a rate considered by the Community industry to be a strict minimum necessary to ensure the continuation of its operations. The Commission considers that this target profit is sufficient given the mature nature of the product requiring only modest investment in research and development as well as production equipment.

(77) On this basis, and taking account of the Community industry's cost of production, a minimum import price was calculated which would permit the Community industry to raise its prices to a profitable level. Since it was established that the resulting injury elimination margin is higher than the dumping of both exporting countries concerned, the level of the duty should be limited to the dumping margin in accordance with Article 13 (3) of the Basic Regulation.

Given the material injury suffered by the Community industry, the homogeneous nature of the product and the possible price fluctuations resulting from demand for downstream products, a variable duty is considered the most appropriate in this case. This will enable the Russian and Ukrainian exporters to maximize their returns while at the same time ensuring that injurious dumping would be eliminated.

In these circumstances, the Commission has decided to improve a variable duty based on a minimum price of ECU 2 735 and ECU 2 701 per ton at a cif Community border level for imports of unwrought magnesium originating in Russia and the Ukraine respectively.

(78) In the interests of sound administration, a period should be fixed which the parties concerned may make their views known and request a hearing. Furthermore, it should be noted that all findings made for the purpose of this Regulation are provisional and may be reconsidered for the purpose of any definitive duty which the Commission may propose,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of unwrought magnesium falling within CN codes 8104 11 00 and 8104 19 00 and originating in Russia and the Ukraine.

2. For the product referred to in paragraph 1 originating in Russia, the amount of anti-dumping duty shall be the difference between the minimum import price of ECU 2 735 per metric tonne of product and the cif Community frontier price in all cases where the cif Community frontier price per metric ton of product is less than the minimum import price.

3. For the product referred to in paragraph 1 originating in the Ukraine, the amount of anti-dumping duty shall be the difference between the minimum import price of ECU 2 701 per metric ton of product and the cif Community frontier price in all cases where the cif Community frontier price per metric ton product is less than the minimum import price.

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

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

Article 2

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

Article 3

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

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

Done at Brussels, 20 December 1995.

For the Commission

Leon BRITTAN

Vice-President

COMMISSION REGULATION (EC) No 2998/95

of 20 December 1995

amending Regulations (EEC) No 1912/92, No 1913/92, No 2254/92, No 2255/92, No 2312/92 and No 1148/93 laying down detailed implementing rules for the specific measures for supplying the Canary Islands, the Azores, Madeira and the French overseas departments with beef and veal

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1601/92 of 15 June 1992 concerning specific measures for the Canary Islands relating to certain agricultural products [1], as last amended by Commission Regulation (EC) No 2537/95 [2], and in particular Articles 4 (4) and 5 (2) thereof,

Having regard to Council Regulation (EEC) No 1600/92 of 15 June 1992 introducing specific measures for the Azores and Madeira concerning certain agricultural products [3], as last amended by Regulation (EC) No 2537/95, and in particular Article 10 thereof,

Having regard to Council Regulation (EEC) No 3763/91 of 16 December 1991 introducing specific measures in respect of certain agricultural products for the benefit of the French overseas departments [4], as last amended by Regulation (EC) No 2598/95 [5], and in particular Article 4 (5) and Articles 7 and 9 thereof,

Whereas the aid for products covered by the forecast supply balance and coming from the Community market is fixed by Commission Regulations (EEC) No 1912/92 [6], (EEC) No 2254/92 [7], as last amended by Regulation (EC) No 789/95 [8], (EEC) No 1913/92 [9], (EEC) No 2255/92 [10], as last amended by Regulation (EC) No 1668/95 [11], (EEC) No 2312/92 [12] and (EEC) No 1148/93 [13], as last amended by Regulation (EC) No 1669/95 [14];

Whereas the application of the criteria for fixing the Community aid to the current situation of the market in the product group and in particular to the rates or prices for those products in the continental part of the Community and on the world market results in the aid for supplies of beef and veal to the Canary Islands, the Azores and the French overseas departments being fixed at the rates set out in the Annex;

Whereas the forecast supply balance for pure-bred breeding animals and male bovine animals for fattening for certain overseas departments should be adjusted on the basis of the justifications put forward by the competent authorities;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. Annexes II and IIa to Regulation (EEC) No 1912/92 are hereby replaced by Annex I hereto.

3. Annexes II to Regulations (EEC) No 2254/92, No 2255/92 and No 2312/92 are hereby replaced by Annex III hereto.

4. The aid set out in Annex III to Regulation (EEC) No 1912/92 is hereby replaced by the amount set out in Annex IV hereto.

5. Annex III to Regulation (EEC) No 1913/92 is hereby replaced by Annex V hereto.

6. Annex III to Regulation (EEC) No 2312/92 is hereby replaced by Annex VI hereto.

7. The Annex to Regulation (EEC) No 1148/93 is hereby replaced by Annex VII hereto.

Article 2

Annex I to Regulation (EEC) No 2312/92 is hereby replaced by Annex VIII hereto.

Article 3

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

[1] OJ No L 173, 27. 6. 1992, p. 13.
[2] OJ No L 260, 31. 10. 1995, p. 10.
[3] OJ No L 173, 27. 6. 1992, p. 1.
[4] OJ No L 356, 24. 12. 1991, p. 1.
[5] OJ No L 267, 9. 11. 1995, p. 1.
[6] OJ No L 192, 11. 7. 1992, p. 31.
[7] OJ No L 219, 4. 8. 1992, p. 34.
[8] OJ No L 80, 8. 4. 1995, p. 21.
[9] OJ No L 192, 11. 7. 1992, p. 35.
[10] OJ No L 219, 4. 8. 1992, p. 37.
[11] OJ No L 158, 8. 7. 1995, p. 28.
[12] OJ No L 222, 7. 8. 1992, p. 32.
[13] OJ No L 116, 12. 5. 1993, p. 15.
[14] OJ No L 158, 8. 7. 1995, p. 31.

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

Done at Brussels, 20 December 1995.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

ANNEX II

Aid on products listed in Annex I and coming from the Community market

(ECU/100 kg net weight)

Product code	Aid
0201 10 00 110 (1)	65,5
0201 10 00 120	49,5
0201 10 00 130 (1)	88,5
0201 10 00 140	67,5
0201 20 20 110 (1)	88,5
0201 20 20 120	67,5
0201 20 30 110 (1)	65,5
0201 20 30 120	49,5
0201 20 50 110 (1)	111,5
0201 20 50 120	85,0
0201 20 50 130 (1)	65,5
0201 20 50 140	49,5
0201 20 90 700	49,5
0201 30 00 100 (2)	159,5
0201 30 00 150 (6)	95,5
0201 30 00 190 (6)	64,0
0202 10 00 100	49,5
0202 10 00 900	67,5
0202 20 10 000	67,5
0202 20 30 000	49,5
0202 20 50 100	85,0
0202 20 50 900	49,5
0202 20 90 100	49,5
0202 30 90 400 (6)	95,5
0202 30 90 500 (6)	64,0
1602 50 10 190	45,0
1602 50 31 195	33,5
1602 50 31 395	33,5
1602 50 39 195	33,5
1602 50 39 395	33,5
1602 50 39 495	33,5
1602 50 39 505	33,5
1602 50 39 595	33,5
1602 50 39 615	33,5
1602 50 39 625	15,0
1602 50 39 705	17,5
1602 50 80 195	33,5
1602 50 80 395	33,5
1602 50 80 495	33,5
1602 50 80 505	33,5
1602 50 80 515	15,0
1602 50 80 595	33,5
1602 50 80 615	33,5
1602 50 80 625	15,0
1602 50 80 705	17,5

NB: The product codes and the footnotes are defined in Commission Regulation (EEC) No 3846/87 (OJ No L 366, 24. 12. 1987, p. 1), as last amended by Regulation (EC) No 2838/95 (OJ No L 296, 9. 12. 1995, p. 1).

ANNEX II A

Aid granted on certain processed products listed in Annex I and coming from the Community market

(ECU/100 kg net weight)

Product code	Aid
1602 50 10 120	95,5 (9)
1602 50 10 140	84,5 (9)
1602 50 10 160	68,0 (9)
1602 50 10 170	45,0 (9)
1602 50 31 125	107,5 (5)
1602 50 31 135	68,0 (9)
1602 50 31 325	96,5 (5)
1602 50 31 335	61,0 (9)
1602 50 39 125	107,5 (5)
1602 50 39 135	68,0 (9)
1602 50 39 325	96,5 (5)
1602 50 39 335	61,0 (9)

NB: The product codes and the footnotes are defined in Commission Regulation (EEC) No 3846/87 (OJ No L 366, 24. 12. 1987, p. 1), as last amended by Regulation (EC) No 2838/95 (OJ No L 296, 9. 12. 1995, p. 1).'

ANNEX II

'ANNEX II

Aid on products listed in Annex I and coming from the Community market

(ECU/100 kg net weight)

Product code	Aid
0201 10 00 110 (1)	65,5
0201 10 00 120	49,5
0201 10 00 130 (1)	88,5
0201 10 00 140	67,5
0201 20 20 110 (1)	88,5
0201 20 20 120	67,5
0201 20 30 110 (1)	65,5
0201 20 30 120	49,5
0201 20 50 110 (1)	111,5
0201 20 50 120	85,0
0201 20 50 130 (1)	65,5
0201 20 50 140	49,5
0201 20 90 700	49,5
0201 30 00 100 (2)	159,5
0201 30 00 150 (6)	95,5
0201 30 00 190 (6)	64,0
0202 10 00 100	49,5
0202 10 00 900	67,5
0202 20 10 000	67,5
0202 20 30 000	49,5
0202 20 50 100	85,0
0202 20 50 900	49,5
0202 20 90 100	49,5
0202 30 90 400 (6)	95,5
0202 30 90 500 (6)	64,0

NB: The product codes and the footnotes are defined in Commission Regulation (EEC) No 3846/87 (OJ No L 366, 24. 12. 1987, p. 1), as last amended by Regulation (EC) No 3838/95 (OJ No L 296, 9. 12. 1995, p. 1).'

ANNEX III

'ANNEX II

Amounts of aid that can be granted to male bovine animals for fattening coming from the Community market

(ECU/head)

CN code	Amount of aid
ex 0102 90 05	46,5
ex 0102 90 29	93,0
ex 0102 90 49	124,0
0102 90 79	186,0'

ANNEX IV

'ANNEX III

Amount of aid that can be granted in the Canary Islands for pure-bred breeding bovines originating in the Community

(ECU/head)

CN code	Description	Aid
0102 10 00	Pure-bred breeding bovines (1)	750

(1) Entry under this subheading is subject to conditions laid down in the relevant Community provisions.'

ANNEX V

'ANNEX III

PART 1

Azores : Supply of pure-bred breeding bovines originating in the Community for the period 1 July 1995 to 30 June 1996

(ECU/head)

CN code	Description	Number of animals to be supplied	Aid
0102 10 00	Pure-bred breeding bovines (1)	1 150	600

(1) Entry under this subheading is subject to conditions laid down in the relevant Community provisions.

PART 2

Madeira : Supply of pure-bred breeding bovines originating in the Community for the period 1 July 1995 to 30 June 1996

(ECU/head)

CN code	Description	Number of animals to be supplied	Aid
0102 10 00	Pure-bred breeding bovines (1)	200	650

(1) Entry under this subheading is subject to conditions laid down in the relevant Community provisions.'

ANNEX VI

'ANNEX III

PART 1

Supply to Réunion of pure-bred breeding bovines originating in the Community for the period 1 July 1995 to 30 June 1996

(ECU/head)

CN code	Description	Number of animals to be supplied	Aid
0102 10 00	Pure-bred breeding bovines (1)	300	1 000

PART 2

Supply to French Guiana of pure-bred breeding bovines originating in the Community for the period 1 July 1995 to 30 June 1996

(ECU/head)

CN code	Description	Number of animals to be supplied	Aid
0102 10 00	Pure-bred breeding bovines (1)	350	1 000

PART 3

Supply to Martinique of pure-bred breeding bovines originating in the Community for the period 1 July 1995 to 30 June 1996

(ECU/head)

CN code	Description	Number of animals to be supplied	Aid
0102 10 00	Pure-bred breeding bovines (1)	40	1 000

PART 4

Supply to Guadeloupe of pure-bred breeding bovines originating in the Community for the period 1 July 1995 to 30 June 1996

(ECU/head)

CN code	Description	Number of animals to be supplied	Aid
0102 10 00	Pure-bred breeding bovines (1)	50	1 000

(1) Entry under this subheading is subject to the conditions laid down in the relevant Community provisions.'

ANNEX VII

'ANNEX

PART 1

Supply to French Guiana of pure-bred breeding horses originating in the Community for the period 1 July 1995 to 30 June 1996

(ECU/head)

CN code	Description of the goods	Number of animals to be supplied	Aid
0101 11 00	Pure-bred breeding horses (1)	16	1 000

PART 2

Supply to Martinique of pure-bred breeding horses originating in the Community for the period 1 July 1995 to 30 June 1996

(ECU/head)

CN code	Description of the goods	Number of animals to be supplied	Aid
0101 11 00	Pure-bred breeding horses (1)	15	1 000

(1) Inclusion in this subheading is subject to the conditions provided for by Council Directive 90/427/EEC of 26 June 1990 on the zootechnical and genealogical conditions governing intra-Community trade in equidae (OJ No L 224, 20. 8. 1990, p. 55).'

ANNEX VIII

'ANNEX I

PART 1

Supply balance for Réunion for male bovine animals for fattening for the period 1 July 1995 to 30 June 1996

CN code	Description	Number of animals
ex 0102 90	Bovine animals for fattening	600

PART 2

Supply balance for Guyana for male bovine animals for fattening for the period 1 July 1995 to 30 June 1996

CN code	Description	Number of animals
ex 0102 90	Bovine animals for fattening	200'

COMMISSION REGULATION (EC) No 2999/95

of 22 December 1995

amending Regulation (EEC) No 391/92 setting the amounts of aid for the supply of cereals products from the Community to the French overseas departments

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3763/91 of 16 December 1991 introducing specific measures in respect of certain agricultural products for the benefit of the French overseas departments [1], as last amended by Commission Regulation (EC) No 2598/95 [2], and in particular Article 2 (6) thereof,

Whereas the amounts of aid for the supply of cereals products to the French overseas departments (FOD) has been settled by Commission Regulation (EEC) No 391/92 [3], as last amended by Regulation (EC) No 2757/95 [4]; whereas, as a consequence of the changes of the rates and prices for cereals products in the European part of the Community and on the world market, the aid for supply to the FOD should be set at the amounts given in the Annex;

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

HAS ADOPTED THIS REGULATION:

Article 1

The Annex of amended Regulation (EEC) No 391/92 is replaced by the Annex to the present Regulation.

Article 2

This Regulation shall enter into force on 1 January 1996.

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

Done at Brussels, 22 December 1995.

For the Commission

Franz FISCHLER

Member of the Commission

---

[1] OJ No L 356, 24. 12. 1991, p. 1.
[2] OJ No L 267, 9. 11. 1995, p. 1.
[3] OJ No L 43, 19. 2. 1992, p. 23.
[4] OJ No L 288, 1. 12. 1995, p. 1.

ANNEX

to the Commission Regulation of 22 December 1995 amending Regulation (EEC) No 391/92 setting the amounts of aid for the supply of cereals products from the Community to the French overseas departments

(Ecu/tonnes)

Product (CN code)	Amount of aid			
	Destination			
	Guadeloupe	Martinique	French Guiana	Réunion
Common wheat (1001 90 99)	0,00	0,00	0,00	0,00
Barley (1003 00 90)	6,00	6,00	6,00	9,00
Maize (1005 90 00)	36,00	36,00	36,00	39,00
Durum wheat (1001 10 00)	0,00	0,00	0,00	0,00

COMMISSION REGULATION (EC) No 3000/95

of 22 December 1995

amending Regulation (EEC) No 1832/92 setting the amounts of aid for the supply of cereals products from the Community to the Canary Islands

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1601/92 of 15 June 1992 introducing specific measures in respect of certain agricultural products for the benefit of the Canary Islands [1], as last amended by Commission Regulation (EC) No 2537/95 [2], and in particular Article 3 (4) thereof,

Whereas the amounts of aid for the supply of cereals products to the Canary Islands has been settled by Commission Regulation (EEC) No 1832/92 [3], as last amended by Regulation (EC) No 2758/95 [4]; whereas, as a consequence of the changes of the rates and prices for cereals products in the European part of the Community and on the world market, the aid for supply to the Canary Islands should be set at the amounts given in the Annex;

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

HAS ADOPTED THIS REGULATION:

Article 1

The Annex of amended Regulation (EEC) No 1832/92 is replaced by the Annex to the present Regulation.

Article 2

This Regulation shall enter into force on 1 January 1996.

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

Done at Brussels, 22 December 1995.

For the Commission

Franz FISCHLER

Member of the Commission

---

[1] OJ No L 173, 27. 6. 1992, p. 13.
[2] OJ No L 260, 31. 10. 1995, p. 10.
[3] OJ No L 185, 4. 7. 1992, p. 26.
[4] OJ No L 288, 1. 12. 1995, p. 3.

ANNEX

to the Commission Regulation of 22 December 1995 amending Regulation (EEC) No 1832/92 setting the amounts of aid for the supply of cereals products from the Community to the Canary Islands

(Ecu/tonne)

Product (CN code)		Amount of aid
Common wheat	(1001 90 99)	0,00
Barley	(1003 00 90)	3,00
Maize	(1005 90 00)	33,00
Durum wheat	(1001 10 00)	0,00
Oats	(1004 00 00)	8,00

COMMISSION REGULATION (EC) No 3001/95

of 22 December 1995

amending Regulation (EEC) No 1833/92 setting the amounts of aid for the supply of cereals products from the Community to the Azores and Madeira

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1600/92 of 15 June 1992 introducing specific measures in respect of certain agricultural products for the benefit of the Azores and Madeira [1], as last amended by Commission Regulation (EC) No 2537/95 [2], and in particular Article 10 thereof,

Whereas the amounts of aid for the supply of cereals products to the Azores and Madeira has been settled by Commission Regulation (EEC) No 1833/92 [3], as last amended by Regulation (EC) No 2759/95 [4], whereas, as a consequence of the changes of the rates and prices for cereals products in the European part of the Community and on the world market, the aid for supply to the Azores and Madeira should be set at the amounts given in the Annex;

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

HAS ADOPTED THIS REGULATION:

Article 1

The Annex of amended Regulation (EEC) No 1833/92 is replaced by the Annex to the present Regulation.

Article 2

This Regulation shall enter into force on 1 January 1996.

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

Done at Brussels, 22 December 1995.

For the Commission

Franz FISCHLER

Member of the Commission

---

[1] OJ No L 173, 27. 6. 1992, p. 1.
[2] OJ No L 260, 31. 10. 1995, p. 10.
[3] OJ No L 185, 4. 7. 1992, p. 28.
[4] OJ No L 288, 1. 12. 1995, p. 5.

ANNEX

to the Commission Regulation of 22 December 1995 amending Regulation (EEC) No 1833/92 setting the amounts of aid for the supply of cereals products from the Community to the Azores and Madeira

(Ecu/tonne)

Product (CN code)		Amount of aid	
		Destination	
		Azores	Madeira
Common wheat	(1001 90 99)	0,00	0,00
Barley	(1003 00 90)	3,00	3,00
Maize	(1005 90 00)	33,00	33,00
Durum wheat	(1001 10 00)	0,00	0,00

COMMISSION REGULATION (EC) No 3002/95

of 22 December 1995

setting the amounts of aid for the supply of rice products from the Community to the Canary Islands

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1601/92 of 15 June 1992 introducing specific measures in respect of certain agricultural products last for the benefit of the Canary Islands [1], as last amended by Commission Regulation (EC) No 2537/95 [2], and in particular Article 2 thereof,

Whereas, pursuant to Article 3 of Regulation (EEC) No 1601/92, the requirements of the Canary Islands for rice are to be covered in terms of quantity, price and quality by the mobilization, on disposal terms equivalent to exemption from the levy, of Community rice, which involves the grant of an aid for supplies of Community origin; whereas this aid is to be fixed with particular reference to the costs of the various sources of supply and in particular is to be based on the prices applied to exports to third countries;

Whereas Commission Regulation (EC) No 2790/94 [3], as amended by Regulation (EC) No 2883/94 [4], lays down common detailed rules for implementation of the specific arrangements for the supply of certain agricultural products, including rice, to the Canary Islands;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92 [5], as last amended by Regulation (EC) No 150/95 [6], are used to convert amounts expressed in third country currencies and are used as the basis for determining the agricultural conversion rates of the Member States' currencies; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93 [7], as last amended by Regulation (EC) No 2853/95 [8];

Whereas, as a result of the application of these detailed rules to the current market situation in the rice sector, and in particular to the rates of prices for these products in the European part of the Community and on the world market, the aid for supply to the Canary Islands should be set at the amounts given in the Annex;

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

HAS ADOPTED THIS REGULATION:

Article 1

Pursuant to Article 3 of Regulation (EEC) No 1601/92, the amount of aid for the supply of rice of Community origin under the specific arrangements for the supply of the Canary Islands shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 January 1996.

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

Done at Brussels, 22 December 1995.

For the Commission

Franz FISCHLER

Member of the Commission

---

[1] OJ No L 173, 27. 6. 1992, p. 13.
[2] OJ No L 260, 31. 10. 1995, p. 10.
[3] OJ No L 296, 17. 11. 1994, p. 23.
[4] OJ No L 304, 29. 11. 1994, p. 18.
[5] OJ No L 387, 31. 12. 1992, p. 1.
[6] OJ No L 22, 31. 1. 1995, p. 1.
[7] OJ No L 108, 1. 5. 1993, p. 106.
[8] OJ No L 299, 12. 12. 1995, p. 1.

ANNEX

to the Commission Regulation of 22 December 1995 setting the amounts of aid for the supply of rice products from the Community to the Canary Islands

(ECU/tonne)

Product (CN code)	Amount of aid
	Canary Islands
Milled rice (1006 30)	269,00
Broken rice (1006 40)	59,00

COMMISSION REGULATION (EC) No 3003/95

of 22 December 1995

setting the amounts of aid for the supply of rice products from the Community to the Azores and Madeira

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1600/92 of 15 June 1992 introducing specific measures in respect of certain agricultural products for the benefit of the Azores and Madeira [1], as last amended by Commission Regulation (EC) No 2537/95 [2], and in particular Article 10 thereof,

Whereas, pursuant to Article 10 of Regulation (EEC) No 1600/92, the requirements of the Azores and Madeira for rice are to be covered in terms of quantity, price and quality by the mobilization, on disposal terms equivalent to exemption from the levy, of Community rice, which involves the grant of an aid for supplies of Community origin; whereas this aid is to be fixed with particular reference to the costs of the various sources of supply and in particular is to be based on the prices applied to exports to third countries;

Whereas Commission Regulation (EEC) No 1696/92 [3], as last amended by Regulation (EEC) No 2596/93 [4], lays down common detailed rules for implementation of the specific arrangements for the supply of certain agricultural products, including rice, to the Azores and Madeira; whereas Commission Regulation (EEC) No 1983/92 of 16 July 1992 laying down detailed rules for implementation of the specific arrangements for the supply of rice products to the Azores and Madeira and establishing the forecast supply balance for these products [5], as last amended by Regulation (EC) No 1683/94 [6], lays down detailed rules which complement or derogate from the provisions of the aforementioned Regulation;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92 [7], as last amended by Regulation (EC) No 150/95 [8], are used to convert amounts expressed in third country currencies and are used as the basis for determining the agricultural conversion rates of the Member States' currencies; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93 [9], as last amended by Regulation (EC) No 2853/95 [10];

Whereas, as a result of the application of these detailed rules to the current market situation in the rice sector, and in particular to the rates of prices for these products in the European part of the Community and on the world market the aid for supply to the Azores and Madeira should be set at the amounts given in the Annex;

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

HAS ADOPTED THIS REGULATION:

Article 1

Pursuant to Article 10 of Regulation (EEC) No 1600/92, the amount of aid for the supply of rice of Community origin under the specific arrangements for the supply of the Azores and Madeira shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 January 1996.

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

Done at Brussels, 22 December 1995.

For the Commission

Franz FISCHLER

Member of the Commission

---

[1] OJ No L 173, 27. 6. 1992, p. 1.
[2] OJ No L 260, 31. 10. 1995, p. 10.
[3] OJ No L 179, 1. 7. 1992, p. 6.
[4] OJ No L 238, 23. 9. 1993, p. 24.
[5] OJ No L 198, 17. 7. 1992, p. 37.
[6] OJ No L 178, 12. 7. 1994, p. 53.
[7] OJ No L 387, 31. 12. 1992, p. 1.
[8] OJ No L 22, 31. 1. 1995, p. 1.
[9] OJ No L 108, 1. 5. 1993, p. 106.
[10] OJ No L 299, 12. 12. 1995, p. 1.

ANNEX

to the Commission Regulation of 22 December 1995 setting the amounts of aid for the supply of rice products from the Community to the Azores and Madeira

(ECU/tonne)

Product (CN code)	Amount of aid	
	Destination	
	Azores	Madeira
Milled rice (1006 30)	269,00	269,00

COMMISSION REGULATION (EC) No 3004/95
of 22 December 1995
amending the export refunds on poultrymeat

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EEC) No 2777/75 of the Council of 29 October 1975 on the common organization of the market in poultrymeat [1], as last amended by the Act of Accession of Austria, Finland and Sweden and by Regulation (EC) No 3290/94 [2], and in particular Article 8 (3) thereof,

Whereas the export refunds on poultrymeat were fixed by Commission Regulation (EC) No 2864/95 [3], as amended by Regulation (EC) No 2902/95 [4];

Whereas it follows from foreseen criteria contained in Article 8 of Regulation (EEC) No 2777/75 to the information known to the Commission that the export refunds at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 paragraph 1 of Regulation (EEC) No 2777/75, exported in the natural state, as fixed in the Annex to amended Regulation (EC) No 2864/95 are hereby altered as shown in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 25 December 1995.

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

Done at Brussels, 22 December 1995.

For the Commission
Franz FISCHLER
Member of the Commission

---

[1] OJ No L 282, 1. 11. 1975, p. 77.
[2] OJ No L 349, 31. 12. 1994, p. 105.
[3] OJ No L 300, 13. 12. 1995, p. 9.
[4] OJ No L 304, 16. 12. 1995, p. 30.

ANNEX

to the Commission Regulation of 22 December 1995 altering the export refunds on poultrymeat

Product code	Destination of refund (1)	Amount of refund (2)
		ECU/100 units
0105 11 11 000	01	2,00
0105 11 19 000	01	2,00
0105 11 91 000	01	2,00
0105 11 99 000	01	2,00
0105 19 10 000	01	3,50
		ECU/100 kg
0207 21 10 900	02	30,00
	03	8,00
0207 21 90 190	02	33,00
	03	8,00
0207 22 10 000	04	8,00
0207 22 90 000	04	8,00
0207 41 11 900	04	6,50
0207 41 51 900	04	6,50
0207 41 71 190	04	6,50
0207 41 71 290	04	6,50
0207 42 10 990	04	15,00
0207 42 51 000	04	6,50
0207 42 59 000	04	6,50

(1) The destinations are as follows:

01 All destinations except the United States of America,

02 Angola, Saudi Arabia, Kuwait, Bahrain, Qatar, Oman, the United Arab Emirates, Jordan, Yemen, Lebanon, Iran, Armenia, Azerbaijan, Georgia, Russia, Uzbekistan and Tajikistan,

03 All destinations except the United States of America, Bulgaria, Poland, Hungary, Romania, Slovakia, the Czech Republic and those of 02 above,

04 All destinations except the United States of America, Bulgaria, Poland, Hungary, Romania, Slovakia and the Czech Republic.

(2) Refunds on exports to the Federal Republic of Yugoslavia (Serbia and Montenegro) may be granted only where the conditions laid down in amended Regulation (EEC) No 990/93 and Regulation (EC) No 2815/95 are observed.

NB: The product codes and the footnotes are defined in amended Commission Regulation (EEC) No 3846/87.

COMMISSION REGULATION (EC) No 3005/95

of 22 December 1995

determining the percentage of quantities covered by applications for export licences for poultrymeat which may be accepted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1372/95 of 16 June 1995 laying down detailed rules for implementing the system of export licences in the poultrymeat sector [1], as last amended by Regulation (EC) No 2841/95 [2], and in particular Article 3 (4) thereof,

Whereas Regulation (EC) No 1371/95 provides for specific measures where applications for export licences concern quantities and/or expenditure which exceed the normal trade patterns or where there is a risk that they will be exceeded, taking account of the limit referred to in Article 8 (12) of Council Regulation (EEC) No 2777/75 [3], as last amended by the Act of Accession of Austria, Finland and Sweden, and by Regulation (EC) No 3290/94 [4], and/or the corresponding expenditure during the period in question;

Whereas the market for certain poultrymeat products is affected by uncertainties; whereas the refunds currently applicable for these products could lead to applications being made for export licences for speculative purposes; whereas there is a risk that the issue of certificates for the quantities applied for from 18 to 20 December 1995 may lead to the quantities corresponding to the normal trade patterns for the products concerned being exceeded; whereas applications for which export licences have not yet been granted should be rejected for the products concerned and acceptance coefficients applying to the quantities requested should be fixed,

HAS ADOPTED THIS REGULATION:

Article 1

Applications for export licences for poultrymeat submitted pursuant to Regulation (EC) No 1372/95 shall be dealt with as follows:

1. for applications from 18 to 20 December 1995, 100 % of the quantities applied for in the case of categories 3, 4, 5, 7 and 8 referred to in Annex I to the abovementioned Regulation shall be accepted;
2. no further action shall be taken in respect of applications pending for certificates which should have been issued from 25 December 1995 for category 6 referred to in Annex I to the abovementioned Regulation.

Article 2

This Regulation shall enter into force on 25 December 1995.

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

Done at Brussels, 22 December 1995.

For the Commission

Franz FISCHLER

Member of the Commission

---

[1] OJ No L 133, 17. 6. 1995, p. 26.
[2] OJ No L 296, 9. 12. 1995, p. 8.
[3] OJ No L 282, 1. 11. 1975, p. 77.
[4] OJ No L 349, 31. 12. 1994, p. 105.

COMMISSION REGULATION (EC) No 3006/95
of 22 December 1995
fixing the export refunds on rice and broken rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice [1], as last amended by Regulation (EC) No 1530/95 [2], and in particular the second subparagraph of Article 14 (3) thereof,

Whereas Article 14 of Regulation (EEC) No 1418/76 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund;

Whereas Article 14 (4) of Regulation (EEC) No 1418/76, provides that when refunds are being fixed account must be taken of the existing situation and the future trend with regard to prices and availabilities of rice and broken rice on the Community market on the one hand and prices for rice and broken rice on the world market on the other; whereas the same Article provides that it is also important to ensure equilibrium and the natural development of prices and trade on the rice market and, furthermore, to take into account the economic aspect of the proposed exports and the need to avoid disturbances of the Community market;

Whereas Commission Regulation (EEC) No 1361/76 [3] lays down the maximum percentage of broken rice allowed in rice for which an export refund is fixed and specifies the percentage by which that refund is to be reduced where the proportion of broken rice in the rice exported exceeds that maximum;

Whereas Article 14 (5) of Regulation (EEC) No 1418/76 defines the specific criteria to be taken into account when the export refund on rice and broken rice is being calculated;

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

Whereas a separate refund should be fixed for packaged long grain rice to accommodate current demand for the product on certain markets;

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

Whereas it follows from applying these rules and criteria to the present situation on the market in rice and in particular to quotations or prices for rice and broken rice within the Community and on the world market, that the refund should be fixed as set out in the Annex hereto;

Whereas Council Regulation (EEC) No 990/93 [4], as amended by Regulation (EC) No 1380/95 [5], prohibits trade between the European Community and the Federal Republic of Yugoslavia (Serbia and Montenegro); whereas this prohibition does not apply in certain situations as comprehensively listed in Articles 2, 4, 5 and 7 thereof and in Council Regulation (EC) No 2815/95 [6]; whereas account should be taken of this fact when fixing the refunds;

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

ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 of Regulation (EEC) No 1418/76 with the exception of those listed in paragraph 1 (c) of that Article, exported in the natural state, shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 January 1996.

[1] OJ No L 166, 25. 6. 1976, p. 1.
[2] OJ No L 148, 30. 6. 1995, p. 5.
[3] OJ No L 154, 15. 6. 1976, p. 11.
[4] OJ No L 102, 28. 4. 1993, p. 14.
[5] OJ No L 138, 21. 6. 1995, p. 1.
[6] OJ No L 297, 9. 12. 1995, p. 1.

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

Done at Brussels, 22 December 1995.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX

to the Commission Regulation of 22 December 1995 fixing the export refunds on rice and broken rice

(ECU/tonne)

Product code	Destination (1)	Amount of refunds (2)
1006 20 11 000	01	204,00
1006 20 13 000	01	204,00
1006 20 15 000	01	204,00
1006 20 17 000	—	—
1006 20 92 000	01	204,00
1006 20 94 000	01	204,00
1006 20 96 000	01	204,00
1006 20 98 000	—	—
1006 30 21 000	01	204,00
1006 30 23 000	01	204,00
1006 30 25 000	01	204,00
1006 30 27 000	—	—
1006 30 42 000	01	204,00
1006 30 44 000	01	204,00
1006 30 46 000	01	204,00
1006 30 48 000	—	—
1006 30 61 100	01	255,00
	02	261,00
	03	266,00
	04	255,00
1006 30 61 900	01	255,00
	04	255,00
1006 30 63 100	01	255,00
	02	261,00
	03	266,00
	04	255,00
1006 30 63 900	01	255,00
	04	255,00
1006 30 65 100	01	255,00
	02	261,00
	03	266,00
	04	255,00
1006 30 65 900	01	255,00
	04	255,00
1006 30 67 100	—	—
1006 30 67 900	—	—
1006 30 92 100	01	255,00
	02	261,00
	03	266,00
	04	255,00
1006 30 92 900	01	255,00
	04	255,00
1006 30 94 100	01	255,00
	02	261,00
	03	266,00
	04	255,00
1006 30 94 900	01	255,00
	04	255,00
1006 30 96 100	01	255,00
	02	261,00
	03	266,00
	04	255,00
1006 30 96 900	01	255,00
	04	255,00
1006 30 98 100	—	—
1006 30 98 900	—	—
1006 40 00 000	—	—

(1) The destinations are identified as follows:

01 Liechtenstein, Switzerland, the communes of Livigno and Campione d'Italia,

02 Zones I, II, III, VI, Ceuta and Melilla,

03 Zones IV, V, VII (c), Canada and Zone VIII excluding Surinam, Guyana and Madagascar,

04 Destinations mentioned in Article 34 of amended Commission Regulation (EEC) No 3665/87

(2) Refunds on exports to the Federal Republic of Yugoslavia (Serbia and Montenegro) may be granted only where the conditions laid down in amended Regulation (EEC) No 990/93 and Regulation (EC) No 2815/95 are observed.

NB: The zones are those defined in the Annex to amended Commission Regulation (EEC) No 2145/92.

COMMISSION REGULATION (EC) No 3007/95

of 22 December 1995

fixing the refunds applicable to cereal and rice sector products supplied as Community and national food aid

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 1863/95 [2], and in particular the third subparagraph of Article 13 (2) thereof,

Having regard to Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice [3], as last amended by Regulation (EC) No 1530/95 [4], and in particular Article 11 (2) thereof,

Whereas Article 2 of Council Regulation (EEC) No 2681/74 of 21 October 1974 on Community financing of expenditure incurred in respect of the supply of agricultural products as food aid [5] lays down that the portion of the expenditure corresponding to the export refunds on the products in question fixed under Community rules is to be charged to the European Agricultural Guidance and Guarantee Fund, Guarantee Section;

Whereas, in order to make it easier to draw up and manage the budget for Community food aid actions and to enable the Member States to know the extent of Community participation in the financing of national food aid actions, the level of the refunds granted for these actions should be determined;

Whereas the general and implementing rules provided for in Article 13 of Regulation (EEC) No 1766/92 and in Article 17 of Regulation (EEC) No 1418/76 on export refunds are applicable *mutatis mutandis* to the abovementioned operations;

Whereas the specific criteria to be used for calculating the export refund on rice are set out in Article 3 of Regulation (EEC) No 1418/76;

Whereas the refunds fixed by this Regulation are applicable without any variations, for all destinations;

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

HAS ADOPTED THIS REGULATION:

Article 1

For Community and national food aid operations under international agreements or other supplementary programmes, the refunds applicable to cereals and rice sector products shall be as set out in the Annex.

Article 2

The refunds fixed in this Regulation shall not be regarded as refunds varying according to destination.

Article 3

This Regulation shall enter into force on 1 January 1996.

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

Done at Brussels, 22 December 1995.

For the Commission

Franz FISCHLER

Member of the Commission

---

[1] OJ No L 181, 1. 7. 1992, p. 21.
[2] OJ No L 179, 29. 7. 1995, p. 1.
[3] OJ No L 166, 25. 6. 1976, p. 1.
[4] OJ No L 148, 30. 6. 1995, p. 5.
[5] OJ No L 288, 25. 10. 1974, p. 1.

ANNEX

to the Commission Regulation of 22 December 1995 fixing the refunds applicable to cereal and rice sector products supplied as Community and national food aid

(ECU/tonne)

Product code	Refund
1001 10 00 400	0,00
1001 90 99 000	0,00
1002 00 00 000	35,00
1003 00 90 000	0,00
1004 00 00 400	7,00
1005 90 00 000	30,00
1006 20 92 000	216,80
1006 20 94 000	216,80
1006 30 42 000	—
1006 30 44 000	—
1006 30 92 100	271,00
1006 30 92 900	271,00
1006 30 94 100	271,00
1006 30 94 900	271,00
1006 30 96 100	271,00
1006 30 96 900	271,00
1006 40 00 000	—
1007 00 90 000	30,00
1101 00 15 100	0,00
1101 00 15 130	0,00
1102 20 10 200	42,00
1102 20 10 400	36,00
1102 30 00 000	—
1102 90 10 100	0,00
1103 11 10 200	0,00
1103 11 90 200	0,00
1103 13 10 100	54,00
1103 14 00 000	—
1104 12 90 100	8,26
1104 21 50 100	0,00

NB: The product codes and the footnotes are defined in Commission Regulation (EEC) No 3846/87 (OJ No L 366, 24. 12. 1987, p. 1), amended.

COMMISSION REGULATION (EC) No 3008/95

of 22 December 1995

establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables [1], as last amended by Regulation (EC) No 1740/95 [2], and in particular Article 4 (1) thereof,

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

Whereas Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto;

Whereas, in compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 23 December 1995.

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

Done at Brussels, 22 December 1995.

For the Commission

Franz FISCHLER

Member of the Commission

---

[1] OJ No L 337, 24. 12. 1994, p. 66.
[2] OJ No L 167, 18. 7. 1995, p. 10.
[3] OJ No L 387, 31. 12. 1992, p. 1.
[4] OJ No L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 22 December 1995 establishing the standard import values for determining the entry price of certain fruit and vegetables

(ECU/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 50	052	67,0
	060	80,2
	064	59,6
	066	41,7
	068	62,3
	204	101,7
	208	44,0
	212	117,9
	624	345,9
	999	102,3
0707 00 40	052	84,4
	053	166,9
	060	61,0
	066	53,8
	068	60,4
	204	49,1
	624	118,7
	999	84,9
0709 10 40	220	244,5
	999	244,5
0709 90 79	052	79,1
	204	77,5
	412	54,2
	624	172,6
	999	95,9
0805 10 61, 0805 10 65, 0805 10 69	052	41,3
	204	49,0
	388	40,5
	600	58,4
	624	46,6
	999	47,2
0805 20 31	052	77,3
	204	77,8
	624	79,7
	999	78,3
0805 20 33, 0805 20 35, 0805 20 37, 0805 20 39	052	60,5
	464	87,6
	624	100,6
	999	82,9
0805 30 40	022	73,4
	052	72,7
	204	53,2
	388	67,5
	400	98,6
	512	54,8
	520	66,5
	524	100,8
	528	94,7
	600	79,0
	624	78,0
	999	76,3
0808 10 92, 0808 10 94, 0808 10 98	052	65,4
	064	78,6
	388	39,2
	400	75,1
	404	55,2
	508	68,4
	512	51,2
	524	57,4
	528	48,0
	728	107,3
	800	78,0
	804	21,0
	999	62,1
0808 20 67	052	143,7
	064	73,6
	388	79,6
	400	104,7
	512	89,7
	528	84,1
	624	79,0
	728	115,4
	800	55,8
	804	112,9
	999	93,8

(1) Country nomenclature as fixed by Commission Regulation (EC) No 3079/94 (OJ No L 325, 17. 12. 1994, p. 17). Code '999' stands for 'of other origin'.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 18 December 1995

appointing members of the Court of Auditors of the European Communities

(95/550/EC, Euratom, ECSC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 45b (3) thereof,

Having regard to the Treaty establishing the European Community, and in particular Article 188b (3) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 160b (3) thereof,

Having regard to the Treaty establishing a Single Council and a Single Commission of the European Communities, and in particular Article 22 thereof,

Having regard to the opinions of the European Parliament (1),

Whereas the terms of office of Mr Bernhard Friedmann, Constantinos Androutsopoulos, Daniel Strasser, Maurice Thoss, André J. Middelhoek, Hubert Weber and John Wiggins expired on 20 December 1995;

Whereas new appointments should therefore be made,

HAS DECIDED AS FOLLOWS:

Sole Article

The following are hereby appointed members of the Court of Auditors for the period from 1 January 1996 to 31 December 2001 inclusive:

— Mr Bernhard Friedmann,
— Ms Kalliopi Nikolaou,
— Mr Jean-François Bernicot,
— Mr François Colling,
— Mr Maarten B. Engwirda,
— Mr Hubert Weber,
— Mr John Wiggins.

Done at Brussels, 18 December 1995.

For the Council

The President

J. BORRELL FONTELLES

(1) Opinions delivered on 14 December 1995, not yet published in the Official Journal.

COMMISSION

COMMISSION DECISION

of 29 November 1995

relating to a proceeding pursuant to Article 85 of the EC Treaty

(IV/34.179, 34.202, 216 — Stichting Certificatie Kraanverhuurbedrijf and the Federatie van Nederlandse Kraanverhuurbedrijven)

(Only the Dutch text is authentic)

(95/551/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 Austria, Finland and Sweden, and in particular Article 3 (1) and Article 15 (2) thereof,

Having regard to the complaint submitted on 13 January 1992 by M.W.C.M. van Marwijk and others, together with an application for interim measures, and having regard to the statutes and rules notified on 15 January 1992 by the Stichting Certificatie Kraanverhuurbedrijf and on 6 February 1992 by the Federatie van Nederlandse Kraanverhuurbedrijven,

Having given the parties concerned, in accordance with Article 19 (1) of Regulation No 17 and with Regulation No 99/63/EEC of the Commission of 25 July 1963 on the hearings provided for in Article 19 (1) and (2) of Council Regulation No 17 [2], the opportunity of being heard on the matters to which the Commission has taken objection,

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

I. THE FACTS

The complaint

(1) On 13 January 1992 a complaint, together with an application for interim measures, was submitted by M.W.C.M. van Marwijk and ten other firms alleging that the Federatie van Nederlandse Kraanverhuurbedrijven (hereinafter referred to as 'FNK') and the Stichting Certificatie Kraanverhuurbedrijf (hereinafter referred to as 'SCK') had infringed the competition rules in the EC Treaty by excluding undertakings which are not certified by SCK from hiring out mobile cranes and by imposing fixed price rates under their statutes and rules.

The notified agreements

(2) SCK's statutes [3] and its rules on certification of the crane-hire trade [4], (hereinafter referred to as 'the rules'), including various annexes of which the most important are the certification requirements, were notified to the Commission on 15 January 1992. FNK's statutes [5] and internal rules [6] were notified on 6 February 1992. In both cases, an application was made for negative clearance or, alternatively, exemption pursuant to Article 85 (3).

FNK

As notified, FNK's rules contain, *inter alia*, a requirement that members charge reasonable prices for hiring out cranes and apply the general conditions issued by FNK, which contain provisions relating to price (Article 3 (b) and (c) of FNK's internal rules), and a requirement that they give preference to other members when hiring extra cranes (Article 3 (a) of FNK's internal rules).

SCK

As notified, SCK's rules contain, *inter alia*, a ban on undertakings affiliated to SCK from hiring extra

[1] OJ No 13, 21. 2., 1962, p. 204/62.
[2] OJ No 127, 20. 8. 1963, p. 2268/63.
[3] Dated 9 January 1992.
[4] Dated 1 January 1992.
[5] Dated 17 July 1989.
[6] Dated 31 October 1988.

cranes from non-affiliated undertakings (the 'inhuurverbod' in the second indent of Article 7 of SCK's rules).

The parties

(3) The complainants are firms which hire out mobile cranes. When the complaint was submitted, nine of them were established in the Netherlands and two in Belgium, and none of them was a member of FNK or affiliated to SCK. Since the complaint was submitted in January 1992, three complainant crane-hire firms have become members of FNK and one has also become affiliated to SCK.

(4) FNK is an association of firms which hire out mobile cranes. It was established on 13 March 1971 and has its registered office at Culemborg. Its object, as laid down in the statutes, is to promote the interests of crane-hire companies, particularly of FNK members, and to foster contact and cooperation in the broadest sense between members. Under the statutes, undertakings established outside the Netherlands cannot be members. In mid-1994, the association had 196 members.

(5) SCK, which has its registered office at the same address in Culemborg, was set up on 13 July 1984. According to its statutes, the object of the organization is to promote and maintain the quality of crane-hire companies [1]. For that purpose SCK set up a private-law certification system on a voluntary basis. In mid-1994, 190 firms were affiliated to SCK, most of them being firms which were also members of FNK [2].

The market

(6) The cranes in question are employed, above all, in the construction, petrochemical and transport industries in the Netherlands. In the crane-hire business, the hiring of extra cranes from other crane-hirers occurs on a large scale. As a means of equipment rationalization and optimum capacity utilization, the temporary hire of (extra) cranes may be more attractive than purchase. At the time of notification, there were, according to FNK, about 350 crane-hire firms in the Netherlands, with a total turnover of some ECU 450 million. According to an independent survey of the sector carried out in 1990, the market share of FNK members and SCK certificate-holders was an estimated 78 % [3]. FNK and SCK estimate their market share in 1992 at about 51 %, the total number of cranes for hire in the Netherlands being put at about 3 000 and the number of cranes owned by FNK members at 1 544 [4]. Because of transport difficulties, according to FNK, most cranes operate within a radius of about 50 kilometers, which would limit the market in the Netherlands for firms from other Member States to areas near the Belgian and German borders.

Government supervision

(7) Under the Law on Conditions at the Workplace (Arbowet), employers must ensure that the tools and equipment they use are appropriately and reliably constructed. They are also required to have such equipment inspected periodically. In various safety decrees based on the Law on Conditions at the Workplace, these rules are stipulated in greater detail. Particular mention may be made here of the Decree on Safety in Factories and at Worksites and the Decree on Safety at other types of Workplace, in which provisions are laid down relating to the safe construction and safe use of cranes and lifting equipment. These provisions are spelt out in detail, as regards the various types of crane and the various types of lifting equipment, in ministerial regulations and various leaflets of the Labour Inspectorate, with due regard to the requirements laid down in Council Directive 89/392/EEC relating to machinery [5]. Germany and Belgium have comparable legal systems.

[1] Originally, SCK's object was to promote and maintain the quality of crane-hire companies in the Netherlands. Under an amendment to the articles dated 9 January 1992 the words 'in the Netherlands' were deleted.

[2] Of the 190 undertakings which on 21 July 1994 were affiliated to the SCK only seven were not members of the FNK. Conversely, on 21 July 1994, only 12 of the 196 FNK members were not certified by the SCK.

[3] According to this sectoral survey by the Nederlandsche Middenstands Bank (NMB), in 1990 there were 240 — 280 active crane-hire firms, of which more than 170 were affiliated to the FNK: FNK's market share for 1989 was thus estimated by the NMB at 78 % (HF 344 — 440 million), assuming an average turnover of HF 254 000 per crane, 1 354 cranes owned by FNK members and the fact that non-FNK members are relatively small firms.
According to the final assessment report on SCK by the Certification Council (Raad voor de Certificatie) of 11 January 1993, about 70 % of cranes hired in the Netherlands are from SCK certificated companies.

[4] According to the KeBoMa annual report for 92, there are 3 432 mobile cranes in the Netherlands, of which, according to FNK/SCK, about 3 000 are for hire.

[5] OJ No L 183, 29. 6. 1989, p. 9. Directive as last amended by Directive 93/68/EEC, OJ No L 220, 30. 8. 1993, p. 1. Cranes were brought within the scope of the Directive by another amendment: Directive 91/368/EEC (OJ No L 198, 22. 7. 1991, p. 16).

Statutory inspections of cranes and lifting equipment are carried out before first entry into service (1), three years later and every two years thereafter. The Foundation KeBoMa (Keuring BouwMachines), at Ede, was designated in 1982 by the Minister for Social Affairs, under the Decree on Safety in Factories and at Worksites, as the institution responsible for carrying out inspections and tests of, *inter alia*, cranes and lifting equipment (2). KeBoMa is the only approval body designated and recognized by the Government to do such work (3). If any serious shortcomings are found, KeBoMa has to inform the Labour Inspectorate. In addition to statutory inspections by KeBoMa, employers are required to have the cranes checked at least once a year by an expert who, in the Labour Inspectorate's opinion, is sufficiently qualified for the task (4).

Structure of FNK and SCK

(8) SCK is recognized by the Certification Council as a certification institution, which means amongst other things that, in the Certification Council's view, it meets the requirements of independence.

(9) This does not alter the fact that there are close links between FNK and SCK. From SCK's establishment to 15 December 1987, its entire board was, in accordance with the statutes, appointed and could be dismissed by the executive committee of FNK. Since the statutes were amended on 15 December 1987, SCK's board itself fills the vacancies, but the members who come from the industry (half the board) were until 20 June 1994 appointed on a binding recommendation from FNK. Only on that date was the binding character of that recommendation done away with. Thus, until then, FNK had a decisive influence on the appointment of at least half the SCK board. As decisions of the SCK board are taken, in accordance with the statutes, by a simple majority, it follows that in practice the board cannot take a single decision without FNK's approval.

The board is assisted by an advisory body, which since 20 June 1994 has been referred to as the Committee of Experts, whose members are appointed and dismissed by the SCK board — acting until 15 December 1987 in consultation with the executive committee of FNK and from that date until 20 June 1994 after consulting FNK, which may itself also propose names. The Committee of Experts consists of eight members: two from the FNK itself, three from affiliated organizations and (associations of) undertakings which place contracts with crane-hire firms, and three other members. The Committee's task includes advising SCK's board on the nature and content of the certification system and the establishment of the inspection requirements and methods underlying the certification system. The Committee's advice is binding (Article 2 of its rules).

Individual certification decisions are taken by the Certification Committee, which consists of two members of the board who are not from the industry (but one of whom is an ex-representative of a firm awarding contracts) and the chairman of the Committee of Experts. The Certification Committee is appointed by SCK's board.

In its notification, SCK explicitly pointed out that it was set up on the initiative of FNK (5). Furthermore, it is clear from the statutes that SCK was set up on behalf of FNK as principal. The two organizations have the same address and secretariat, and until 1 January 1993 had the same telephone number (6). The statutes and rules of the two organizations were notified by the same representative and in the same form. This same representative replied on behalf of both FNK and SCK to the statement of objections of 16 December 1992 and the statement of objections of 21 October 1994. Until September 1987, an applicant had to be a member of FNK in order to be eligible for certification by SCK. Until October 1993, SCK certificate-holders were obliged to apply the general conditions drawn up by FNK.

From September 1987 to 1 January 1992 participation in the SCK certification arrangements was roughly three times cheaper for FNK members than for non-members, and during the same period SCK received a subsidy from FNK. From 1985 to 1987, SCK also received a subsidy from the Netherlands State.

(1) Since 1 January 1993, pursuant to the Machinery Directive (see preceding footnote), testing no longer applies to cranes which bear a 'CE mark', subsequently renamed 'CE marking' under Article 6 of Directive 93/68/EEC, and are accompanied by a declaration of conformity in accordance with the Directive.

(2) Recognition by the State Secretary for Social Affairs and Employment, 18 February 1992. Decision No 2306/77, Nederlandse Staatscourant 77.

(3) KeBoMa's annual report for 1992, p. 1.

(4) Such an expert may, for instance, be the supplier of the crane, but in practice KeBoMa is often called in.

(5) See point 4 of the notification. This is also explicitly apparent from the final assessment report on SCK, p. 3, mentioned in footnote 3, p. 80.

(6) Since 1 January 1993, however, SCK, according to a letter dated 21 July 1994, has been using a different postal address.

Behaviour of the FNK and the SCK

FNK

(10) Under its statutes, FNK's object is to promote the interests of the crane-hire business in general and of its members in particular and to encourage contacts and cooperation in the broadest sense between members. Those objectives, and the manner in which they are to be achieved, are set out in the statutes and internal rules. Under Article 6 (1) of the statutes, decisions which are taken in accordance with the statutes and rules are binding on members. Any member that acts in breach of this rule may have its membership cancelled pursuant to Article 10 (1) (d).

From 15 December 1979 to 28 April 1992, FNK's internal regulations required FNK members to give preference to other members when hiring or hiring out cranes and to charge 'reasonable' rates. To this end, until 1992 FNK published cost calculations, and recommended rates based on them, in the handbook it issued. According to an independent sectoral survey, those recommended rates were generally higher than the market rates [1]. Until 1992, discussions regularly took place between crane-hire firms with certain categories of crane about recommended rates and internal rates — that is, the rates charged between crane-hire companies when hiring or hiring out cranes. The internal rates were generally somewhat lower than the recommended ones but higher than the market rate [2]. FNK's involvement in these discussions is clear, *inter alia*, from the fact that FNK made its secretariat available for such discussions and from the fact that an assistant in the secretariat was instructed to draft the report and handle the other administrative matters [3].

In addition, FNK members are obliged under the internal rules to apply the general conditions drawn up by FNK [4]. These contain detailed instructions on prices and rates; thus, among other things, minimum rental hours, higher rates for Sundays and holidays and cancellation costs are prescribed, and reference is made to the recommended rates drawn up by FNK.

In the interlocutory judgment given by the President of the Utrecht District Court on 11 February 1992 it was ordered, *inter alia*, that FNK cease enforcing the preference rule and the system of recommended and internal rates applied and devised by the association.

SCK

(11) Under its statutes, SCK's object is to promote and maintain the quality of crane-hire firms. This is to be done by drawing up guidelines in the form of regulations on the establishment of a crane-hire business, a certification system and a monitoring system for ensuring compliance with the guidelines. Certification involves the monitoring of a number of aspects of the crane-hire firm iself: compliance with legal requirements concerning tax and social security payments; evidence of insurance cover, creditworthiness and liquidity; and evidence of the competence of the operatives to be employed. Firms also had to show that they were registered with the Chamber of Commerce, which virtually excluded or, at any rate, seriously impeded access by firms from outside the Netherlands. With effect from 1 May 1993, this requirement was modified to the effect that evidence of the enrolment of foreign firms in an equivalent commercial register is also accepted. Certification also covers technical aspects of the cranes themselves. Lastly, certified firms were obliged until 21 October 1993 to apply FNK's general conditions. As mentioned at point 10, these include conditions concerning prices.

Certification requirements are drawn up by the Committee of Experts, while the Certification Committee is responsible for actually carrying out the certification. Especially in the Committee of Experts, members drawn from the sector which awards contracts to crane-hire companies are prominently represented. Among others, DSM and Shell have representatives on SCK's Committee of Experts. One member and the chairman of SCK's board are (former) representatives of Akzo. Firms placing such contracts are thus encouraged to award them to certified firms. The system was made watertight by the 'inhuurverbod' mentioned above (see point (2)) which entered into force on 1 January 1991, under which the certified firm is not allowed to hire extra cranes from firms that are not affiliated to SCK [5]. Since much work in the sector

[1] NMB sectoral survey of carne hire companies, 15 December 1990, p. 19.
[2] NMB sectoral survey, pp. 4, 15 and 19, and p. 19 of FNK's notification.
[3] See point 19 of FNK's notification and the letter dated 3 March 1992 from FNK to various crane-hire companies.
[4] General conditions for the performance of contracts by crane operators, registered with the Arrondissementsrechtbank [District Courts] of Amsterdam and Rotterdam on 1 January 1991.
[5] Before the 'inhuurverbod' was introduced on 1 January 1991, a transitional provision was in force which meant that a certificate-holder was obliged when hiring cranes to check whether the hired equipment and personnel satisfied such requirements as it could assume liability for.

is contracted out, the likely effect has been a significant decrease in the turnover of non-affiliated firms such as Van Marwijk.

As a result of the national court's judgment (see point (13)), SCK had to drop the 'inhuurverbod', which it did on 4 November 1993.

Course of the proceedings before the Commission

(12) Following preliminary examination of the case, the Commission considered lifting, pursuant to Article 15 (6) of Regulation No 17, immunity from fines, as laid down in Article 15 (5) of the same Regulation, since it was of the opinion that Article 85 (1) of the Treaty applied and that the application of Article 85 (3) was not justified, principally because SCK restrained its affiliated companies from hiring cranes from non-affiliated firms and excluded foreign firms from joining, or at least made it difficult for them to do so. This ban on hiring extra cranes from non-affiliated firms had far-reaching consequences, particularly in view of the involvement in SCK of large firms which regularly and frequently award contracts to crane-hire firms. After extensive discussions with FNK and SCK, both orally and in writing, the Commission adopted, under Article 15 (6), Decision 94/272/EC [1] on 13 April 1994.

Course of the proceedings before the national court

(13) In an interlocutory judgment of 11 February 1992, the President of the Utrecht District Court, in proceedings brought by Van Marwijk and others, ordered FNK to suspend application of the priority condition and the system of recommended and internal rates. SCK was ordered to suspend application of the 'inhuurverbod'. This judgment was overturned, similarly in interlocutory proceedings, on 9 July 1992 by the Amsterdam Gerechtshof (Court of Appeal), which took the view, *inter alia*, that it was not for the time being evident and beyond all doubt that the arrangements in question did not have any chance of being exempted by the Commission. Consequently, SCK, on the same day, reinstated the 'inhuurverbod'.

Following the issuing of the statement of objections on 16 December 1992, Van Marwijk and others again applied to the President of the Utrecht District Court, who ruled, in an interlocutory judgment delivered on 6 July 1993, that the ban on the hire of cranes from non-affiliated firms should be suspended, since the Commission had in the meantime made known its views as to the arrangements in question and it was accordingly clear that the ban had no chance of being exempted by the Commission. This judgment was confirmed by the Amsterdam Court of Appeal on 28 October 1993. SCK then accordingly prepared and distributed on 4 November, in order to comply with the Court order, a statement to the effect that the 'inhuurverbod' was withdrawn until such time as the Commission adopted a definitive position on the matter.

II. LEGAL ASSESSMENT

1. Article 85 (1)

Agreements between undertakings and/or decisions by associations of undertakings

FNK

(14) FNK is an association. The members of the association are undertakings engaged in the crane-hire trade. This is clear from Articles 1 and 2 of FNK's statutes and from the explanatory memorandum attached to the notification.

FNK is therefore an association of undertakings within the meaning of Article 85 (1).

(15) FNK's statutes, which form FNK's basic rules and govern the legal relations between FNK and its members, are agreements within the meaning of the said Article (see Commission Decision 88/587/EEC, *Hudson's Bay* v. *Dansk Pelsdyravlerforening* [2]).

(16) FNK's internal rules constitute a decision by an association of undertakings, in that they were adopted under the FNK statutes, and in particular Article 4 thereof. The internal rules are binding upon FNK members.

SCK

(17) SCK is a foundation constituted under Netherlands law, which carries out commercial and/or economic activities. It has as its object the certification of crane-hire companies against payment. It has no public-law basis.

SCK is therefore an undertaking within the meaning of Article 85 (1).

(18) The fact that SCK is a certification institution recognized by the Certification Council and complies with the pertinent European standards (the EN 45 000 series) does not prevent Article 85 (1) from being applicable. The fact that the SCK rules are recognized by the Certification Council does not in any case serve as authority to act in breach of competition law.

[1] OJ No L 117, 7. 5. 1994, p. 30.

[2] OJ No L 316, 23. 11. 1988, p. 43.

(19) The crane-hire firms certified by SCK are also undertakings within the meaning of Article 85 (1).

Participation in the SCK system, which involves acceptance of the statutes and rules, therefore constitutes an agreement and/or a decision by an association of undertakings within the meaning of Article 85 (1).

Restrictions of competition

Recommended and internal rates (FNK)

(20) Prior to the national court's judgment of 11 February 1992, FNK's members were obliged to charge 'reasonable' rates for the hiring of cranes. To this end, FNK published cost calculations and recommended rates based on them [1]. These rates and the rates which crane-hire companies charge each other for the hiring of extra cranes were regularly discussed by companies hiring out cranes of certain categories. As is clear from point 10, FNK was involved in those discussions. The jointly recommended prices, which may or may not have been observed in practice, make it possible to predict with reasonable certainty what the pricing policy of competitors would be. Even if, as FNK maintains, it should be left to the crane-hire companies to interpret the concept 'reasonable', which incidentally is nowhere apparent, it is still established that the reasonability of rates was discussed between the crane-hire companies and FNK. FNK's assertion that only recommended rates 'for internal use' were involved does not alter the fact that FNK members were obliged under Article 3 (b) of the internal rules to charge 'reasonable' rates. The FNK claim that crane-hire companies were 'completely free' when setting their rates is therefore inaccurate. Under Article 3 (c) of the same rules, FNK members have to apply the general conditions drawn up by FNK, in which reference is made to the FNK recommended rates. Under Article 10 (1) (d) of the statutes, expulsion may follow where a member acts in breach of, *inter alia*, the internal rules. For this reason, the system of recommended and internal rates, which is intended to give substance to the concept of 'reasonable rates', falls, in accordance with the Commission's decisions and the case-law of the Court of Justice of the European Communities, and in particular its judgments in Case 8/72, *Vereeniging van Cementhandelaren* v. *Commission* and in Case 45/85, *Verband der Sachversicherer* v. *Commission* [2], within the scope of Article 85 (1) of the Treaty.

(21) The rules may appreciably restrict competition, given the total turnover in the crane-hire business and the share thereof of FNK members (see point (6)).

Ban on the hiring of extra cranes from non-affiliated firms ('inhuurverbod') (SCK)

(22) Under Article 7 of the rules, SCK certificate-holders were not to hire cranes from firms which are not affiliated to SCK. This requirement was ultimately withdrawn on 4 November 1993, at the order of the national court.

(23) The ban on calling on firms not certified by SCK as sub-contractors restricts the freedom of action of certified firms. Whether a ban can be regarded as preventing, restricting or distorting competition within the meaning of Article 85 (1) must be judged in the legal and economic context. If such a ban is associated with a certification system which is completely open, independent and transparent and provides for the acceptance of equivalent guarantees from other systems, it may be argued that it has no restrictive effects on competition but is simply aimed at fully guaranteeing the quality of the certified goods or services.

As will be explained in more detail below, the hiring ban in this case is caught by the prohibition in Article 85 (1), since the SCK certification system is in any case not completely open — not, at any rate, until 21 October 1993 — and does not permit the acceptance of equivalent guarantees from other systems.

(24) From the start, the SCK certification system had features of a closed system. Prior to its introduction (and until 28 April 1992), FNK members were obliged under Article 3 (a) of FNK's internal rules to give preference to other members when hiring cranes. From its inception on 13 July 1984 until 18 September 1987, only FNK members were eligible for SCK certification (Article 2 of the Rules on Certification of the Crane-Hire Trade). Since, pursuant to Article 4 (a) of the FNK statutes, only crane-hire companies established in the Netherlands are admitted to FNK, foreign crane-hire

[1] Points 17 and 18 of FNK's notification.

[2] [1972] ECR 977, at paragraphs 15 to 25, [1987] ECR 405, at paragraphs 34 to 43.

companies were thereby excluded from participating in the SCK certification system. Although, in September 1987, the explicit requirement that only FNK members could be certified by SCK disappeared, in practice it continued to be more difficult for non-FNK members than for members to be admitted to certification. Thus, until January 1992, the costs of participation were considerably higher for non-members than for members (see point (9)). The firms affiliated to SCK are therefore in effect largely the same firms as the members of FNK (see point (5)). For foreign crane-hire firms, access to the certification system was further complicated by the fact that the certification requirements in particular were orientated on the Dutch situation. Thus, until 1 May 1993, it was necessary to register with the Chamber of Commerce and, until 21 October 1993, the FNK general conditions had to be applied (see point (11)).

(25) In addition, the SCK certification system does not provide for the acceptance of equivalent guarantees from other systems — neither from certification systems set up by other private-law institutions in the Community, nor from government schemes which provide for equivalent guarantees relating to safety on the crane-hire market.

By letter dated 12 July 1993, followed by further details in a letter dated 3 August 1993, SCK proposed an amendment to the 'inhuurverbod' formulated in the second indent of Article 7 of the Rules on Certification of the Crane-Hire Trade, to the effect that only cranes may be used 'which are provided with valid evidence of certification, in the form of a prior certificate from either the foundation or some other certification institution — in the Netherlands or abroad — which is qualified to certify crane-hire companies and in so doing applies demonstrably equivalent criteria'.

On 2 August 1993 the Commission informed SCK in writing that this proposal did not satisfy the Commission's objections, since it had not been established that a private-law certification system such as that introduced by SCK adds anything essential to the existing statutory requirements applying to cranes and lifting equipment. All such machines and parts thereof are covered by the abovementioned Directive 89/392/EEC. In addition, KeBoMa, the crane inspection body recognized by the Netherlands, was not regarded at the time as a qualified certification institution, with the result that cranes which had only KeBoMa approval but consequently satisfied all statutory requirements, were still caught by the ban. The proposal of FNK and SCK would therefore have had little or no effect in practice.

(26) The 'inhuurverbod' introduced on 1 January 1991 reinforced the closed nature of the certification system and *de facto* promoted mutual exclusivity between the firms concerned.

Not only did the ban restrict the freedom of action of affiliated firms and hence competition between them, but it also considerably impeded access by third parties to the Dutch market, especially by firms established in another Member State (see the first paragraph of point (11)). SCK has not demonstrated that the current certification system could not function without the abovementioned ban and other restrictions. The fact that the SCK system, after the enforced withdrawal of the said restrictions, evidently still functions, points rather to the contrary.

(27) The anti-competitive nature and consequences of the 'inhuurverbod' as a component part in the SCK certification system must be seen in the light of the frequent use of cranes hired from other crane-hire companies, the market share of firms affiliated to SCK, the position of FNK and the involvement in SCK of the largest firms using hired cranes. The presence of such firms in the organs of SCK has had the practical consequence that SCK certificate-holders are better placed to win the largest contracts. The internal instructions of, among others, Shell and Nederlandse Spoorwegen lay down that only SCK certified crane-hire companies may be used.

(28) Articles 9 and 10 of the SCK rules provide for the suspension or decertification of affiliated firms if they fail to comply with the various requirements, including the ban on hiring extra cranes from non-affiliated firms. Suspension or decertification of an affiliated firm is announced by way of an advertisement in the specialized press (see Article 8 of the SCK rules). There is an implied threat of decertification of other affiliated companies which continue to do business with the firm in question, and the general impression is created that it is better to avoid doing business with that firm. Such advertisements are thus extremely damaging to the firms concerned.

(29) While FNK requires its members to be established in the Netherlands (Article 4 (a) of its statutes), SCK's certification requirements, in the version originally notified, were entirely and exclusively

based on and geared to the situation in the Netherlands, so that firms from other Member States, in particular Belgium and Germany (see point (11)), were excluded or, at any rate, had their access to the Dutch market made considerably more difficult. On the other hand, Dutch crane-hire firms which wish to operate on, for example, the Belgian and German markets have to meet no requirements other than that they must comply with the statutory conditions prevailing in those countries. Germany and Belgium have a comparable system to that in the Netherlands for the statutory inspection of cranes.

(30) SCK's 'inhuurverbod' may appreciably restrict competition, in view of the total turnover in the crane-hire business, the market share of SCK certificate-holders and the involvement in SCK of the firms that award contracts.

Effect on trade between Member States

(31) FNK and SCK dispute that trade between Member States is affected. They cite the limited extent of cross-border operations in the industry, arguing that 'mobile cranes are by their nature not meant to be transported'. However, it is evident from the FNK handbook that Krupp cranes can travel at maximum speeds of between 63 and 78 kph (1991 handbook, page 10). An advertisement on page 124 of the FNK handbook offers for hire cranes with a lifting capacity of 12 to 400 tonnes which 'can be set up rapidly anywhere'. This means (as indeed the word 'mobile' implies) that it is perfectly possible to move mobile cranes and that the system therefore constitutes a potential restriction of intra-Community trade. This remains true even if the participants do not at present engage in intra-Community activities, as the Court of Justice held in Case 107/82 *AEG-Telefunken* v. *Commission* [1]. The fact that two of the complainants are from Belgium shows that intra-Community trade is a genuine possibility. For the reasons set out at points (21) and (30), the (potential) effect on trade is appreciable.

2. Article 85 (3)

(32) The statutes and internal rules of FNK and the statues and rules of SCK were notified to the Commission with a view to obtaining negative clearance or, alternatively, exemption under Article 85 (3).

(33) In order to qualify for exemption, FNK and SCK must, *inter alia*, show that the agreements or decisions by associations of undertakings contribute to improving the crane-hire business while allowing consumers a fair share of the resulting benefit. The improvement must entail objective and appreciable advantages such as to compensate for any disadvantages they cause in the field of competition ; see the judgment of the Court of Justice in Joined Cases 56 and 58/64, *Consten and Grundig* v. *Commission* [2].

Recommended and internal rates (FNK)

(34) It has not been established that the obligation to apply 'reasonable' rates, irrespective of the alleged aim of increasing transparency on the market, contributes to improving the crane-hire business and that consumers, in this case the firms which hire cranes, enjoy a fair share of the resulting benefit. On the contrary, according to the independent sectoral survey referred to at point (10), the recommended and internal rates applied, which were fixed by FNK in order to spell out what is meant by 'reasonable' rates, were generally above the market rates. The authors of the survey saw part of the explanation in the fact that 'on the market one has to deal with competition'.

(35) It is therefore not possible, for the reasons set out above, to grant exemption under to Article 85 (3) of the Treaty.

The 'inhuurverbod' (SCK)

(36) The question whether the 'inhuurverbod' is eligible for an exemption must be seen in the context of the certification system in which it operates.

SCK has submitted that the object of the certification system is to create transparency on the market and that the 'inhuurverbod' must be seen as the essential instrument for guaranteeing the quality of the cranes and of the service provided by the participating firms. The certification system set up by SCK is claimed to provide added value over and above the relevant requirements laid down by statute or regulation. It is also contended that the 'inhuurverbod' is the only means of effectively monitoring compliance with the requirements imposed by SCK. The 'inhuurverbod', so it is argued, is prescribed by the Certification Council's recognition criteria, which are based on the ISO standards for quality systems.

[1] [1983] ECR 3151, at paragraph 60.

[2] [1966] ECR 299, especially at p. 348.

(37) The Commission does not share SCK's view. It has not been established that the SCK certification system does provide real added value over and above the statutory rules applicable. The requirements imposed on the affiliated firms are virtually identical to the statutory ones, particularly where tax and social security provisions and compliance with safety rules are concerned (see point 11). This was explicitly recognized by SCK in its notification. SCK observed in particular that 'it intends only to ensure that a certified firm can demonstrate that it meets the statutory requirements' (1).

It is the responsibility of the authorities to ensure compliance with such statutory provisions by all firms, whether or not they participate in the system; see the judgment of the Court of First Instance of the European Communities in Case T-30/89, Hilti AG v. Commission (2). The complainants have handed over documents to the Commission from which it is clear that firms which do not participate in the SCK certification system can likewise demonstrate that they meet the statutory requirements. The Commission is entirely convinced that the restrictions imposed on affiliated firms and the disadvantages which result for non-affiliated firms clearly outweigh any advantages claimed by SCK.

Most of the safety requirements which SCK imposes for certifying a crane-hire firm are also imposed by the safety decrees based on the Law on Conditions at the Workplace (Arbowet) and by the various ministerial regulations. Official supervision of compliance with such provisions is carried out by KeBoMa and the Labour Inspectorate in particular. Similarly, most of the non-safety-related requirements which SCK imposes, such as those relating to the payment of tax and social security contributions, registration with the Chamber of Commerce, third-party insurance, creditworthiness and application of the collective labour agreement, are already covered by statutory provisions. SCK goes beyond statute law by imposing requirements regarding the manner of conducting business, but that alone is insufficient to justify the restrictions of competition imposed.

Even if the advantages claimed by SCK for the certification system should outweigh the disadvantages thereof for non-affiliated firms, it has still not been shown that the SCK certification system could not function without the 'inhuurverbod'. The system has in fact functioned without the 'inhuurverbod' since 4 November 1993 (see point (11)). The 'inhuurverbod' is, accordcing to SCK, prescribed by paragraph 2.5 of the Certification Council's recognition criteria, which is derived from the ISO standards for quality systems. Yet paragraph 2.5 offers three ways of monitoring the quality of the supplier firm, in this case the crane-hire firm hiring extra cranes. It makes it possible, *inter alia*, for the latter itself, as the principal, to judge on its own responsibility whether another crane-hire company called in meets the statutory quality requirements — for example, by the submission of testing certificates, a lifting certificate, etc. In this way, a crane-hire company which, for whatever reasons, does not wish to be affiliated to SCK still has access to the market in principle, and quality does not suffer.

(38) The fact that the Commission's policy on certification allows scope for private-law certification systems that are designed to provide supplementary monitoring of compliance with statutory provisions cannot detract from the principle that the details of such systems must conform to the competition rules laid down in the Treaty. Restrictions on competition that are caught by Article 85 (1) cannot therefore be justified solely on the grounds that the introduction of a certification system necessarily fits in with the Commission's certification policy.

(39) It is therefore not possible, for the reasons set out above, to grant exemption under Article 85 (3) of the Treaty.

3. Article 3 of Regulation No 17

(40) Under Article 3 (1) of Regulation No 17, the Commission, where it finds that there is infringement of Article 85, may by decision require the undertakings concerned to bring such infringement to an end.

4. Article 15 of Regulation No 17

(41) Under Article 15 (2) (a) of Regulation No 17, the Commission may by decision impose of undertakings or associations of undertaking fines ranging from ECU 1 000 to ECU 1 000 000 or a sum not exceeding 10 percent of the turnover in the preceding business year of each of the undertakings

(1) Point 28 of SCK's notification. See also points 26 and 27 of that notification. Evidently, SCK is now distancing itself from its own views (Answer to the statement of objections of 21 October 1994, p. 19, footnote 3).

(2) [1991] ECR II-1439, at paragraph 118.

participating in the infringement where, either intentionally or negligently, they infringe Article 85. In fixing the amount of the fine, the Commission must have regard to all relevant factors, in particular the gravity and the duration of the infringement.

(42) Under Article 15 (5) of the said Regulation, no fines may be imposed in respect of activities associated with agreements and concerted practices after notification to the Commission and before the Commission's decision under Article 85 (3). In Decision 94/272/EC, mentioned above, however, the Commission, acting under Article 15 (6) of Regulation No 17, declared this provision to be inapplicable in the present case.

(43) The Commission is of the opinion that in the present case a fine should be imposed on FNK with regard to the system of recommended and internal rates and on SCK with regard to the 'inhuurverbod'.

(44) FNK and SCK cannot have been unaware of the fact that the offending behaviour served to restrict competition, or at any rate has that effect.

(45) In determining the amount of the fine, the Commission takes account in particular of the following factors:

— the said provisions artificially control or restrict the Netherlands crane-hire market and thus distort the Community market in crane-hire,

— FNK and SCK which are linked closely to each other, comprise a great many undertakings which occupy together an important part of the crane-hire market,

— the restrictions were dropped only after a court order to that effect.

(46) FNK's rules on the application of 'reasonable rates' were introduced on 15 December 1979 and were in force until 28 April 1992. The FNK rules were notified to the Commission on 6 February 1992. Since Decision 94/272/EC withdrawing immunity, from fines covered only the prohibition on hiring extra cranes and not the FNK's 'reasonable' tariff system, the fine imposed on FNK can only cover the period up to 6 February 1992. The 'inhuurverbod' in the SCK rules was introduced on 1 January 1991 and declared inapplicable between 17 February and 9 July 1992 and again with effect from 4 November 1993, following rulings by the national court. The period between notification of the SCK agreements on 15 January 1992 and the notification on 22 April 1994 to SCK of Decision 94/272/EC is not taken into account for determining the amount of the fines imposed on SCK,

HAS ADOPTED THIS DECISION:

Article 1

FNK has infringed Article 85 (1) of the EC Treaty by applying a system of recommended and internal rates between 15 December 1979 and 28 April 1992, which enabled its members to predict each other's pricing policy.

Article 2

FNK shall terminate the infringement referred to in Article 1 forthwith, if it has not already done so.

Article 3

SCK has infringed Article 85 (1) of the EC Treaty by prohibiting its affiliated firms during the period 1 January 1991 to 4 November 1993, with the exception of the period between 17 February and 9 July 1992, from hiring cranes from firms not affiliated to SCK, as a result of which, given the fact that the SCK certification system in the said period did not meet the criterion of openness and did not allow the acceptance of equivalent guarantees from other systems, access to the Netherlands crane-hire business by crane-hire companies not affiliated to SCK, and in particular foreign crane-hire companies, was impeded.

Article 4

SCK shall terminate the infringement referred to in Article 3 forthwith, if it has not already done so.

Article 5

1. A fine of ECU 11 500 000 is imposed on FNK in respect of the infringement set out in Article 1.

2. A fine of ECU 300 000 is imposed on SCK in respect of the infringement set out in Article 3.

Article 6

The fines referred to in Article 5 shall be paid in ecus within three months of the date of notification of this Decision into the following bank account of the Commission of the European Communities:

310-0933000-34
Bank Brussel Lambert
Europees Agentschap
Rondpunt Schuman 5
B-1040 Brussel.

On expiry of that period, interest shall automatically be payable at the rate charged by the European Monetary Institute on its ecu operations on the first working day of the month in which this Decision was adopted, plus 3,5 percentage points, namely at 9,25 %.

Article 7

This Decision is addressed to:

1. Stichting Certificatie Kraanverhuurbedrijf
   Postbus 551
   NL-4100 AH Culemborg.
2. Federatie van Nederlandse Kraanverhuurbedrijven
   Postbus 312
   NL-4100 AH Culemborg.

This Decision is shall be enforceable pursuant to Article 192 of the EC Treaty.

Done at Brussels, 29 November 1995.

For the Commission
Karel VAN MIERT
Member of the Commission