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

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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 2938/95

of 20 December 1995

fixing the export refunds on white sugar and raw sugar exported in its unaltered state

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector [1], as last amended by Regulation (EC) No 1101/95 [2], and in particular point (a) of the first subparagraph of Article 19 (4) thereof,

Whereas Article 19 of Regulation (EEC) No 1785/81 provides that the difference between quotations or prices on the world market for the products listed in Article 1 (1) (a) of that Regulation and prices for those products within the Community may be covered by an export refund;

Whereas Regulation (EEC) No 1785/81, provides that when refunds on white and raw sugar, undenatured and exported in its unaltered state are being fixed account must be taken of the situation on the Community and world markets in sugar and in particular of the price and cost factors set out in Article 17a of that Regulation; whereas the same Article provides that the economic aspect of the proposed exports should also be taken into account;

Whereas the refund on raw sugar must be fixed in respect of the standard quality; whereas the latter is defined in Article 1 of Council Regulation (EEC) No 431/68 of 9 April 1968 determining the standard quality for raw sugar and fixing the Community frontier crossing point for calculating cif prices for sugar [3], as amended by Regulation (EC) No 3290/94 [4]; whereas, furthermore, this refund should be fixed in accordance with Article 17a (4) of Regulation (EEC) No 1785/81; whereas candy sugar is defined in Commission Regulation (EC) No 2135/95 of 7 September 1995 laying down detailed rules of application for the grant of export refunds in the sugar sector [5]; whereas the refund thus calculated for sugar containing added flavouring or colouring matter must apply to their sucrose content and, accordingly, be fixed per 1 % of the said content;

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

Whereas, in special cases, the amount of the refund may be fixed by other legal instruments;

Whereas Council Regulation (EEC) No 990/93 [6], as amended by Regulation (EC) No 1380/95 [7], 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 [8]; whereas account should be taken of this fact when fixing the refunds;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92 [9], as last amended by Regulation (EC) No 150/95 [10], 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 [11], as last amended by Regulation (EC) No 2853/95 [12];

Whereas the refund must be fixed every two weeks; whereas it may be altered in the intervening period;

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

[1] OJ No L 177, 1. 7. 1981, p. 4.
[2] OJ No L 110, 17. 5. 1995, p. 1.
[3] OJ No L 89, 10. 4. 1968, p. 3.
[4] OJ No L 349, 31. 12. 1994, p. 105.
[5] OJ No L 214, 8. 9. 1995, p. 16.
[6] OJ No L 102, 28. 4. 1993, p. 14.
[7] OJ No L 138, 21. 6. 1995, p. 1.
[8] OJ No L 297, 9. 12. 1995, p. 1.
[9] OJ No L 387, 31. 12. 1992, p. 1.
[10] OJ No L 22, 31. 1. 1995, p. 1.
[11] OJ No L 108, 1. 5. 1993, p. 106.
[12] OJ No L 299, 12. 12. 1995, p. 1.

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 21 December 1995.

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

to the Commission Regulation of 20 December 1995 fixing the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Amount of refund (3)
	— ECU/100 kg —
1701 11 90 100	38,63 (1)
1701 11 90 910	38,65 (1)
1701 11 90 950	(2)
1701 12 90 100	38,63 (1)
1701 12 90 910	38,65 (1)
1701 12 90 950	(2)
	— ECU/1 % of sucrose x 100 kg —
1701 91 00 000	0,4199
	— ECU/100 kg —
1701 99 10 100	41,99
1701 99 10 910	42,02
1701 99 10 950	42,02
	— ECU/1 % of sucrose x 100 kg —
1701 99 90 100	0,4199

(1) Applicable to raw sugar with a yield of 92 %; if the yield is other than 92 %, the refund applicable is calculated in accordance with the provisions of Article 17a (4) of Regulation (EEC) No 1785/81.

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

(3) 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.

COMMISSION REGULATION (EC) No 2939/95

of 20 December 1995

fixing the maximum export refund for white sugar for the 21st partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1813/95

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector [1], as last amended by Regulation (EC) No 1101/95 [2], and in particular the second subparagraph of Article 17 (5) (b) thereof,

Whereas Commission Regulation (EC) No 1813/95 of 26 July 1995 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar [3], requires partial invitations to tender to be issued for the export of this sugar;

Whereas, pursuant to Article 9 (1) of Regulation (EC) No 1813/95 a maximum export refund shall be fixed, as the case may be, account being taken in particular of the state and foreseeable development of the Community and world markets in sugar, for the partial invitation to tender in question;

Whereas, following an examination of the tenders submitted in response to the 21st partial invitation to tender, the provisions set out in Article 1 should be adopted;

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 Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

1. For the 21st partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1813/95 the maximum amount of the export refund is fixed at ECU 45,036 per 100 kilograms.

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.

Article 2

This Regulation shall enter into force on 21 December 1995.

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

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[1] OJ No L 177, 1. 7. 1981, p. 4.
[2] OJ No L 110, 17. 5. 1995, p. 1.
[3] OJ No L 175, 27. 7. 1995, p. 12.
[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.

COMMISSION REGULATION (EC) No 2940/95

of 20 December 1995

fixing the representative prices and the additional import duties for molasses in the sugar sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the market in sugar (1), as last amended by Regulation (EC) No 1101/95 (2),

Having regard to Commission Regulation (EC) No 1422/95 of 23 June 1995 laying down detailed rules of application for imports of molasses in the sugar sector and amending Regulation (EEC) No 785/68 (3), and in particular Articles 1 (2) and 3 (1) thereof,

Whereas Regulation (EC) No 1422/95 stipulates that the cif import price for molasses, hereinafter referred to as the 'representative price', should be set in accordance with Commission Regulation (EEC) No 785/68 (4); whereas that price should be fixed for the standard quality defined in Article 1 of the above Regulation;

Whereas the representative price for molasses is calculated at the frontier crossing point into the Community, in this case Amsterdam; whereas that price must be based on the most favourable purchasing opportunities on the world market established on the basis of the quotations or prices on that market adjusted for any deviations from the standard quality; whereas the standard quality for molasses is defined in Regulation (EEC) No 785/68;

Whereas, when the most favourable purchasing opportunities on the world market are being established, account must be taken of all available information on offers on the world market, on the prices recorded on important third-country markets and on sales concluded in international trade of which the Commission is aware, either directly or through the Member States; whereas, under Article 7 of Regulation (EEC) No 785/68, the Commission may for this purpose take an average of several prices as a basis, provided that this average is representative of actual market trends;

Whereas the information must be disregarded if the goods concerned are not of sound and fair marketable quality or if the price quoted in the offer relates only to a small quantity that is not representative of the market; whereas offer prices which can be regarded as not representative of actual market trends must also be disregarded;

Whereas, if information on molasses of the standard quality is to be comparable, prices must, depending on the quality of the molasses offered, be increased or reduced in the light of the results achieved by applying Article 6 of Regulation (EEC) No 785/68;

Whereas a representative price may be left unchanged by way of exception for a limited period if the offer price which served as a basis for the previous calculation of the representative price is not available to the Commission and if the offer prices which are available and which appear not to be sufficiently representative of actual market trends would entail sudden and considerable changes in the representative price;

Whereas where there is a difference between the trigger price for the product in question and the representative price, additional import duties should be fixed under the conditions set out in Article 3 of Regulation (EC) No 1422/95; whereas should the import duties be suspended pursuant to Article 5 of Regulation (EC) No 1422/95, specific amounts for these duties should be fixed;

Whereas application of these provisions will have the effect of fixing the representative prices and the additional import duties for the products in question as set out in the Annex to this Regulation;

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

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and the additional duties applying to imports of the products referred to in Article 1 of Regulation (EC) No 1422/95 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 21 December 1995.

(1) OJ No L 177, 1. 7. 1981, p. 4.
(2) OJ No L 110, 17. 5. 1995, p. 1.
(3) OJ No L 141, 24. 6. 1995, p. 12.
(4) OJ No L 145, 27. 6. 1968, p. 12.

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

fixing the representative prices and additional import duties applying to imports of molasses in the sugar sector

CN code	Amount of the representative price in ECU per 100 kg net of the product in question	Amount of the additional duty in ECU per 100 kg net of the product in question	Amount of the duty to be applied to imports in ECU per 100 kg net of the product in question in the event of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 (2)
1703 10 00 (1)	9,75	—	0,00
1703 90 00 (1)	10,39	—	0,00

(1) For the standard quality as defined in Article 1 of Regulation (EEC) No 785/68.

(2) This amount replaces, in accordance with Article 5 of Regulation (EC) No 1422/95, the rate of the Common Customs Tariff duty fixed for these products.

COMMISSION REGULATION (EC) No 2941/95

of 20 December 1995

amending Regulation (EC) No 2763/94 opening and providing for the administration of Community tariff quotas for certain agricultural products originating in the African, Caribbean and Pacific (ACP) States

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 715/90 of 5 March 1990 on the arrangements applicable to agricultural products and certain goods resulting from the processing of agricultural products originating in the ACP States or in the overseas countries and territories (OCT) (1), as last amended by Regulation (EC) No 2484/94 (2), and in particular Article 27 thereof,

Whereas, pursuant to Regulation (EC) No 2763/94 (3), as last amended by Regulation (EC) No 895/95 (4), the Commission opened Community tariff quotas for certain agricultural products for 1995 at reduced or 0 % rate, among others, for tomatoes in a fresh or refrigerated state, falling under CN code ex 0702 00 10 ; whereas, following the result of the GATT negotiations, in as much as the CN and Taric codes as well as the rate foreseen for the modifications in question will be applicable from 1 January 1996, it is appropriate to amend this Regulation ;

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

HAS ADOPTED THIS REGULATION :

Article 1

The Table and Annex shown in Regulation (EC) No 2763/94 are hereby amended as follows :

'Order No	CN code	Taric subdivision	Description	Volume (t)	Rate of duty (%)
09.1601	0702 00 15	*19	Tomatoes, other than cherry tomatoes, fresh or refrigerated, from 15 November to 30 April of following year	2 000	4,1
		*29			4,1 + 1,8 ECU/100 kg/net
		*39			4,1 + 3,6 ECU/100 kg/net
		*49			4,1 + 5,4 ECU/100 kg/net
		*59			4,1 + 7,2 ECU/100 kg/net
		*69			4,1 + 34,7 ECU/100 kg/net
	0702 00 20	*13			4,1
		*63			
		*17			4,1 + 2,3
		*67			ECU/100 kg/net
		*23			4,1 + 4,7
		*73			ECU/100 kg/net
		*27			4,1 + 7
		*77			ECU/100 kg/net
		*33			4,1 + 9,4
		*83			ECU/100 kg/net
		*37			4,1 + 34,7
		*87			ECU/100 kg/net

(1) OJ No L 84, 30. 3. 1990, p. 85.
(2) OJ No L 265, 15. 10. 1994, p. 3.
(3) OJ No L 294, 15. 11. 1994, p. 6.
(4) OJ No L 92, 25. 4. 1995, p. 10.

Order No	CN code	Taric subdivision	Description	Volume (t)	Rate of duty (%)
09.1601 *(cont'd)*	0702 00 45	*12			4,1
		*32			
		*52			
		*14			4,1 + 1,3
		*34			ECU/100 kg/net
		*54			
		*17			4,1 + 2,7
		*37			ECU/100 kg/net
		*57			
		*22			4,1 + 4
		*42			ECU/100 kg/net
		*62			
		*24			4,1 + 5,4
		*44			ECU/100 kg/net
		*64			
		*27			4,1 + 34,7
		*47			ECU/100 kg/net
		*67			
	0702 00 50	*19			4,1
		*29			4,1 + 1,4 ECU/100 kg/net
		*39			4,1 + 2,9 ECU/100 kg/net
		*49			4,1 + 4,3 ECU/100 kg/net
		*59			4,1 + 5,8 ECU/100 kg/net
		*69			4,1 + 34,7 ECU/100 kg/net
09.1613	0702 00 15	*11	Cherry tomatoes, fresh or refrigerated, from 15 November to 30 April of following year		0 (1)
		*21			
		*31			
		*41			
		*51			
		*61			
	0702 00 20	*11			
		*15			
		*21			
		*25			
		*31			
		*35			
		*61			
		*65			
		*71			
		*75			
		*81			
		*85			

Order No	CN code	Taric subdivision	Description	Volume (t)	Rate of duty (%)
09.1613 *(cont'd)*	0702 00 45	*11			
		*13			
		*16			
		*21			
		*23			
		*26			
		*31			
		*33			
		*36			
		*41			
		*43			
		*46			
		*51			
		*53			
		*56			
		*61			
		*63			
		*66			
	0702 00 50	*11			
		*21			
		*31			
		*41			
		*51			
		*61			

(1) The additional specific rate is applicable.'

Article 2

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

It shall apply from 1 January 1996.

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

Done at Brussels, 20 December 1995.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION REGULATION (EC) No 2942/95

of 20 December 1995

opening and providing for the administration of Community tariff quotas for certain agricultural products originating in the African, Caribbean and Pacific States

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 715/90 of 5 March 1990 on the arrangements applicable to agricultural products and certain goods resulting from the processing of agricultural products and certain goods resulting from the processing of agricultural products originating in the ACP States or in the overseas countries and territories (1), as last amended by Regulation (EC) No 2484/94 (2), and in particular Article 27 thereof,

Whereas Article 16 of Regulation (EEC) No 715/90 provide for the opening by the Community of quotas for imports of the following:

— 1 000 tonnes of fresh apples falling within CN code 0808 10, for the period 1 January to 31 December,

— 1 000 tonnes of fresh pears falling within CN codes 0808 20 10 to 0808 20 39, for the period 1 January to 31 December,

— 400 tonnes of seedless table grapes falling within CN code ex 0806 10 29 and ex 0806 10 69 for the period 1 December to 31 January of each year,

originating in the countries in question;

Whereas following the results of the GATT negotiations, in as much as the CN and Taric as well as the rate foreseen for modifications in question will be applicable from 1 January 1996;

Whereas it is in particular necessary to ensure that all Community importers enjoy equal and uninterrupted access to the abovementioned quotas and that the rates laid down for those quotas should apply consistently to all imports of the products concerned into all Member States until the quotas have been used up;

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

HAS ADOPTED THIS REGULATION:

Article 1

The customs duties applicable to imports into the Community of the following products originating in the African Caribbean and Pacific States shall be suspended at the levels during the periods indicated and within the limits of the Community tariff quotas as shown below:

Order No	CN code	Taric subdivision	Description	Volume (t)	Rate of duty (%)
09.1610	0808 10 10		Apples, fresh from 1 January to 31 December 1995	1 000	4,2 MIN 0,2 ECU/100 kg/net
	0808 10 51	*10			3,6
		*20			3,8 + 1,2 ECU/100 kg/net
		*30			3,8 + 2,5 ECU/100 kg/net
		*40			3,8 + 3,7 ECU/100 kg/net
		*50			3,8 + 4,9 ECU/100 kg/net
		*60			3,8 + 28,7 ECU/100 kg/net

(1) OJ No L 84, 30. 3. 1990, p. 85.
(2) OJ No L 265, 15. 10. 1994, p. 3.

Order No	CN code	Taric subdivision	Description	Volume (t)	Rate of duty (%)
09.1610 *(cont'd)*	0808 10 53	*10			3,6
		*20			3,8 + 1,2 ECU/100 kg/net
		*30			3,8 + 2,5 ECU/100 kg/net
		*40			3,8 + 3,7 ECU/100 kg/net
		*50			3,8 + 4,9 ECU/100 kg/net
		*60			3,8 + 28,7 ECU/100 kg/net
	0808 10 59	*10			3,6
		*20			3,8 + 1,2 ECU/100 kg/net
		*30			3,8 + 2,5 ECU/100 kg/net
		*40			3,8 + 3,7 ECU/100 kg/net
		*50			3,8 + 4,9 ECU/100 kg/net
		*60			3,8 + 28,7 ECU/100 kg/net
	0808 10 61	*10			2,7
		*20			2,7 + 1,2 ECU/100 kg/net
		*30			2,7 + 2,5 ECU/100 kg/net
		*40			2,7 + 3,7 ECU/100 kg/net
		*50			2,7 + 4,9 ECU/100 kg/net
		*60			2,7 + 6,2 ECU/100 kg/net
		*70			2,7 + 7,4 ECU/100 kg/net
		*80			2,7 + 28,7 ECU/100 kg/net
	0808 10 63	*10			2,7
		*20			2,7 + 1,2 ECU/100 kg/net
		*30			2,7 + 2,5 ECU/100 kg/net
		*40			2,7 + 3,7 ECU/100 kg/net
		*50			2,7 + 4,9 ECU/100 kg/net
		*60			2,7 + 6,2 ECU/100 kg/net
		*70			2,7 + 7,4 ECU/100 kg/net
		*80			2,7 + 28,7 ECU/100 kg/net

Order No	CN code	Taric subdivision	Description	Volume (t)	Rate of duty (%)
09.1610 *(cont'd)*	0808 10 69	*10			2,7
		*20			2,7 + 1,2 ECU/100 kg/net
		*30			2,7 + 2,5 ECU/100 kg/net
		*40			2,7 + 3,7 ECU/100 kg/net
		*50			2,7 + 4,9 ECU/100 kg/net
		*60			2,7 + 6,2 ECU/100 kg/net
		*70			2,7 + 7,4 ECU/100 kg/net
		*80			2,7 + 28,7 ECU/100 kg/net
	0808 10 71	*10			2,5
		*20			2,8 + 1 ECU/100 kg/net
		*30			2,8 + 2 ECU/100 kg/net
		*40			2,8 + 3 ECU/100 kg/net
		*50			2,8 + 4 ECU/100 kg/net
		*60			2,8 + 27,7 ECU/100 kg/net
	0808 10 73	*10			2,5
		*20			2,8 + 1 ECU/100 kg/net
		*30			2,8 + 2 ECU/100 kg/net
		*40			2,8 + 3 ECU/100 kg/net
		*50			2,8 + 4 ECU/100 kg/net
		*60			2,8 + 27,7 ECU/100 kg/net
	0808 10 79	*10			2,5
		*20			2,8 + 1 ECU/100 kg/net
		*30			2,8 + 2 ECU/100 kg/net
		*40			2,8 + 3 ECU/100 kg/net
		*50			2,8 + 4 ECU/100 kg/net
		*60			2,8 + 27,7 ECU/100 kg/net
	0808 10 92	*10			6,1
		*20			6,5 + 1 ECU/100 kg/net
		*30			6,5 + 2 ECU/100 kg/net
		*40			6,5 + 3 ECU/100 kg/net
		*50			6,5 + 4 ECU/100 kg/net
		*60			6,5 + 27,7 ECU/100 kg/net

Order No	CN code	Taric subdivision	Description	Volume (t)	Rate of duty (%)
09.1610 *(cont'd)*	0808 10 94	*10			6,1
		*20			6,5 + 1 ECU/100 kg/net
		*30			6,5 + 2 ECU/100 kg/net
		*40			6,5 + 3 ECU/100 kg/net
		*50			6,5 + 4 ECU/100 kg/net
		*60			6,5 + 27,7 ECU/100 kg/net
	0808 10 98	*10			6,1
		*20			6,5 + 1 ECU/100 kg/net
		*30			6,5 + 2 ECU/100 kg/net
		*40			6,5 + 3 ECU/100 kg/net
		*50			6,5 + 4 ECU/100 kg/net
		*60			6,5 + 27,7 ECU/100 kg/net
09.1612	0808 20 10		Pears, fresh from 1 January to 31 December 1995	1 000	4,2 MIN 0,2 ECU/100 kg/net
	0808 20 31	*11			4,8
		*12			4,8 + 1,1 ECU/100 kg/net
		*13			4,8 + 2,2 ECU/100 kg/net
		*14			4,8 + 3,4 ECU/100 kg/net
		*15			4,8 + 4,5 ECU/100 kg/net
		*16			4,8 + 28,7 ECU/100 kg/net
	0808 20 37	*11			2,3
		*12			2,3 + 1,1 ECU/100 kg/net
		*13			2,3 + 2,2 ECU/100 kg/net
		*14			2,3 + 3,4 ECU/100 kg/net
		*15			2,3 + 4,5 ECU/100 kg/net
		*16			2,3 + 5,6 ECU/100 kg/net
		*17			2,3 + 6,7 ECU/100 kg/net
		*18			2,3 + 28,7 ECU/100 kg/net
	0808 20 41	*11			2,3 MIN 0,9 ECU/100 kg/net
		*19			
		*51			2,1 MIN 0,8 ECU/100 kg/net
		*59			

Order No	CN code	Taric subdivision	Description	Volume (t)	Rate of duty (%)
09.1612 *(cont'd)*	0808 20 47	*10			2,1
		*20			2,3 + 1 ECU/100 kg/net
		*30			2,3 + 2 ECU/100 kg/net
		*40			2,3 + 3 ECU/100 kg/net
		*50			2,3 + 4 ECU/100 kg/net
		*60			2,3 + 27,7 ECU/100 kg/net
	0808 20 51	*10			4,1
		*20			4,6 + 1 ECU/100 kg/net
		*30			4,6 + 2 ECU/100 kg/net
		*40			4,6 + 3 ECU/100 kg/net
		*50			4,6 + 4 ECU/100 kg/net
		*60			4,6 + 27,7 ECU/100 kg/net
	0808 20 57	*10			6
		*20			6 + 0,9 ECU/100 kg/net
		*30			6 + 1,7 ECU/100 kg/net
		*40			6 + 2,6 ECU/100 kg/net
		*50			6 + 3,4 ECU/100 kg/net
		*60			6 + 27,7 ECU/100 kg/net
	0808 20 67	*10			6
		*20			6 + 1,1 ECU/100 kg/net
		*30			6 + 2,2 ECU/100 kg/net
		*40			6 + 3,3 ECU/100 kg/net
		*50			6 + 4,4 ECU/100 kg/net
		*60			6 + 27,7 ECU/100 kg/net
09.1615	ex 0806 10 29	*11	Seedless table grapes, from 1 December to 31 January	400	0
	ex 0806 10 69	*81			

Article 2

The tariff quotas referred to in Article 1 shall be managed by the Commission, which may take any appropriate administrative measures to ensure that they are managed efficiently.

Article 3

Where an importer preserves an entry for release for free circulation in a Member States in respect of a product covered by this Regulation, applying to take advantage of the preferential arrangements, and the entry is accepted by the customs authorities, the Member State concerned shall, by notifying the Commission, draw an amount corresponding to requirements from the quota.

Requests for drawings, indicating the data on which the entries were accepted, must be sent to the Commission without delay.

Drawings shall be granted by the Commission in chronological order of the dates on which the customs authorities of the Member States concerned accepted the entries for release for free circulation to the extent that the available balance so permits.

If a Member State does not use a drawing in full it shall return any unused portion of the corresponding quota as soon as possible.

If the quantities requested are greater than the available balance of the quota, the balance shall be allocated among applicants *pro rata*. The Commission shall inform the Member States of the drawings made.

Article 4

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

Article 5

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

Article 6

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

It shall apply with effect from 1 December 1995 for quotas under order No 09.1615 (CN and Taric codes ex 0806 10 29* 11 and ex 0806 10 69* 81) and from 1 January 1996 for quotas under order Nos 09.1610 and 09.1612.

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

Done at Brussels, 20 December 1995.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION REGULATION (EC) No 2943/95

of 20 December 1995

setting out detailed rules for applying Council Regulation (EC) No 1627/94 laying down general provisions concerning special fishing permits

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1627/94 of 27 June 1994 laying down general provisions concerning special fishing permits (1), and in particular Articles 13 (2) and 16 thereof,

Whereas detailed rules should be laid down for the transmission to the Commission of relevant information concerning Community fishing vessels with a view to the issue of special fishing permits, as well as criteria for the Commission to use in considering permit applications;

Whereas, where an infringement is committed by a fishing vessel flying the flag of a third country, the owner of that vessel should be given an opportunity to express his views on the measures taken;

Whereas a cooperation procedure among the competent authorities of the Member States needs to be established to facilitate the exchange of information in cases where Community rules have not been complied with;

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

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down detailed rules for applying Articles 7, 8, 10 and 13 of Regulation (EC) No 1627/94.

CHAPTER 1

Authorization to fish in Community fishing waters and on the high seas

Article 2

1. Member States shall transmit to the Commission, at least one month before the start of fishing operations, a draft list of the Community fishing vessels likely to be exercising a fishing activity subject to the terms and conditions set out in Article 7 of Regulation (EC) No 1627/94 as well as the information which will make it possible to check that the list complies with the relevant provisions of Community law, including data for evaluating fishing effort.

2. The list of vessels shall include in particular the information referred to in Annex I to Regulation (EC) No 1627/94.

3. The list of vessels and the supplementary information shall be supplied to the Commission preferably by computerized data transmission or by electronic mail.

4. The deadline period referred to in Article 7 (2) of Regulation (EC) No 1627/94 shall commence on the date of receipt of all the relevant information.

Article 3

1. Member States shall provide the Commission with the final list of vessels which have received a special permit within 30 days at the latest of the permits being issued.

The definitive list shall remain valid until expressly or implicitly revoked by the Member State.

2. In case of modifications to the definitive list, the information required under Article 2 (1) must be received by the Commission at least 12 working days before the start of fishing operations.

3. Member States shall immediately notify the Commission of any special permits withdrawn or suspended, in whole or in part, giving the reasons for such action.

Article 4

By 15 November each year at the latest, the Member States shall send the Commission information about specific national permit schemes as referred to in Article 8 of Regulation (EC) No 1627/94 where they have established such schemes.

CHAPTER 2

Withdrawal and suspension of permits issued to third-country vessels

Article 5

Member States shall notify any infringements detected as referred to in Article 10 (1) of Regulation (EC) No 1627/94, indicating as a minimum the name of the vessel involved, its external marking, its international radio call sign, the third country of the flag flown, the names and addresses of the master and the owner, a detailed statement of the facts of the case, details of any judicial, administrative or other action undertaken and any final decision in law concerning the infringement.

(1) OJ No L 171, 6. 7. 1994, p. 7.

Article 6

1. The Commission shall consider all notified infringements committed by third-country vessels, assessing the seriousness of each case in the light of judicial and administrative decisions by the competent authorities in the Member States and in particular of the commercial benefits which the vessel owner may have enjoyed and the impact of the infringement on fishery resources.

In respect of the vessel concerned, and without prejudice to the provisions of any fishery agreement with the third-country flag state, the Commission may — after giving the vessel owner the opportunity to express his views on the alleged infringement — decide on the basis of the seriousness of the case to:

— suspend the special fishing permit,

— withdraw the special fishing permit,

— remove the vessel concerned from the list of vessels eligible for a special fishing permit in the following calendar year.

2. The Commission's decision may not be taken within the 14-day period following receipt by the owner of notification of the alleged infringement.

CHAPTER 3

General and final provisions

Article 7

1. The competent authorities detecting an infringement shall provide all necessary assistance to the authorities of the flag Member State to enable them to start the procedure referred to in Article 13 (1) of Regulation (EC) No 1627/94.

2. Such assistance may consist, in particular, in transmitting documentary evidence, providing access to proof of the infringement and facilitating the appearance of their officers as witnesses in court proceedings in the flag Member State.

3. The competent authorities detecting an infringement shall inform the authorities of the flag Member State about any vessel not complying with requirements imposed on it under penalties resulting from an infringement.

4. Member States shall inform the Commission and the flag Member State of any judicial, administrative or other action undertaken and any final decision in law in respect of vessels flying that flag which are found to have committed an infringement.

Article 8

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, 20 December 1995.

For the Commission

Emma BONINO

Member of the Commission

COMMISSION REGULATION (EC) No 2944/95

of 18 December 1995

amending Regulation (EC) No 1153/95 adopting a protective measure applying to imports of garlic originating in China

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 28 (2) thereof,

Whereas Commission Regulation (EC) No 1153/95 (3) limits the issue of import licences to a maximum monthly quantity for the period 1 June 1995 to 31 May 1996; whereas the Regulation lays down that, should this quantity be exceeded, the Commssion is to lay down the conditions under which licences may be issued;

Whereas in September 1995 the quantities for which import licences were sought in the Community exceeded the quantity fixed for the month in question; whereas, Regulation (EC) No 2141/95 (4), the Commission established the extent to which import licences could be issued in respect of these applications;

Whereas, as a result of an incorrect application of Regulation (EC) No 2141/95, import licences were issued for a quantity far greater than that allowed by that Regulation; whereas the size of the excess is such that it cannot but have adverse effects on the Community market in garlic; whereas it is therefore necessary to reduce the quantities fixed for the months of January to May 1996 by the amount of the excess quantity, by amending Regulation (EC) No 1153/95,

HAS ADOPTED THIS REGULATION:

Article 1

In the Annex to Regulation (EC) No 1153/95, for the months January to May in the column entitled 'Sub-period', the figure '1 000' in the column entitled 'Quantity' is replaced by the figure '955'.

Article 2

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

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

Done at Brussels, 18 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 116, 23. 5. 1995, p. 23.
(4) OJ No L 214, 8. 9. 1995, p. 29.

COMMISSION REGULATION (EC) No 2945/95

of 20 December 1995

amending Regulation (EEC) No 2807/83 laying down detailed rules for recording information on Member States' catches of fish

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2847/93 [1] of 12 October 1993, as amended by Council Regulation (EC) No 2870/95 [2], establishing a control system applicable to the common fisheries policy, and in particular Article 19e (5) thereof,

Whereas, in accordance with Article 19e (5) of Regulation (EEC) No 2847/93, detailed rules should be laid down for recording fishing effort in a logbook so that the system for the management of fishing effort referred to in Council Regulation (EC) No 685/95 of 27 March 1995 on the management of the fishing effort relating to certain Community fishing areas and resources [3] can be implemented;

Whereas, where an authorized fishing vessel crosses a fishery without carrying out fishing activities this information must be recorded in the logbook;

Whereas in the period before the introduction of a new logbook whereas action should be taken therefore, as a temporary measure, to supplement the provisions on the recording of the information concerned in the existing logbook for masters of vessels who are required to record fishing effort deployed in a fishery from 1 January 1996;

Whereas when the transmission by masters of radio communications concerning vessel movements to the competent authorities are made by radio they must be made via a radio station appearing on the list of radio stations approved by the Commission;

Whereas, in order to facilitate the transmission of communications by telex, fax, telephone or radio to the authorities responsible for monitoring, a list of such authorities and their telex, telephone and fax numbers should be drawn up;

Whereas the measures taken in this Regulation are in accordance with the opinion of the Management Committee for Fisheries and Aquaculture,

HAS ADOPTED THIS REGULATION:

Article 1

Commission Regulation (EEC) No 2807/83 [4] is hereby amended as follows:

1. The following Article 1a is inserted after Article 1:

'*Article 1a*

1. Masters of Community fishing vessels authorized to carry out fishing activities in the areas, hereinafter referred to as effort zones, defined in Article 1 of Council Regulation (EC) No 685/95 (*) shall record the information referred to in Article 19e of Council Regulation (EEC) No 2847/93 (**) in their logbooks in accordance with the model shown in Annex I.

2. Where masters of Community fishing vessels cross an effort zone where they are authorized to fish without carrying out fishing activities they shall record the date and time of entry and exit to and from that effort zone in their logbook.

3. The record shall be made in accordance with the instructions set out in Annex IVa.

(*) OJ No L 71, 31. 3. 1995, p. 5.
(**) OJ No L 261, 20. 10. 1993, p. 1.'

2. The following Article 3a is inserted after Article 3:

'*Article 3a*

Where, pursuant to Article 19c of Regulation (EC) No 2847/93, the master of a fishing vessel transmits a message concerning fishing effort by radio, transmission shall take place via one of the radio stations listed in Annex VIIIa.

The names, addresses and telex, telephone and fax numbers of the competent authorities referred to in the second indent of Article 19c (1) are shown in Annex VIIIb.'

3. Annex I to this Regulation is inserted as Annex IVa.

4. Annex II to this Regulation is added as Annex VIa.

5. Annex III to this Regulation is added as Annex VIIIa.

6. Annex IV to this Regulation is added as Annex VIIIb.

Article 2

This Regulation shall enter into force on 1 January 1996.

[1] OJ No L 261, 20. 10. 1993, p. 1.
[2] OJ No L 301, 14. 12. 1995, p. 1.
[3] OJ No L 71, 31. 3. 1995, p. 5.
[4] OJ No L 276, 10. 10. 1983, p. 1.

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

Done at Brussels, 20 December 1995.

For the Commission
Emma BONINO
Member of the Commission

ANNEX I

'ANNEX IVa

ADDITIONAL INSTRUCTIONS TO MASTERS REQUIRED TO RECORD FISHING EFFORT IN A LOGBOOK AS AT ANNEX I

1. PRELIMINARY REMARK

These instructions are additional to those contained in Annex IV and are for masters of vessels who are required by Community rules to record fishing effort deployed.

2. INSTRUCTIONS CONCERNING RECORDING

2.1. General rule

(a) All information required under this Annex must be recorded in the logbook.

(b) Time is to be recorded as universal time (UTC).

(c) Effort zone is to be recorded using the codes in Annex VIa.

(d) Target species are to be recorded using the codes in Annex VIa.

2.2. Information concerning fishing effort

(a) *Crossing an effort zone*

Where an authorized vessel enters an effort zone without carrying out fishing activity in that zone, an additional line must be completed. The following information is to be inserted in that line:

"the date; the effort zone; the dates and times of each entry/exit; the word "Crossing"."

(b) *Entry into an effort zone*

Where the vessel enters an effort zone in which it is likely to carry out fishing activities, an additional line must be completed. The following information is to be inserted in that line:

"the date; the word "entry"; the effort zone, the time of entry and the target species."

(c) *Exit from an effort zone*

— Where the vessel leaves an effort zone in which it has carried out fishing activities and where the vessel enters another effort zone in which it is likely to carry out fishing activities, an additional line must be completed. The following information is to be inserted in that line:

"the date; the word "entry"; the new effort zone, the time of exit/entry and the target species."

— Where the vessel leaves an effort zone in which it has carried out fishing activities and will not carry out further fishing activities in an effort zone, an additional line must be completed. The following information is to be inserted in that line:

"the date; the word "exit"; the effort zone, the time of departure and the target species."

(d) *Trans-zonal fishing*(1)

Where the vessel carries out trans-zonal fishing activities, an additional line must be completed. The following information is to be inserted in that line:

"the date; the word "trans-zonal"; the time of first exit and effort zone, the time of last entry and effort zone and the target species."

(1) Vessels remaining within an effort zone not exceeding 5 nautical miles either side of the line separating two effort zones must record their first entry and last exit during a period of 24 hours.

2.3. **Information concerning the communication of vessel movements**

Where a vessel, carrying out fishing activities directed at demersal species, is required to communicate its movements to the competent authorities, the following information must be given in addition to that referred to in point 2.2 (b), (c) and (d):

— the date and time of the communication,

— the geographical position of the vessel,

— the means of communication and, where applicable, the radio station used, and

— the destination(s) of the communication.

2.4. **Information concerning fishing effort relating to static gear**

Where a vessel carries out fishing activities using static or fixed gear, the master must fill in an additional line for that day at sea. The following information is to be inserted in that line:

"the date and time the gear is shot and the date and time of completion of the fishing operation."

ANNEX II

'ANNEX VI a

INFORMATION CONCERNING FISHERIES (1)

Groups of target species		Effort zones
DEMERSAL	Demersal species other than deep-water species (emperor fish, grenadier, cutlassfish and Portuguese dogfish), edible crab, spieder crab and scallop	*A:* V b (except Faroe Islands and Icelandic waters), VI
DEEP WATER	Deep-water species (emperor fish, grenadier, cutlassfish and Portuguese dogfish)	*B:* VI (Irish Box) (1)
CRABS	Edible crab, spider crab	*C:* VII a
SCALLOP	Scallop	*D:* VII f (Irish Box)
PELAGIC	Pelagic fish except: Ray's bream, shark, tuna and highly migratory species	*E:* Other VII (Irish Box)
MIGRATORY	Ray's bream, shark, tuna and highly migratory species	*F:* VII (Except Irish Box)
TUNA	Tuna	*G:* VIII a, VIII b, VIII d
		H: IX, X, CECAF 34.1.1, 34.1.2, 34.2.0 (other waters not included)
		J: VIII c, VIII e, IX (Spanish waters) (2)
		K: CECAF 34.1.1 (Spanish waters)
		L: CECAF 34.1.2 (Spanish waters)
		M: CECAF 34.2.0 (Spanish waters)
		N: IX (Portuguese waters)
		P: X (Portuguese waters)
		Q: CECAF 34.1.1 (Portuguese waters)
		R: CECAF 34.1.2 (Portuguese waters)
		S: CECAF 34.2.0 (Portuguese waters)

(1) The "Irish Box" comprises the area south of latitude 56° 30′ north, east of longitude 12° west and north of latitude 50° 30′ north. Fishing effort covers fishing activities carried out using both towed gear and static gear.

(2) The recording of effort for the United Kingdom is subdivided between IX, VIII c, VIII e Spanish waters and IX, VIII c, VIII e non-Spanish waters.

(1) Fisheries are defined giving the stocks or groups of stocks, the effort zones and the gear or gears as specified in Regulations (EC) No 685/95 and (EEC) No 2027/93.'

ANNEX III

'ANNEX VIIIa

RADIO STATIONS APPROVED BY THE COMMISSION

Name	Radio call sign
Norddeich Radio	DAN
Tarifa	EAC
Chipiona	
Finistère	EAF
Coruña	
Cabo Peñas	EAS
Machichaco	
Dublin	
Valentia	EJK
Malin Head	EJM
Boulogne	FFB
Bordeaux-Arcachon	FFC
Saint-Nazaire	FFO
Brest	FFU
Portshead	GKA
	GKB
	GKC
Wick	GKR
Stonehaven	GND
Cullercoats	GCC
Humber	GKZ
Ilfracombe	GIL
Niton	GNI
Land's End	GLD
Portpatrick	GPK
Hebrides	GHD
Lewis	
Skye	
Oban	
Islay	
Clyde	
Morcombe Bay	
Anglesey	GLV
Cardigan Bay	
Celtic	
Ilfracombe	GIL
Pendennis	
Start Point	
Weymouth Bay	
Hastings	
North Foreland	GNF
Oostende	OST
	OSU'

ANNEX IV

'ANNEX VIIIb

NAMES, ADDRESSES AND TELEX NUMBERS OF THE COMPETENT AUTHORITIES RESPONSIBLE FOR MONITORING THE MARITIME WATERS SUBJECT TO THE SOVEREIGNTY OR JURISDICTION OF THE MEMBER STATES

GERMANY	Bundesanstalt für Landwirtschaft und Ernährung Palmaille 9 D-22767 Hamburg Tel.: (040) 38 90 51 80 Fax: (040)38 90 51 60 Telex: 214 763 BLE D
BELGIUM	Ministerie van Middenstand en Landbouw Dienst Zeevisserij Administratief Centrum Vrijhavenstraat 5 B-8400 Oostende Tel.: (32-59) 51 29 94 Fax: (32-59) 51 45 57 Telex: 81075 DZVOST
DENMARK	Fiskeridirektoratet Stormgade 2 DK-1470 København K Fax: (45) 33 96 39 00 Telex: FM 16144 DK
FRANCE	Cross A Château-La-Garenne F-56410 Étel Telex: Crossat 950519
IRELAND	Naval Supervisory Centre Haulbowline Cork Fax: (353) 021 379 108 Telex Cork 24924
UNITED KINGDOM	For vessels operating in ICES Area VII: Ministry of Agriculture, Fisheries and Food Nobel House 17 Smith Square London SW1P 3JR Fax: (44) 171 990 673373 Telex: (44) 171 922711 For vessels operating in ICES Areas Vb (EC zone) and VI Scottish Office of Agriculture, Environment and Fisheries Department Pentland House 47 Robb's Loan Edinburgh EH14 ITW Fax: (44) 131 244 6471 Telex: (44) 727 696
SPAIN	Secretario General de Pesca Marítima (Segepesca) c/o Ortega y Gasset, 57 Madrid Télex: 47457 SGPM E

THE NETHERLANDS	Algemene Inspectiedienst Kloosterraderstraat 25 Postbus 234 NL-6460 AE Kerkrade Fax : (045) 546 10 11
PORTUGAL	Direcção-Geral das Pescas Avenida 24 de Julho nº 80 Lisboa Telex : 12696 SEPGC P'

COMMISSION REGULATION (EC) No 2946/95

of 18 December 1995

amending Regulation (EEC) No 2814/90 laying down detailed rules for the definition of lambs fattened as heavy carcases and Regulation (EEC) No 2700/93 on detailed rules for the application of the premium in favour of sheepmeat and goatmeat producers

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3013/89 of 25 September 1989 on the common organization of the market in sheepmeat and goatmeat [1], as last amended by Regulation (EC) No 1265/95 [2], and in particular Articles 5 (9) and 28 thereof,

Having regard to Council Regulation (EEC) No 3901/89 of 12 December 1989 defining lambs as heavy carcases [3], as last amended by Regulation (EC) No 1266/95 [4], and in particular Article 1 (2) thereof,

Whereas detailed rules for definition of lambs fattened as heavy carcases were adopted by Commision Regulation (EEC) No 2814/90 [5], as last amended by Regulation (EC) No 2583/95 [6];

Whereas, to harmonize the dates of premium application for producers benefiting from the derogation provided for in the second subparagraph of Article 1 (1) of Regulation (EEC) No 3901/89 with regard to lambs belonging to particular breeds in certain geographical areas, it is necessary to clarify the conditions under which producers may fatten their lambs before the beginning of the marketing year;

Whereas detailed rules for the application of the premium in favour of sheepmeat and goatmeat producers were adopted by Commission Regulation (EEC) No 2700/93 [7], as last amended by Regulation (EC) No 279/94 [8], and in particular Article 2; whereas, in order to improve the management of the provisions governing the granting of the premium to ewes whose lambs are fattened as heavy carcases, it is necessary that the Commission receive information annually of the flock size and regional location of the number of ewes qualifying in the Member States; whereas, to this end, the Annex to Regulation (EEC) No 2770/93 should be adapted;

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

HAS ADOPTED THIS REGULATION:

Article 1

In Article 2 (1) of Regulation (EEC) No 2814/90, the following subparagraph replaces the third subparagraph:

'However, Member States may decide that premium applications be submitted in the course of a period set within the period of 1 November preceding the beginning of the marketing year and the following 31 March. In this case, the producer shall submit to the competent authorities not later than the day on which lambing begins, a specific notification giving the details described in the three indents of the first subparagraph. This notification shall be referred to in the premium application for the marketing year in respect of which this notification was submitted.'

Article 2

In Regulation (EEC) No 2700/93:

(a) the Annex is replaced by Annexes I and II to this Regulation;

(b) Article 2 is replaced by the following:

'Article 2

Notification

Member States shall notify the Commission:

— by 31 July of each year at the latest of the information relating to premium applications submitted during the period referred to in Article 1 (2). For that purpose they shall use the model form included in Annex I.

— by 31 July of the year following the abovementioned period, of the information relating to the number of ewes which qualified for the premium for lambs fattened as heavy carcases during the period referred to in Article 1 (2). For that purpose they shall use the model form included in Annex II.

The information referred to in the above indents shall be made available to the national bodies responsible for drawing up official statistics in the sheepmeat and goatmeat sector, at their request.'

Article 3

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

It shall apply to applications for premiums presented for the 1996 marketing year and subsequent years.

[1] OJ No L 289, 7. 10. 1989, p. 1.
[2] OJ No L 123, 3. 6. 1995, p. 1.
[3] OJ No L 375, 23. 12. 1989, p. 4.
[4] OJ No L 123, 3. 6. 1995, p. 3.
[5] OJ No L 268, 29. 9. 1990, p. 35.
[6] OJ No L 263, 4. 11. 1995, p. 10.
[7] OJ No L 245, 1. 10. 1993, p. 99.
[8] OJ No L 37, 9. 2. 1994, p. 1.

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

Done at Brussels, 18 December 1995.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

APPLICATIONS FOR EWE AND SHE-GOAT PREMIUMS

MARKETING YEAR :

Region (1)	Total number of applications	(I) Number of ewes declared per producer not marketing ewe's milk ewe's milk products (by class)							Number of applications (I)	(II) Number of ewes declared per producer marketing ewe's milk ewe's milk products (by class)							Number of applications (II)	(III) Number of she-goats declared per producer (by class)							Number of applications (III)
		1/20	21/50	51/100	101/500	501/1 000	+ 1 000	Total		1/20	21/50	51/100	101/500	501/1 000	+ 1 000	Total		1/20	21/50	51/100	101/500	501/1 000	+ 1 000	Total	
Total per Member State																									

	Total number of applications	Number of ewes declared per producer not marketing ewe's milk / ewe's milk products	Number of ewes declared per producer marketing ewe's milk / ewe's milk products	Number of she-goats declared
Less favoured areas Directive 75/268/EEC				
Non-less favoured areas				

(1) Regional subdivision laid down by Article 5 (2) of Council Directive 82/177/EEC.

ANNEX II

NUMBER OF EWES QUALIFYING FOR PREMIUM FOR LAMBS FATTENED AS HEAVY CARCASES

MARKETING YEAR :

Region (*)	Total number of applications	Number of ewes per producer marketing ewe's milk or ewe's milk products which qualified for premium for lambs fattened as heavy carcasses (by class)						
		1/20	21/50	51/100	101/500	501/1 000	+ 1 000	Total
Total per Member State								

	Total number of applications	Number of ewes per producer which qualified for premium for lambs fattened as heavy carcases
Less favoured areas Directive 75/268/EEC		
Non-less favoured areas		

(*) Regional subdivision laid down Article 5 (2) of Council Directive 82/177/EEC.

COMMISSION REGULATION (EC) No 2947/95

of 19 December 1995

amending Regulation (EEC) No 1481/86 on the determination of prices of fresh or chilled sheep carcases on representative Community markets and the survey of prices of certain other qualities of sheep carcases in the Community

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3013/89 of 25 September 1989 on the common organization of the market in sheepment and goatmeat [1], as amended by Regulation (EC) No 1265/95 [2], and in particular Article 4 (5) thereof,

Whereas Commission Regulation (EEC) No 1481/86 [3], as last amended by Regulation (EC) No 3268/94 [4], lays down the rules for the determination of prices of fresh or chilled sheep carcases on representative Community markets as well as the survey of prices of certain other qualities of sheep carcases in the Community;

Whereas the coefficients used for calculating the price of sheep carcases on representative Community markets should be adjusted in the light of the figures available with regard to sheep production;

Whereas in Germany, the regions and the fixed coefficients should be altered to take account of the variable trends in quantities coming onto the market;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1481/86 is hereby amended as follows:

1. Annex I is replaced by the Annex to this Regulation.

2. In Annex II, Point C is replaced by the following:

'C. Federal Republic of Germany

1. Representative market:

Federal Republic of Germany

Weighting coefficients

The prices recorded in each Bundesland are to be weighted by means of coefficients which are variable each week and reflect the relative importance of the number of animals slaughtered in each Bundesland compared to the total in the Federal Republic of Germany.

2. Category:

	weighting coefficient
Lammfleisch	100 %'.

Article 2

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

It shall apply from the beginning of the 1996 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 Commission

Franz FISCHLER

Member of the Commission

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[1] OJ No L 289, 7. 10. 1989, p. 1.
[2] OJ No L 123, 3. 6. 1995, p. 1.
[3] OJ No L 130, 16. 5. 1986, p. 12.
[4] OJ No L 339, 29. 12. 1994, p. 42.

ANNEX

'ANNEX I

Coefficients to be used in calculating the price recorded on the representative Community markets

Belgium	0,31 %
Denmark	0,21 %
Germany	3,73 %
Spain	20,50 %
France	13,12 %
Greece	7,15 %
Ireland	8,93 %
Italy	4,76 %
Luxembourg	—
Netherlands	2,45 %
Portugal	2,13 %
Great Britain	32,62 %
Northern Ireland	3,08 %
Austria	0,51 %
Finland	0,11 %
Sweden	0,39 %'

COMMISSION REGULATION (EC) No 2948/95

of 20 December 1995

adapting the Annexes to Regulation (EC) No 3281/94 applying a four-year scheme of generalized tariff preferences (1995 to 1998) in respect of certain industrial products originating in developing countries

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3281/94 of 19 December 1994 applying a four-year scheme of generalized tariff preferences (1995 to 1998) in respect of certain industrial products originating in developing countries [1], and in particular Articles 15 (3) and 19 thereof,

Whereas Article 15 (3) of Regulation (EC) No 3281/94 lays down the procedure for enacting changes to Annex I or Annex II thereof made necessary by amendments to the Combined Nomenclature, whereas the Combined Nomenclature for 1996 annexed to Commission Regulation (EC) No 2448/95 [2] embodies new elements which affect the lists appearing in Annexes I and II of Regulation (EC) No 3281/94, and it is therefore appropriate to adapt those Annexes accordingly;

Whereas the provisions of this Regulation are in accordance with the opinion of the Committee for the Management of Generalized Preferences,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II of Council Regulation (EC) No 3281/94 shall be adapted as indicated in the Annex hereto.

Article 2

For the products of CN codes 29054500, 33019021 and 3823, the preferential treatment applied in 1995 shall continue until 31 March 1996.

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, 20 December 1995.

For the Commission

Manuel MARÍN

Vice-President

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[1] OJ No L 348, 31. 12. 1994, p. 1.
[2] OJ No L 259, 30. 10. 1995, p. 1.

ANNEX

Regulation (EC) No 3281/94 is hereby amended as follows:

In Annex I, Part 1, insert:

'3823 70 00 | Industrial fatty alcohols'.

In Annex I, Part 2:

— *for:* '2841 60 10',
read: '2841 61 00';

— at CN code ex 2905:

for: 'excluding products listed in Annex IX',
read: 'except products of CN code 2905 45 00 and excluding products listed in Annex IX';

— *for:* '2930 90 10',
read: '2930 90 12, 2930 90 14, 2930 90 16';

— insert '3823 12 00 | Oleic acid';

— *for:* '3907 60 00',
read: '3907 60 90';

— *for:* '8519 91 10',
read: '8519 92 00';

— *for:* '8520 31 11, 8520 31 30',
read: '8520 32 11, 8520 32 30, 8520 33 11, 8520 33 30';

— *for:* '8524 21 10, 8524 22 10, 8524 23 10 and 8524 90 91',
read: '8524 40 10 and 8524 91 10';

— *for:* '8528 20 71',
read: '8528 13 00'.

In Annex I, Part 3:

— *for:* '2930 90 10',
read: '2930 90 12, 2930 90 14, 2930 90 16';

— at CN code 8517, insert 'except products of CN code 8517 19 10';

— *for:* '7802 00',
read: '7802 00 00';

— *for:* '8456 90 10 and 8456 90 30',
read: '8456 91 00, 8456 99 10 and 8456 99 30';

— *for:* '8471 10 10, 8471 20 10, 8471 91 10, 8471 92 10 and 8471 93 10',
read: '8471 10 10, 8471 41 10, 8471 49 10, 8471 50 10, 8471 60 10 and 8471 70 10';

— *for:* '8542 11 05, 8542 11 12',
read: '8542 13 05, ex 8542 13 11, 8542 19 05, ex 8542 19 15';

— *for:* '8542 11 182',
read: '8542 13 13, 8542 13 15, 8542 13 17, ex 8542 19 15'.

In Annex I, Part 4:

— at ex Chapter 29, insert CN code '2934 90 85';

— *for:* '3502 10 10, 3502 90 10',
read: '3502 11 10, 3502 19 10, 3502 20 10, 3502 90 20';

— at ex Chapter 38:

for: 'except products mentioned in Part 2',
read: 'except products mentioned in Parts 1 and 2';

— at ex Chapter 39, insert CN code '3907 60 10';

— *for:* '4403 10 91, 4403 10 99, 4403 20 00, 4403 31 00, 4403 32 00, 4403 33 00, 4403 34, 4403 35, 4403 99, 4407 21 60, 4407 21 70, 4407 21 80, 4407 22 60, 4407 22 80, 4407 23 90, 4407 99 99, 4408 90 91, 4419 00 10, 4421 90 10, 4421 90 30, 4421 90 50 and 4421 90 99',
read: '4403 10 90, 4403 20, 4403 41 00, 4403 49, 4403 91 00, 4403 92 00, 4403 99, 4407 10 71, 4407 10 91, 4407 10 93, 4407 10 99, 4407 24 90, 4407 25 60, 4407 25 80, 4407 26 70, 4407 26 80, 4407 29 61, 4407 29 69, 4407 29 99, 4407 91 90, 4407 92 90, 4407 99 91, 4407 99 93, 4407 99 98, 4408 10 91, 4408 39 70, 4408 90 35, 4419 00 10, 4421 90 10, 4421 90 30, 4421 90 50 and 4421 90 99';

— *for:* '7201 30 10',
read: '7201 50 10, 7202 60 00';

— *for:* '8502 30 10, 8506 19 50',
read: '8502 39 10, 8506 80 05';

— *for:* '8543 10 10, 8543 30 10, 8543 80 10, 8543 80 70 and 8543 90 10',
read: '8543 11 00, 8543 30 10, 8543 89 10, 8543 89 70, 8543 90 10 and 8548 10 90';

— at ex Chapter 90, delete CN code '9025 20 10';

— *for:* '9010 20 10, 9010 20 20, 9010 20 30',
read: '9010 41 00, 9010 42 00, 9010 49 00';

— *for:* '9025 80 10',
read: '9025 80 15';

— *for:* '9030 81 10, 9030 81 20, 9030 81 81, 9030 81 83, 9030 81 85',
read: '9030 82 00, 9030 83 10';

— delete '9030 89 20, 9030 89 81, 9030 89 83, 9030 89 85';

— *for:* '9031 40 10, 9031 40 20, 9031 40 30',
read: '9031 41 00, 9031 49 10'.

In Annex II:

— *for:* '7208 11 00 (*)
7208 12 (*)
7208 13 (*)
7208 14 (*)
7208 21 (*)
7208 22 (*)
7208 23 (*)
7208 24 (*)
7208 31 00 (*)
7208 32 (*)
7208 33 (*)
7208 34 (*)
7208 35 (*)
7208 41 00
7208 42 (*)
7208 43 (*)
7208 44 (*)
7208 45 (*)
7208 90 10 (*)',

read: '7208 10 00 (*)
7208 25 00 (*)
7208 26 00 (*)
7208 27 00 (*)
7208 36 00 (*)
7208 37 (*)
7208 38 (*)
7208 39 (*)
7208 40 (*)
7208 51 10
7208 51 30 (*)
7208 51 50 (*)
7208 51 91 (*)
7208 51 99 (*)
7208 52 10
7208 52 91 (*)
7208 52 99 (*)
7208 53 10
7208 53 90 (*)
7208 54 (*)
7208 90 10 (*)';

— *for:* '7209 11 00
7209 12 (*)
7209 13 (*)
7209 14 (*)
7209 21 00
7209 22 (*)
7209 23 (*)
7209 24 (*)
7209 31 00
7209 32 (*)
7209 33 (*)
7209 34 (*)
7209 41 00
7209 42 (*)
7209 43 (*)
7209 44 (*)
7209 90 10 (*)',

read: '7209 15 00
7209 16 (*)
7209 17 (*)
7209 18 (*)
7209 25 00
7209 26 (*)
7209 27 (*)
7209 28 (*)
7209 90 10 (*)';

— *for:* '7210 31 10 (*)
7210 39 10 (*)
7210 41 10 (*)
7210 49 10 (*)
7210 50 10 (*)
7210 60 11 (*)
7210 60 19 (*)
7210 70 31 (*)
7210 70 39 (*)
7210 90 31 (*)
7210 90 33 (*)
7210 90 35 (*)
7210 90 39 (*)',

read: '7210 30 10 (*)
7210 41 10 (*)
7210 49 10 (*)
7210 50 10 (*)
7210 61 10 (*)
7210 69 10 (*)
7210 70 31 (*)
7210 70 39 (*)
7210 90 31 (*)
7210 90 33 (*)
7210 90 35 (*)
7210 90 38 (*)';

— *for:* '7211 11 00
7211 12 10 (*)
7211 12 90
7211 19 10 (*)
7211 19 91
7211 19 99
7211 21 00
7211 22 10 (*)
7211 22 90
7211 29 10 (*)
7211 29 91
7211 29 99
7211 30 10 (*)
7211 41 10 (*)
7211 41 91
7211 49 10 (*)
7211 90 11 (*)',

read: '7211 13 00
7211 14 10 (*)
7211 14 90
7211 19 20 (*)
7211 19 90
7211 23 10 (*)
7211 23 51
7211 29 20 (*)';

— *for:* '7212 21 11 (*)
7212 29 11 (*)',

read: '7212 20 11 (*)';

— *for:* '7213 31 (*)
7213 39 (*)
7213 41 00 (*)
7213 49 00 (*)
7213 50',

read: '7213 91 10 (*)
7213 91 20
7213 91 41 (*)
7213 91 49 (*)
7213 91 70
7213 91 90
7213 99 10 (*)
7213 99 90 (*)';

— *for:* '7214 40 (*) 7214 50 (*) 7214 60 00 (*)',	*read:* '7214 91 10 (*) 7214 91 90 7214 99 10 (*) 7214 99 31 (*) 7214 99 39 (*) 7214 99 50 (*) 7214 99 61 (*) 7214 99 69 (*) 7214 99 80 (*) 7214 99 90 (*)' ;
— *for:* '7216 90 10 (*)',	*read:* '7216 99 10 (*)' ;
— *for:* '7218 90 11 7218 90 13 7218 90 15 7218 90 19 7218 90 50 (*)',	*read:* '7218 91 11 7218 91 19 7218 99 11 7218 99 20 (*)' ;
— *for:* '7219 11 (*)',	*read:* '7219 11 00 (*)' ;
— *for:* '7219 23 (*)',	*read:* '7219 23 00 (*)' ;
— *for:* '7219 24 (*)',	*read:* '7219 24 00 (*)' ;
— *for:* '7219 31 (*)',	*read:* '7219 31 00 (*)' ;
— *for:* '7219 90 11 7219 90 19 (*)',	*read:* '7219 90 10 (*)' ;
— *for:* '7222 10',	*read:* '7222 11 7222 19' ;
— *for:* '7222 40 11 7222 40 19 (*)',	*read:* '7222 40 10 (*)' ;
— *for:* '7225 10 7225 20 20 7225 30 00 7225 40 7225 50 7225 90 10 (*)',	*read:* '7225 11 00 7225 19 7225 20 20 7225 30 00 7225 40 7225 50 00 7225 91 10 7225 92 10 7225 99 10 (*)' ;
— *for:* '7226 10 10 7226 10 31 7226 10 39 7226 20 20 7226 91 7226 92 10 7226 99 20',	*read:* '7226 11 10 7226 19 10 7226 19 30 7226 20 20 7226 91 7226 92 10 7226 93 20 7226 94 20 7226 99 20'.

COMMISSION REGULATION (EC) No 2949/95

of 20 December 1995

amending Regulation (EC) No 3175/94 laying down detailed rules of application for the specific arrangements for the supply of cereal products to the smaller Aegean islands and establishing the forecast supply balance

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 implementation of the specific arrangements for the supply of certain agricultural products to the smaller Aegean islands;

Whereas, pursuant to Article 2 of Regulation (EEC) No 2019/93, the forecast supply balance of cereal products was established for 1995 by Commission Regulation (EC) No 3175/94 [5], as last amended by Regulation (EC) No 1961/95 [6], ; whereas this forecast supply balance for 1996 should be drawn up; whereas, subsequently, Regulation (EC) No 3175/94 should be amended;

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 3175/94 is hereby replaced by the Annex to the present Regulation.

Article 2

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

It shall apply from 1 January 1996.

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

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[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 335, 23. 12. 1994, p. 54.
[6] OJ No L 189, 10. 8. 1995, p. 18.

ANNEX

Supply balance for cereals for the smaller Aegean islands for 1996

(in tonnes)

Quantity		1996	
Cereal products originating in the European Communities	CN code	Islands belonging to group A	Islands belonging to group B
Grain cereals	1001, 1002, 1003, 1004 and 1005	10 000	30 750
Barley originating in Limnos	1003	12 000	
Wheat flour	1101 and 1102	10 000	30 750
Food industry residues and waste	2302 to 2308	1 000	16 500
Preparations of a kind used in animal feeding	2309 90	1 000	6 500
	Total	22 000	84 500
	Grand Total	118 500	

These groups are defined in Annexes I and II of Regulation (EEC) No 2958/93.

COMMISSION REGULATION (EC) No 2950/95

of 20 December 1995

amending for the eighth time Regulation (EC) No 3146/94 adopting exceptional support measures for the market in pigmeat in Germany

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organization of the market in pigmeat (1), as last amended by Commission Regulation (EEC) No 3290/94 (2), and in particular Article 20 thereof,

Whereas, because of the outbreak of classical swine fever in certain production regions in Germany, exceptional support measures for the market in pigmeat were adopted for that Member State in Commission Regulation (EC) No 3146/94 (3), as last amended by Regulation (EC) No 1995/95 (4);

Whereas new outbreaks of classical swine fever have recently occured in the district of Verden in Lower Saxony; however the disease has totally disappeared in the district of Emsland;

Whereas the authorities of Mecklenburg-Vorpommern surrounded the area, in which the exceptional measures are supplied, with a protection belt in order to improve the struggle against classical swine fever; whereas veterinary and commercial restrictions are applied to the live pigs in this belt;

Whereas it is necessary to take account of all these modifications by amending the list of districts and regions in which the exceptional market support measures apply;

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

HAS ADOPTED THIS REGULATION:

Article 1

Annex II of Regulation (EC) No 3146/94 is replaced by the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 20 December 1995.

For the Commission

Franz FISCHLER

Member of the Commission

(1) OJ No L 282, 1. 11. 1975, p. 1.
(2) OJ No L 349, 31. 12. 1994, p. 105.
(3) OJ No L 332, 22. 12. 1994, p. 23.
(4) OJ No L 194, 17. 8. 1995, p. 11.

ANNEX

'ANNEX II

1. In Lower Saxony, the protection zones in the following *Kreise:*

   Vechta,
   Cloppenburg,
   Verden,
   Oldenburg,
   Diepholz.

2. In Mecklenburg-Vorpommern, the specific region foreseen in the Regulation of the *Land* of 30 January 1995 regarding the struggle against classical fever and the protection belt foreseen in the Decision of the *Land* of 30 November 1995 regarding supplementary measures taken against classical swine fever.'

COMMISSION REGULATION (EC) No 2951/95

of 20 December 1995

amending Regulation (EC) No 1487/95 establishing the supply balance for the Canary Islands for products from the pigmeat sector and fixing the aid for products coming from the Community

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 for the Canary Islands concerning certain agricultural products [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 the pigmeat sector to the Canary Islands have been settled by Commission Regulation (EC) No 1487/95 of 28 June 1995 establishing the supply balance for the Canary Islands for products from the pigmeat sector and fixing the aid for products coming from the Community [3]; whereas, as a consequence of the changes in the rates and prices for cereal 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 Pigmeat,

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to Regulation (EEC) No 1487/95 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, 20 December 1995.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ No L 173, 27. 6. 1992, p. 13.
[2] OJ No L 260, 31. 10. 1995, p. 10.
[3] OJ No L 145, 29. 6. 1995, p. 63.

ANNEX

'ANNEX II

Amounts of aid granted for products coming from the Community market

(ECU/100 kg net weight)

Product code	Amount of aid
0203 21 10 000	9,4
0203 22 11 100	14,1
0203 22 19 100	9,4
0203 29 11 100	9,4
0203 29 13 100	14,1
0203 29 15 100	9,4
0203 29 55 110	16
1601 00 91 100	14,1
1601 00 99 100	9,4
1602 20 90 100	4,7
1602 41 10 210	16
1602 42 10 210	11,3
1602 49 11 190	—
1602 49 13 190	—
1602 49 19 190	9,4

NB: The product codes as well as the footnotes are defined in Regulation (EEC) No 3846/87.'

COMMISSION REGULATION (EC) No 2952/95

of 20 December 1995

amending Regulation (EC) No 2684/95 laying down detailed rules for the application of Council Regulation (EC) No 2505/95 on improving the Community production of peaches and nectarines

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2505/95 of 24 October 1995 on improving the Community production of peaches and nectarines [1], and in particular Article 6 thereof,

Whereas the amount of the aid referred to in Article 2 of Commission Regulation (EC) No 2684/95 [2] was fixed in ecus on 21 November 1995; whereas the operative event for the agricultural conversion rate applicable to that aid may have occurred on 1 January 1995, before the date of abolition of the correcting factor of 1,207509;

Whereas the agricultural conversion rate applicable on 1 January 1995 relates to amounts in ecus multiplied by that correcting factor and may therefore not be applied to amounts fixed after 1 February 1995 without them being adjusted beforehand; whereas, to prevent errors and ensure greater clarity, the amount of aid in ecus that must be used in this case should be indicated;

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

HAS ADOPTED THIS REGULATION:

Article 1

The following sentence is hereby added to Article 2 of Regulation (EC) No 2684/95:

'Where the operative event for the agricultural conversion rate occurred on 1 January 1995, the amount of the aid shall be ECU 4 141.'

Article 2

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

It shall apply with effect from 21 November 1995.

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

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[1] OJ No L 258, 28. 10. 1995, p. 1.
[2] OJ No L 279, 21. 11. 1995, p. 3.

COMMISSION REGULATION (EC) No 2953/95

of 20 December 1995

fixing the minimum starch content for starch potatoes in certain Member States in the 1995/96 marketing year

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1868/94 of 27 July 1994 establishing a quota system in relation to the production of potato starch [1], as last amended by Regulation (EC) No 1863/95 [2], and in particular Article 2 thereof,

Whereas Commission Regulation (EC) No 97/95 of 17 January 1995 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards the minimum price and compensatory payment to be paid to potato producers and of Council Regulation (EC) No 1868/94 establishing a quota system in relation to the production of potato starch [3], as amended by Regulation (EC) No 1949/95 [4], fixes, *inter alia*, the minimum starch content of batches of potatoes delivered to starch manufacturers at 13 % ; whereas the second subparagraph of Article 6 (2) of that Regulation also provided that, at the reasoned request from a Member State, a derogation from the rule may be granted, in particular for climatic reasons, down to a starch content of 12,8 % ;

Whereas, in the light of the exceptional weather conditions in the potato production regions in summer 1995 characterized by heavy rainfall, and the requests submitted to that effect from certain Member States, the minimum starch content threshold should be lowered, within a limit of 2 % of the quantity of potatoes to be processed by the starch manufacturer, without this derogation entailing an amendment of the starch content scale laid down in Annex II to Regulation (EC) No 97/95 ;

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

1. The following Member States are hereby authorized to accept batches of potatoes with a starch content of not less than 12,8 % :

Austria, France, the Netherlands, Germany and Denmark.

2. The minimum price to be paid for potatoes with a starch content of between not less than 12,8 % and 13 % shall be the minimum price applicable to a starch content of 13 %.

3. Batches accepted under the above arrangements shall not exceed 2 % of the quantities provided for in the cultivation contracts processed by the starch manufacturer.

Article 2

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

It shall apply from 1 July 1995.

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

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[1] OJ No L 197, 30. 7. 1994, p. 4.
[2] OJ No L 179, 29. 7. 1995, p. 1.
[3] OJ No L 16, 24. 1. 1995, p. 3.
[4] OJ No L 187, 8. 8. 1995, p. 6.

COMMISSION REGULATION (EC) No 2954/95
of 20 December 1995
fixing the export refunds on olive oil

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats [1], as last amended by the Act of Accession of Austria, Finland and Sweden and by Regulation (EC) No 3290/94 [2],

Having regard to Council Regulation (EEC) No 1650/86 of 26 May 1986 on export refunds and levies on olive oil [3], and in particular the first sentence of Article 3 (1) thereof,

Whereas Article 20 of Regulation No 136/66/EEC provides that, where prices within the Community are higher than world market prices, the difference between these prices may be covered by a refund when olive oil is exported to third countries;

Whereas the detailed rules for fixing and granting export refunds on olive oil are contained in Regulation (EEC) No 1650/86 and Commission Regulation (EEC) No 616/72 [4], as last amended by Regulation (EEC) No 2962/77 [5];

Whereas the first indent of Article 2 of Regulation (EEC) No 1650/86 provides that the refund must be the same for the whole Community;

Whereas, in accordance with Article 4 of Regulation (EEC) No 1650/86, the refund for olive oil must be fixed in the light of the existing situation and outlook in relation to olive oil prices and availability on the Community market and olive oil prices on the world market; whereas, however, where the world market situation is such that the most favourable olive oil prices cannot be determined, account may be taken of the price of the main competing vegetable oils on the world market and the difference recorded between that price and the price of olive oil during a representative period; whereas the amount of the refund may not exceed the difference between the price of olive oil in the Community and that on the world market, adjusted, where appropriate, to take account of export costs for the products on the world market;

Whereas, in accordance with Article 5 of Regulation (EEC) No 1650/86, it may be decided that the refund shall be fixed by tender;

Whereas the tendering procedure should cover the amount of the refund and may be limited to certain countries of destination, quantities, qualities and presentations;

Whereas the second indent of Article 2 of Regulation (EEC) No 1650/86 provides that the refund on olive oil may be varied according to destination where the world market situation or the specific requirements of certain markets make this necessary;

Whereas Article 3 (1) of Regulation (EEC) No 1650/86 provides that the refund must be fixed at least once every month; whereas it may, if necessary, be altered in the intervening period;

Whereas it follows from applying these detailed rules to the present situation on the market in olive oil and in particular to olive oil prices within the Community and on the markets of third countries that the refund should be as set out in the Annex hereto;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92 [6], as last amended by Regulation (EC) No 150/95 [7], 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 [8], as last amended by Regulation (EC) No 2853/95 [9];

Whereas Council Regulation (EEC) No 990/93 [10], as amended by Regulation (EC) No 1380/95 [11], 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 [12]; 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 Oils and Fats,

[1] OJ No 172, 30. 9. 1966, p. 3025/66.
[2] OJ No L 349, 31. 12. 1994, p. 105.
[3] OJ No L 145, 30. 5. 1986, p. 8.
[4] OJ No L 78, 31. 3. 1972, p. 1.
[5] OJ No L 348, 30. 12. 1977, p. 53.
[6] OJ No L 387, 31. 12. 1992, p. 1.
[7] OJ No L 22, 31. 1. 1995, p. 1.
[8] OJ No L 108, 1. 5. 1993, p. 106.
[9] OJ No L 299, 12. 12. 1995, p. 1.
[10] OJ No L 102, 28. 4. 1993, p. 14.
[11] OJ No L 138, 21. 6. 1995, p. 1.
[12] OJ No L 297, 9. 12. 1995, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 (2) (c) of Regulation No 136/66/EEC 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, 20 December 1995.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX

to the Commission Regulation of 20 December 1995 fixing the export refunds on olive oil

(ECU/100 kg)

Product code	Amount of refund (1) (2)
1509 10 90 100	42,00
1509 10 90 900	0,00
1509 90 00 100	50,50
1509 90 00 900	0,00
1510 00 90 100	9,50
1510 00 90 900	0,00

(1) For destinations mentioned in Article 34 of amended Commission Regulation (EEC) No 3665/87 as well as for exports to third countries.

(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 2955/95

of 20 December 1995

fixing the maximum export refunds on olive oil for the third partial invitation to tender under the standing invitation to tender issued by Regulation (EC) No 2544/95

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats [1], as last amended by the Act of Accession of Austria, Finland and Sweden and by Regulation (EC) No 3290/94 [2], and in particular Article 3 thereof,

Whereas Commission Regulation (EC) No 2544/95 [3] issued a standing invitation to tender with a view to determining the export refunds on olive oil;

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 Article 6 of Regulation (EC) No 2544/95 provides that maximum amounts are to be fixed for the export refunds in the light in particular of the current situation and foreseeable developments on the Community and world olive-oil markets and on the basis of the tenders received; whereas contracts are awarded to any tenderer who submits a tender at the level of the maximum refund or at a lower level;

Whereas, for the purposes of applying the above-mentioned provisions, the maximum export refunds should be set at the levels specified in the Annex;

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refunds for olive oil for the third partial invitation to tender under the standing invitation to tender issued by Regulation (EC) No 2544/95 are hereby fixed in the Annex, on the basis of the tenders submitted by 14 December 1995.

Article 2

This Regulation shall enter into force on 21 December 1995.

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

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[1] OJ No 172, 30. 9. 1966, p. 3025/66.
[2] OJ No L 349, 31. 12. 1994, p. 105.
[3] OJ No L 260, 31. 10. 1995, p. 38.
[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.

ANNEX

to the Commission Regulation of 20 December 1995 fixing the maximum export refunds on olive oil for the third partial invitation to tender under the standing invitation to tender issued by Regulation (EC) No 2544/95

(ECU/100 kg)

Product code	Amount of refund (1)
1509 10 90 100	45,35
1509 10 90 900	—
1509 90 00 100	54,10
1509 90 00 900	—
1510 00 90 100	12,00
1510 00 90 900	—

(1) 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 2956/95
of 20 December 1995
fixing the import duties in the rice sector

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),

Having regard to Commission Regulation (EC) No 1573/95 of 30 June 1995 laying down detailed rules for the application of Council Regulation (EEC) No 1418/76 as regards import duties in the rice sector (3), as amended by Regulation (EC) No 1818/95 (4), and in particular Article 4 (1) thereof,

Whereas Article 12 of Regulation (EEC) No 1418/76 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation; whereas, however, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention buying price valid for such products on importation and increased by a certain percentage according to whether it is Indica or Japonica rice and also husked or milled rice, minus the cif import price applicable to the consignment in question provided that duty does not exceed the rate of the Common Customs Tariff duties;

Whereas, pursuant to Article 12 (4) of Regulation (EEC) No 1418/76, the cif import prices are calculated on the basis of the prices for the product in question on the world market;

Whereas Regulation (EC) No 1573/95 lays down detailed rules for the application of Regulation (EEC) No 1418/76 as regards import duties in the rice sector;

Whereas the import duties are applicable until new duties are fixed and enter into force; whereas they also remain in force in cases where no quotation is available for the reference referred to in Annex I to Regulation (EC) No 1573/95 during the two weeks preceding the next periodical fixing;

Whereas, in order to allow the import duty system to function normally, the market rates recorded during a reference period should be used for calculating the duties;

Whereas application of Regulation (EC) No 1573/95 results in import duties being fixed as set out in the Annexes to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import duties in the rice sector referred to in Article 12 (1) and (2) of Regulation (EEC) No 1418/76 shall be those fixed in Annex I to this Regulation on the basis of the information given in Annex II.

Article 2

This Regulation shall enter into force on 21 December 1995.

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

(1) OJ No L 166, 25. 6. 1976, p. 1.
(2) OJ No L 148, 30. 6. 1995, p. 5.
(3) OJ No L 150, 1. 7. 1995, p. 53.
(4) OJ No L 175, 27. 7. 1995, p. 25.

ANNEX I

to the Commission Regulation of 20 December 1995 fixing the import duties on rice and broken rice

(ECU/tonne)

CN code	Duties (6)				
	Third countries (except ACP and Bangladesh) (3) (9)	ACP Bangladesh (1) (2) (3) (4)	Basmati India (7) Article 4, Regulation (EC) No 1573/95	Basmati Pakistan (8) Article 4, Regulation (EC) No 1573/95	Arrangement in Regulation (EEC) No 3877/86 (5)
1006 10 21	(9)	150,76			
1006 10 23	(9)	150,76			
1006 10 25	(9)	150,76			
1006 10 27	(9)	150,76			—
1006 10 92	(9)	150,76			
1006 10 94	(9)	150,76			
1006 10 96	(9)	150,76			
1006 10 98	(9)	150,76			—
1006 20 11	242,93	117,12			
1006 20 13	242,93	117,12			
1006 20 15	242,93	117,12			
1006 20 17	352,57	171,94	102,57	302,57	—
1006 20 92	242,93	117,12			
1006 20 94	242,93	117,12			
1006 20 96	242,93	117,12			
1006 20 98	352,57	171,94	102,57	302,57	—
1006 30 21	517,93	244,05			
1006 30 23	517,93	244,05			
1006 30 25	517,93	244,05			
1006 30 27	611,00	290,59			—
1006 30 42	517,93	244,05			
1006 30 44	517,93	244,05			
1006 30 46	517,93	244,05			
1006 30 48	611,00	290,59			—
1006 30 61	517,93	244,05			
1006 30 63	517,93	244,05			
1006 30 65	517,93	244,05			
1006 30 67	611,00	290,59			—
1006 30 92	517,93	244,05			
1006 30 94	517,93	244,05			
1006 30 96	517,93	244,05			
1006 30 98	611,00	290,59			—
1006 40 00	(9)	90,38			

(1) Subject to the application of the provisions of Articles 12 and 13 of amended Council Regulation (EEC) No 715/90 (OJ No L 84, 30. 3. 1990, p. 85).

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

(3) The import levy on rice entering the overseas department of Réunion is specified in Article 12 (3) of Regulation (EEC) No 1418/76.

(4) The duty on imports of rice not including broken rice (CN code 1006 40 00), originating in Bangladesh is applicable under the arrangements laid down in Council Regulation (EEC) No 3491/90 (OJ No L 337, 4. 12. 1990, p. 1) and Commission Regulation (EEC) No 862/91 (OJ No L 88, 9. 4. 1991, p. 7).

(5) Only for imports of rice of the long-grain aromatic Basmati variety under the arrangements laid down in amended Council Regulation (EEC) No 3877/86 (OJ No L 361, 20. 12. 1986, p. 1).

(6) No import duty applies to products originating in the OCT pursuant to Article 101 (1) of amended Council Decision 91/482/EEC (OJ No L 263, 19. 9. 1991, p. 1).

(7) For husked rice of the Basmati variety originating in India and not imported under the arrangments in Regulation (EEC) No 3877/86, a reduction of ECU 250 per tonne applies (Article 4, Regulation (EC) No 1573/95).

(8) For husked rice of the Basmati variety originating in Pakistan and not imported under the arrangements in Regulation (EEC) No 3877/86, a reduction of ECU 50 per tonne applies (Article 4, Regulation (EC) No 1573/95).

(9) Duties fixed in the Common Customs Tariff.

ANNEX II

Calculation of import duties for rice

	Paddy	Indica rice		Japonica rice		Broken rice
		Husked	Milled	Husked	Milled	
1. Import duty (ECU/tonne) (1)	(2)	352,57	611,00	242,93	517,93	(2)
2. Elements of calculation :						
(a) Arag cif price ($/tonne)	—	366,48	396,95	509,99	497,96	—
(b) fob price ($/tonne)	—	—	—	479,99	467,96	—
(c) Sea freight ($/tonne)	—	—	—	30	30	—
(d) Source	—	USDA	USDA	Operators	Operators	—

(1) Where rice is imported during the month following fixing, these import duties must be adjusted in accordance with the fourth subparagraph of Article 4 (1) of Regulation (EC) No 1573/95.

(2) Duties fixed in the Common Customs Tariff.

COMMISSION REGULATION (EC) No 2957/95

of 20 December 1995

fixing the import duties in the cereals sector

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],

Having regard to Commission Regulation (EC) No 1502/95 of 29 June 1995 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 for the 1995/96 marketing year as regards import duties in the cereals sector [3], as last amended by Regulation (EC) No 2481/95 [4], and in particular Article 2 (1) thereof,

Whereas Article 10 of Regulation (EEC) No 1766/92 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation; whereas, however, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by 55 %, minus the cif import price applicable to the consignment in question;

Whereas, pursuant to Article 10 (3) of Regulation (EEC) No 1766/92, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market;

Whereas Regulation (EC) No 1502/95 lays down detailed rules for the application of Council Regulation (EEC) No 1766/92 for the 1995/96 marketing year as regards import duties in the cereals sector;

Whereas the import duties are applicable until new duties are fixed and enter into force; whereas they also remain in force in cases where no quotation is available for the reference exchange referred to in Annex II to Regulation (EC) No 1502/95 during the two weeks preceding the next periodical fixing;

Whereas, in order to allow the import duty system to function normally, the representative market rates recorded during a reference period should be used for calculating the duties;

Whereas application of Regulation (EC) No 1502/95 results in import duties being fixed as set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import duties in the cereals sector referred to in Article 10 (2) of Regulation (EEC) No 1766/92 shall be those fixed in Annex I to this Regulation on the basis of the information given in Annex II.

Article 2

This Regulation shall enter into force on 21 December 1995.

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

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[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. 13.
[4] OJ No L 256, 26. 10. 1995, p. 10.

ANNEX I

Import duties for the products listed in Article 10 (2) of Regulation (EEC) No 1766/92

CN code	Description	Import duty by land inland waterway or sea from Mediterranean, the Black Sea or Baltic Sea ports (ECU/tonne)	Import duty by sea from other ports (2) (ECU/tonne)
1001 10 00	Durum wheat (1)	0,00	0,00
1001 90 91	Common wheat seed	0,00	0,00
1001 90 99	Common high quality wheat other than for sowing (3)	0,00	0,00
	medium quality	24,93	14,93
	low quality	28,51	18,51
1002 00 00	Rye	23,65	13,65
1003 00 10	Barley, seed	23,65	13,65
1003 00 90	Barley, other (3)	23,65	13,65
1005 10 90	Maize seed other than hybrid	71,30	61,30
1005 90 00	Maize other than seed (3)	71,30	61,30
1007 00 90	Grain sorghum other than hybrids for sowing	23,65	13,65

(1) In the case of durum wheat not meeting the minimum quality requirements referred to in Annex I to Regulation (EC) No 1502/95, the duty applicable is that fixed for low-quality common wheat.

(2) For goods arriving in the Community via the Atlantic Ocean (Article 2 (4) of Regulation (EC) No 1502/95), the importer may benefit from a reduction in the duty of:

— ECU 3 per tonne, where the port of unloading is on the Mediterranean Sea, or

— ECU 2 per tonne, where the port of unloading is in Ireland, the United Kingdom, Denmark, Sweden, Finland or the Atlantic Coasts of the Iberian Peninsula.

(3) The importer may benefit from a flat-rate reduction of ECU 8 per tonne, where the conditions laid down in Article 2 (5) of Regulation (EC) No 1502/95 are met.

ANNEX II

Factors for calculating duties (period from 6. 12. to 19. 12. 1995):

1. Averages over the two-week period preceding the day of fixing:

Exchange quotations	Minneapolis	Kansas-City	Chicago	Chicago	Mid-America	Mid-America
Product (% proteins at 12 % humidity)	HRS2. 14 %	HRW2. 11 %	SRW2	YC3	HAD2	US barley 2
Quotation (ECU/tonne)	146,76	142,21	142,66	104,96	209,86 (2)	163,62 (2)
Gulf premium (ECU/tonne)	—	20,12	16,09	11,01	—	—
Great lake premium (ECU/tonne)	24,84	—	—	—	—	—

(1) Fob Duluth.
(2) Fob Gulf.

2. Freight/cost: Gulf of Mexico — Rotterdam: ECU 11,50 per tonne; Great Lakes/St Lawrence — Rotterdam: ECU 29,00 per tonne.

3. Subsidy (third paragraph of Article 4 (2) of Regulation (EC) No 1502/95: ECU 0,00 per tonne).

COMMISSION REGULATION (EC) No 2958/95

of 20 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 21 December 1995.

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

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[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 20 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	134,7
	208	44,0
	212	117,9
	624	145,1
	999	83,6
0707 00 40	052	84,4
	053	166,9
	060	61,0
	066	53,8
	068	60,4
	204	49,1
	624	96,9
	999	81,8
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	50,4
	388	40,5
	600	58,4
	624	46,7
	999	47,5
0805 20 31	052	76,4
	204	79,7
	624	86,8
	999	81,0
0805 20 33, 0805 20 35, 0805 20 37, 0805 20 39	052	58,6
	464	87,6
	624	77,5
	999	74,6
0805 30 40	052	81,4
	388	67,5
	400	62,5
	512	54,8
	520	66,5
	524	100,8
	528	94,7
	600	85,5
	624	78,0
	999	76,9
0808 10 92, 0808 10 94, 0808 10 98	052	65,4
	064	78,6
	388	39,2
	400	74,6
	404	60,4
	508	68,4
	512	51,2
	524	57,4
	528	48,0
	728	107,3
	800	78,0
	804	21,0
	999	62,5
0808 20 67	052	143,7
	064	76,2
	388	79,6
	400	92,1
	512	89,7
	528	84,1
	624	79,0
	728	115,4
	800	55,8
	804	112,9
	999	92,8

(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'.

COMMISSION REGULATION (EC) No 2959/95

of 20 December 1995

amending representative prices and additional duties for the import of certain products in the sugar sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector [1], as last amended by Regulation (EC) No 1101/95 [2],

Having regard to Commission Regulation (EC) No 1423/95 of 23 June 1995 laying down detailed implementing rules for the import of products in the sugar sector other than molasses [3], as amended by Regulation (EC) No 2528/95 [4], and in particular the second subparagraph of Article 1 (2), and Article 3 (1) thereof,

Whereas the amounts of the representative prices and additional duties applicable to the import of white sugar, raw sugar and certain syrups are fixed by Commission Regulation (EC) No 1568/95 [5], as last amended by Regulation (EC) No 2936/95 [6];

Whereas it follows from applying the general and detailed fixing rules contained in Regulation (EC) No 1423/95 to the information known to the Commission that the representative prices and additional duties at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties on imports of the products referred to in Article 1 of Regulation (EC) No 1423/95 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 21 December 1995.

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

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[1] OJ No L 177, 1. 7. 1981, p. 4.
[2] OJ No L 110, 17. 5. 1995, p. 1.
[3] OJ No L 141, 24. 6. 1995, p. 16.
[4] OJ No L 258, 28. 10. 1995, p. 50.
[5] OJ No L 150, 1. 7. 1995, p. 36.
[6] OJ No L 307, 20. 12. 1995, p. 28.

ANNEX

to the Commission Regulation of 20 December 1995 amending representative prices and the amounts of additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 99

(ECU)

CN code	Amount of representative prices per 100 kg net of product concerned	Amount of additional duty per 100 kg net of product concerned
1701 11 10 (1)	23,21	4,69
1701 11 90 (1)	23,21	9,93
1701 12 10 (1)	23,21	4,50
1701 12 90 (1)	23,21	9,50
1701 91 00 (2)	28,16	11,15
1701 99 10 (2)	28,16	6,63
1701 99 90 (2)	28,16	6,63
1702 90 99 (3)	0,28	0,37

(1) For the standard quality as defined in Article 1 of amended Council Regulation (EEC) No 431/68 (OJ No L 89, 10. 4. 1968, p. 3).

(2) For the standard quality as defined in Article 1 of Council Regulation (EEC) No 793/72 (OJ No L 94, 21. 4. 1972, p. 1).

(3) By 1 % sucrose content.

COMMISSION REGULATION (EC) No 2960/95
of 20 December 1995
fixing the agricultural conversion rates

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy [1], as last amended by Regulation (EC) No 150/95 [2], and in particular Article 3 (1) thereof,

Whereas the agricultural conversion rates were fixed by Commission Regulation (EC) No 2681/95 [3];

Whereas Article 4 of Regulation (EEC) No 3813/92 provides that, subject to confirmation periods being triggered, the agricultural conversion rate for a currency is to be adjusted where the monetary gap between it and the representative market rate exceeds certain levels;

Whereas the representative market rates are determined on the basis of basic reference periods or, where applicable, confirmation periods, established in accordance with Article 2 of Commission Regulation (EEC) No 1068/93 of 30 April 1993 on detailed rules for determining and applying the agricultural conversion rates [4], as last amended by Regulation (EC) No 2853/95 [5]; whereas paragraph 2 of that Article provides that, in cases where the absolute value of the difference between the monetary gaps in two Member States, calculated from the average of the ecu rates for three consecutive quotation days, exceeds six points, the representative market rates are to be adjusted on the basis of the three quotation days in question;

Whereas, as a consequence of the exchange rates recorded from 11 to 20 December 1995, it is necessary to fix a new agricultural conversion rate for the Greek drachma;

Whereas Article 15 (2) of Regulation (EEC) No 1068/93 provides that an agricultural conversion rate fixed in advance is to be adjusted if the gap between that rate and the agricultural conversion rate in force at the time of the operative event applicable for the amount concerned exceeds four points; whereas, in that event, the agricultural conversion rate fixed in advance is brought more closely into line with the rate in force, up to the level of a gap of four points with that rate; whereas the rate which replaces the agricultural conversion rate fixed in advance should be specified,

HAS ADOPTED THIS REGULATION:

Article 1

The agricultural conversion rates are fixed in Annex I hereto.

Article 2

In the case referred to in Article 15 (3) of Regulation (EEC) No 1068/93, the agricultural conversion rate fixed in advance shall be replaced by the ecu rate for the currency concerned, shown in Annex II:

— Table A, where the latter rate is higher than the rate fixed in advance,

— Table B, where the latter rate is lower than the rate fixed in advance.

Article 3

Regulation (EC) No 2681/95 is hereby repealed.

Article 4

This Regulation shall enter into force on 21 December 1995.

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

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[1] OJ No L 387, 31. 12. 1992, p. 1.
[2] OJ No L 22, 31. 1. 1995, p. 1.
[3] OJ No L 277, 21. 11. 1995, p. 5.
[4] OJ No L 108, 1. 5. 1993, p. 106.
[5] OJ No L 299, 12. 12. 1995, p. 1.

ANNEX I

Agricultural conversion rates

ECU 1 =	39,5239	Belgian and Luxembourg francs
	7,49997	Danish kroner
	1,90616	German marks
	310,749	Greek drachmas
	198,202	Portuguese escudos
	6,61023	French francs
	5,88000	Finnish marks
	2,14021	Dutch guilders
	0,829498	Irish punt
	2 164,34	Italian lire
	13,4084	Austrian schillings
	165,198	Spanish pesetas
	9,24240	Swedish kroner
	0,856563	Pound sterling

ANNEX II

Agricultural conversion rates fixed in advance and adjusted

Table A			Table B		
ECU 1 =	38,0038	Belgian and Luxembourg francs	ECU 1 =	41,1707	Belgian and Luxembourg francs
	7,21151	Danish kroner		7,81247	Danish kroner
	1,83285	German marks		1,98558	German marks
	298,797	Greek drachmas		323,697	Greek drachmas
	190,579	Portuguese escudos		206,460	Portuguese escudos
	6,35599	French francs		6,88566	French francs
	5,65385	Finnish marks		6,12500	Finnish marks
	2,05789	Dutch guilders		2,22939	Dutch guilders
	0,797594	Irish punt		0,864060	Irish punt
	2 081,10	Italian lire		2 254,52	Italian lire
	12,8927	Austrian schillings		13,9671	Austrian schillings
	158,844	Spanish pesetas		172,081	Spanish pesetas
	8,88692	Swedish kroner		9,62750	Swedish kroner
	0,823618	Pound sterling		0,892253	Pound sterling

COUNCIL REGULATION (EC) No 2961/95

of 18 December 1995

imposing a definitive anti-dumping duty on imports of peroxodisulphates (persulphates), originating in the People's Republic of China, and collecting definitively the provisional duty imposed

THE COUNCIL OF THE EUROPEAN UNION,

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), and in particular Article 23 thereof,

Having regard to Council Regulation (EC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community (2), and in particular Article 12 thereof,

Having regard to the proposal from the Commission after consulting the Advisory Committee,

Whereas :

A. Provisional measures

(1) The Commission, by Regulation (EC) No 1748/95 (3), hereinafter referred to as the 'provisional duty Regulation', imposed a provisional anti-dumping duty on imports into the Community of peroxodisulphates (persulphates) originating in the People's Republic of China and falling within CN code ex 2833 40 00. By Regulation (EC) No 2677/95 (4), the Council extended the validity of this duty for a period of two months expiring on 20 January 1996.

B. Subsequent procedure

(2) Subsequent to the imposition of the provisional anti-dumping duty, the interested parties who so requested were granted an opportunity to be heard by the Commission. They also made written submissions making known their views on the findings.

(3) Upon request, parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive duty and the definitive collection of amounts by way of a provisional duty. They were also granted a period within which to make representations subsequent to the disclosure.

(4) The oral and written comments submitted by the parties were considered and, where appropriate, the Commission's findings were modified to take account of them.

C. Product under consideration

(5) For the purpose of its preliminary findings, the Commission determined, pursuant to recital 9 of the provisional duty Regulation, that the three types of persulphates (ammonium, sodium and potassium) should be treated as one product. According to the preliminary determination, the three different types of persulphates have the same end-uses as an initiator and oxidizing agent in the textile and chemical industries and can be substituted one for another.

(6) The two cooperating exporters claimed that the three different types of persulphates are not sufficiently interchangeable, in particular because the end-users in practice have only a limited possibility to switch from one type of persulphates to another. According to the exporters, the pricing of intermediate products like persulphates is essential for the finished product to be competitive in the market and the purchase of one of the types of persulphates is determined by end-users' needs to produce a specific competitive end-product. In addition, all industrial end-users would, if the three types of persulphates were interchangeable, due to the price difference among them, purchase exclusively the cheapest persulphate in order to minimize costs of their finished products.

(7) After consideration of the exporters' arguments and having obtained comments from the Community industry, the Council confirms the preliminary findings that the three types of persulphates should be regarded as one product for the following reasons :

— the essential characteristics of the three types of persulphates are the same, because, regardless of the type of persulphate, the persulphate anion is the active substance which generally gives end-users the ability to alternate among the different types,

— the basic end-use as initiator and oxidizing agent is the same for all the three different types of persulphates,

(1) OJ No L 349, 31. 12. 1994, p. 1. Regulation as last amended by Regulation (EC) No 1251/95 (OJ No L 122, 2. 6. 1995, p. 1).
(2) OJ No L 209, 2. 8. 1988, p. 1. Regulation as last amended by Regulation (EC) No 522/94 (OJ No L 66, 10. 3. 1994, p. 1).
(3) OJ No L 169, 19. 7. 1995, p. 15.
(4) OJ No L 275, 18. 11. 1995, p. 21.

— price differences are mainly due to differences in production cost stemming from price variation of the chemical components ammonium, sodium and potassium used to manufacture the three types of persulphates,

— price levels for persulphates in the Community show a high degree of interdependence among the different types,

— persulphate as accessory material forms only an extremely small part of the overall manufacturing cost in the production process of other products, and the price difference among the three types of persulphates is only one element for the customer's choice, as *inter alia*, production equipment, particle size and environmental considerations seem to play an important role.

D. Like product

(8) For the purpose of its preliminary findings, the Commission considered persulphates imported from the People's Republic of China as like the product manufactured and sold by the Community and Japanese producers because persulphates of these origins are identical in their chemical compositions and in their applications.

(9) The exporters claimed that persulphates imported from the People's Republic of China are not like the product manufactured and sold by the Community and Japanese producers. According to the exporters, the quality of Chinese persulphates is inferior to the Community and Japanese product, as the iron content is higher and the purity of the Chinese persulphate is often 98 %, i.e. below 99 % as produced by the Community producers. In addition, the Chinese product has a tendency to stickiness.

(10) Having examined the exporters' arguments and the comments received from the Community industry, the Council confirms the preliminary findings that persulphates manufactured by the Community and Japanese producers are like the Chinese product for the following reasons:

— the three different types of persulphates are produced and exported by the People's Republic of China and the same three types of persulphates are produced and sold in the Community and in Japan,

— the fact that quality differences in purity and iron content between the origins of the persulphates may exist, does not lead to the conclusion that they should not be regarded as like products, particularly since the persulphates produced in Japan and in the Community, on the one hand, and the People's Republic of China, on the other, when compared on a type-by-type basis, are identical in their basic chemical compositions and in their applications.

E. Dumping

1. *Normal value*

(11) The Commission established normal value on the basis of net selling price at which the like product was sold in Japan, which was selected as the reference country.

(12) In the light of the economic reforms which have taken place in the People' Republic of China, the two cooperating exporters object to China still being regarded as a non-market economy country. In addition, the exporters opposed the choice of Japan as reference country because, *inter alia*, of the allegedly closed nature of the Japanese domestic distribution channels, which allegedly result in high domestic prices.

(13) According to Article 2 (5) of Regulation (EEC) No 2423/88, the People's Republic of China is to be regarded as a non-market economy country. As a result, normal value must be based on one of the criteria set out in that Article. In the present case, normal value was established pursuant to Article 2 (5) (a) (i).

(14) The choice of Japan as reference country was explained extensively by the Commission in recitals 15 and 17 of the provisional duty Regulation. In addition, the exporters in question have not suggested any other suitable reference country. The allegation that the product concerned is sold at high prices in the domestic market due to the distribution system in Japan, suggesting that sales were not made in the ordinary course of trade in the domestic market in Japan, is not confirmed by the results of the verifications carried out at the premises of two independent Japanese companies nor by information obtained from other producers involved in the investigation.

2. *Export price*

(15) No further arguments were submitted on the methodology used by the Commission in its preliminary findings, and the findings in recitals 19 and 20 of the provisional duty Regulation have therefore been confirmed.

3. *Comparison*

(16) The two cooperating exporters claimed that the quality of persulphates originating in the People's Republic of China is inferior to persulphates produced in Japan and that a reasonable allowance should be made to take account of this difference in physical characteristics.

(17) The alleged differences between persulphates produced in Japan and in the Community, on the one side, and persulphates produced in the People's Republic of China, on the other, consist of lower purity, difference an iron content and tendency of stickiness of the Chinese product. However, the claim for an adjustment due to differences in physical characteristics between Chinese and Japanese persulphates was not supported by any evidence, showing that these differences affect price comparability. The claim was therefore rejected.

F. Dumping margin

(18) The two cooperating exporters claimed that the calculation of dumping margins should be based on export prices supplied by each individual exporter and that, as far as the non-cooperating exporters are concerned, a separate dumping margin should have been calculated on the facts available for these exporters.

(19) Since the two cooperating exporting companies are wholly owned by the Chinese State, no individual treatment could be granted under these circumstances, in accordance with the Community institutions' standing practice.

(20) No other arguments were submitted on the methodology used by the Commission in its preliminary determination. Therefore, the weighted average dumping margin definitively established and expressed as a percentage of the cif Community frontier import price is confirmed to be 110,1 %.

G. Injury

4. *Factors relating to dumped imports*

(21) The two exporters cooperating with the Commission claimed that, when calculating price undercutting, account should be taken of the inferior quality (purity, iron content, stickiness) of Chinese persulphates compared to persulphates produced in the Community.

(22) No evidence has been presented that differences in quality between persulphates manufactured in the Community and in the People's Republic of China have an influence on the pricing of the products. Tendency to stickiness of persulphates is a general attribute of the product and it is not substantiated that this characteristic is due to origin or quality of the product.

(23) The provisional findings on undercutting are therefore confirmed. As no other arguments were submitted regarding the provisional conclusion on injury, the Council concludes definitively that the Community industry has suffered injury.

H. Causation

5. *Effect of other factors*

(24) The two exporters alleged that the Community producers in the past have been able to charge high prices due to a collective market dominance of the Community producers and previously high prices had to be adjusted downwards when the economy went into recession.

(25) No evidence has been presented to substantiate the claim that the injury suffered by the Community industry is due to an alleged discontinuance of a former collective market dominance of the Community producers. On the contrary, the Commission's investigation showed that the companies investigated follow different policies with regard to marketing and pricing of the product concerned. In addition, price levels in the Community were not at a level sufficient to allow profitable sales by the Community producers. Imports from third countries not subject to the proceeding in significant quantities have contributed to maintain a competitive market situation.

(26) As set out in recitals 25 and 35 of the provisional duty Regulation, the downturn in prices on the Community market and the loss of market share coincided with the arrival of the dumped imports accompanied by price undercutting which led to a substantial fall in profits or even financial losses. Even if the contraction in demand has contributed to the injury, the import of significant quantities at dumped prices clearly caused material injury to the Community industry.

(27) The preliminary findings with regard to causation are therefore confirmed.

I. Community interest

(28) In the absence of other new arguments, the findings laid down in recitals 40 and 41 of the provisional duty Regulation are confirmed.

J. Duty

(29) The two cooperating Chinese exporters have claimed that separate injury margins for each of the three types of persulphates should be calculated because the different types of persulphates could not, due to the alleged lack of interchangeability, be regarded as one single product.

(30) For the reasons stated in recital 7, the three types of persulphates should be treated as one product. The claim by the exporters in this respect is therefore rejected and the methodology adopted by the Commission for the establishment of the provisional duty rate to be applied, as set out in recitals 42 to 44 of the provisional duty Regulation, is confirmed.

(31) Since the margin of dumping found was greater than the corresponding increase in export prices necessary to remove the injury suffered by the Community industry, the definitive duty to be imposed should therefore correspond to the injury margin established, i.e. 83,3 %.

K. Collection of the provisional duty

(32) In view of the dumping margin established and the injury caused to the Community industry, it is considered necessary that the amounts secured by way of a provisional anti-dumping duty should be definitively collected,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports into the Community of peroxodisulphates (persulphates) originating in the People's Republic of China and falling within CN code ex 2833 40 00 (Taric code: 2833 40 00 * 10).

2. The rate of duty applicable to the net, free-at-Community-frontier price, before duty shall be 83,3 %.

3. Unless otherwise specified, the provisions in force concerning customs duty shall apply.

Article 2

The amounts secured by way of the provisional anti-dumping duty pursuant to Regulation (EC) No 1748/95 shall be definitively collected at the rate of duty definitively imposed.

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, 18 December 1995.

For the Council

The President

J. BORRELL FONTELLES

COUNCIL REGULATION (EC) No 2962/95

of 18 December 1995

repealing Regulations (EEC) No 868/90 and (EEC) No 898/91 imposing definitive anti-dumping duties on imports of certain welded tubes, of iron or non-alloy steel, originating in Yugoslavia except Serbia and Montenegro and Romania, and in Turkey and Venezuela respectively

THE COUNCIL OF THE EUROPEAN UNION,

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), and in particular Article 23 thereof,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidised imports from countries not members of the European Economic Community (2), and in particular Article 14 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas :

A. PREVIOUS INVESTIGATIONS

1. Romania and the former Yugoslavia

(1) By Regulation (EEC) No 868/90 (3), the Council imposed a definitive anti-dumping duty on imports of certain welded tubes, or iron or non-alloy steel, originating in Yugoslavia and Romania.

(2) By Decision 90/166/EEC (4), the Commission accepted price undertakings from the former State-trading import/export monopoly organization of Romania and from a Yugoslavian producer.

2. Turkey and Venezuela

(3) By Regulation (EEC) No 898/91 (5), the Council imposed definitive anti-dumping duties on imports of certain welded tubes, of iron or non-alloy steel, originating in Turkey and Venezuela.

(4) By Regulation (EEC) No 3617/90 (6), the Commission accepted price undertakings from different producers/exporters in Turkey and Venezuela.

B. CURRENT REVIEW INVESTIGATION

1. Review application in respect of Romania

(5) A request for a review was lodged by S. C. Tepro SA, a Romanian producer, based on changed circumstances with regard to imports at dumped prices from Romania. In its request, the producer alleged that the former centrally planned economic system had been abolished and that important economic reform programmes had been set in motion. It further alleged that the price undertaking accepted from the former State-trading import/export monopoly organization had become discriminatory towards all Romanian producers of the product in question because it upheld the position of the State-trading organization as exclusive exporter to the Community, while other independent companies since established were subject to the residual anti-dumping duty. It finally alleged that prices for export to the Community were not lower than domestic prices and that dumping had ceased.

These circumstances were deemed sufficient to justify a review with regard to imports of the product concerned originating in Romania.

2. Extension of review in respect of the former Yugoslavia (except Serbia and Montenegro)

(6) Taking into account the fundamental changes that have also occurred in the former Yugoslavia due to the dissolution of the country and the fact that anti-dumping measures on imports of the product

(1) OJ No L 349, 31. 12. 1994, p. 1. Regulation as last amended by Regulation (EC) No 1251/95 (OJ No L 122, 2. 6. 1995, p. 1).
(2) OJ No L 209, 2. 8. 1988, p. 1. Regulation as last amended by Regulation (EC) No 522/94 (OJ No L 66, 10. 3. 1994, p. 10).
(3) OJ No L 91, 6. 4. 1990, p. 8.
(4) OJ No L 91, 6. 4. 1990, p. 36.
(5) OJ No L 91, 12. 4. 1991, p. 1.
(6) OJ No L 351, 15. 12. 1990, p. 17.

in question were imposed at the same time as for Romania, it was considered that a review, on the initiative of the Commission, with regard to imports originating in the successor Republics of the former Yugoslavia was also warranted.

(7) However, a review was not warranted in respect of Serbia and Montenegro, with which the Community has suspended trade relations and where a trade embargo is currently in operation. In the absence of a request for review of the measures applicable to imports of the product concerned from these two countries, the relevant definitive anti-dumping duty expired on 8 April 1995 (1).

3. Extension of review in respect of Turkey and Venezuela

(8) As the products imported from Turkey and Venezuela are the same as those subject to the proceeding concerning Romania and the former Yugoslavia, for which a review was warranted, it was decided, in the interest of efficiency and sound administration, to extend the review to include the anti-dumping measures imposed on imports of welded tubes originating in Turkey and Venezuela.

4. Initiation of the investigation

(9) On the basis of the above and after consultation of the Advisory Committee, a review pursuant to Article 14 of Regulation (EEC) No 2423/88 (hereinafter referred to as 'the Basic Regulation') was initiated in respect of the anti-dumping measures relating to imports of certain welded tubes of iron or non-alloy steel originating in Romania, the former Yugoslavia (except Serbia and Montenegro), Turkey and Venezuela. A notice of initiation of a review was published in December 1993 (2).

5. Investigation

(10) The Commission officially advised the producers, exporters known to be concerned, importers which cooperated in the original investigations, 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. Several interested parties made written submissions and were granted hearings.

(11) The Commission sent questionnaires to parties known to be concerned and received detailed information from the following:

Community producers:

— British Steel plc, Corby, UK;

— Hoogovens Buizen BV, Oosterhout, Netherlands;

— Mannesmannröhren-Werke AG, Mülheim an der Ruhr, Germany;

— Perfil en Frio SA, Pamplona, Spain;

— Profil Arbed SA, Differdange, Luxembourg;

— Siderurgica Aristrain Madrid SL, Madrid, Spain;

— Tubeurop France, Paris la Défense, France;

— Tubi Dalmine Ilva srl, Genova, Italy;

producers/exporters:

Romania:

— Metalexportimport SA, Bucharest,
S.C. Tepro SA, Iasi;

Croatia:

— Zeljezara Sisak 'Femark';

Former Yugoslavian Republic of Macedonia:

— FZC 11. Oktomvri, Kumanovo;

Turkey:

— Borusan Birlesik Boru Fabrikalari AS, Istanbul;

— Borusan Ihracat Ithalat ve Dagitim AS, Istanbul;

— Bosas Boru ve Profil Sanayi AS, Trabzon;

— Cayirova Sanayi ve Ticaret AS, Istanbul;

— Erbosan Erciyas Boru Sanayii ve Ticaret AS, Kayseri;

— Mannesmann-Sümerbank Boru Indüstrisi TAS, Izmir;

— Yücel Boru Ihracat Ithalat ve Pazarlama AS, Istanbul;

— Yücel Boru ve Profil Indüstrisi AS, Istanbul;

Venezuela:

— C.A. Conduven, Caracas, Venezuela.

(12) None of the importers contacted (see recital (10)) replied to the questionnaires sent by the Commission in the course of the current review and no new importer made itself known to the Commission after the publication of the notice of initiation.

(13) The Commission carried out investigations at the premises of all cooperating Community producers, with the exception of Profil Arbed S.A. and all producers/exporters in both Romania and Turkey.

(1) OJ No C 77, 29. 3. 1995, p. 2.
(2) OJ No C 344, 22. 12. 1993, p. 5.

(14) Upon request, parties were informed of the essential facts and considerations upon which it was intended to recommend the repeal of the measures in force. They were also granted a reasonable period within which to make representations subsequent to the disclosure.

(15) The investigation of dumping covered the period from 1 January 1993 to 30 November 1993 (the investigation period).

C. PRODUCT UNDER CONSIDERATION, LIKE PRODUCT

1. Description

(16) The products concerned are certain welded tubes, of iron or non-alloy steel, threaded or threadable, zinc coated or not, of circular cross section of an external diameter of not more than 168,3 mm falling within CN codes 7306 30 51, 7306 30 59, ex 7306 30 71 and ex 7306 30 78.

2. Like product

(17) The products in question produced in the Community, Romania, the former Yugoslavia (except Serbia and Montenegro), Turkey and Venezuela which have closely resembling physical characteristics and uses and compete with each other are considered like products within the meaning of Article 2 (12) of the Basic Regulation.

D. DUMPING

1. Former Yugoslavia

(a) Bosnia-Herzegovina and Slovenia

(18) For the reasons expressed in recitals 45 and 77 concerning the absence of any contribution to injury suffered by the Community industry or recurrence of injury, no dumping calculations were made with regard to Bosnia-Herzegovina and Slovenia.

(b) Croatia

Normal value

(19) Normal value was based on domestic prices of the like product on the Croatian market which were found to be made in the ordinary course of trade and in representative quantities as compared to the volume exported to the Community during the investigation period. Due to the high rate of inflation during the said period, normal value has been assessed on a monthly basis.

Export prices

(20) Export prices have been determined on the basis of prices actually paid for the product concerned sold for export to independent customers in the Community.

Comparison

(21) Normal value has been compared to export prices on a transaction-by-transaction basis, at ex-works level and at the same level of trade. Adjustments in respect of credit costs and import charges have been granted in accordance with Article 2 (10) (b) and (c) (iii) of the Basic Regulation.

Dumping margin

(22) The dumping margin found, expressed as a percentage of the export price, at CIF Community frontier level, amounts to 31,1 %.

(c) Former Yugoslavian Republic of Macedonia (Fyrom)

(23) In the absence of export sales during the investigation period, no dumping calculation could be made with regard to Fyrom.

2. Romania

(a) Preamble

(24) Information submitted in reply to the Commission's questionnaire and the subsequent on-the-spot investigation showed that Romania had commenced a liberalization process which affected both the pricing of goods sold and the relations between the different operators on the domestic market. In the context of this process, the producer of the product concerned became progressively independent, its management being entitled to act on behalf of the company. Furthermore, the investigation revealed that the company's book-keeping, as supplemented by the necessary commercial documentation, had developed to conform with generally agreed principles of accountancy. Consequently, the Commission was satisfied that the information provided by the Romanian companies investigated could be used for determining normal value and export price.

(b) Normal value

(25) Normal value could not be calculated by reference to domestic sales transactions because none was profitable during the investigation period. Therefore, normal value was determined on the basis of cost of production calculated on the basis of all costs, in the ordinary course of trade, both fixed and variable, in Romania, plus a reasonable amount for selling, administrative and other general expenses and a reasonable level of profit. The steel coils which were used for manufacturing the tubes concerned were supplied by a sister company at a price below the cost of production. For that reason, the steel coil input factor used for determining the cost of production of steel hot-rolled coils manufactured by the sister company which supplied the necessary information. The profit rate was fixed at 3 % on turnover, which was considered reasonable for the industry in question.

(c) Export prices

(26) With regard to export prices, all transactions were made through the former State-trading company, Metalexportimport, from which a price undertaking had been accepted at the end of the original investigation.

(27) Taking into account that this trading organization had to be considered as being related to the producer during the investigation period, as both entities belonged to the Romanian State, the export prices were assessed on the basis of the price actually paid for the product when exported to the Community by the State-trading company.

(d) Comparison

(28) Constructed normal value has been compared with export prices on a transaction-by-transaction basis at ex-works level and at the same level of trade.

(29) To take account of any differences affecting price comparability, adjustments have been granted with regard to selling expenses as provided for by Article 2 (9) and (10) of the Basic Regulation.

(e) Dumping margin

(30) The dumping margin found, expressed as a percentage of the export price at cif Community frontier level, amounts to 10,3 %.

3. **Turkey**

(a) Preamble

(31) Of the eight companies which cooperated in the current investigation, three constituted the Yücel Boru Group, two the Borusan Group, while the three remaining companies were fully independent.

(32) During the investigation period, only the Yücel Boru Group and the Borusan Group, from which price undertakings had been accepted during the original investigation, made exports to the Community.

(33) The remaining three companies did not export the products concerned to the Community during the investigation period. For this reason, no dumping determination could be made in respect of them.

(b) Normal value

(34) Due to high inflation in Turkey during the investigation period, normal value was established on a monthly basis.

(35) Normal values for the Borusan Group and the Yücel Boru Group were determined on the basis of the comparable prices actually paid or payable in the ordinary course of trade for the like product sold for consumption on the domestic market in Turkey when such sales were representative.

(36) In cases where domestic sales could not be considered to have been made in ordinary course of trade, normal value was constructed in accordance with Article 2 (3) (b) (iii) of the Basic Regulation by adding cost of production, including a reasonable amount for selling, general and administrative expenses and a margin of profit of 3 % of turnover, considered reasonable for the industry in question.

(c) Export prices

(37) For the two groups concerned, export prices were calculated on the basis of the prices actually paid for the welded tubes sold for export to the Community.

(d) Comparison

(38) Normal value has been compared to export prices on a transaction-by-transaction basis, at ex-works level and at the same level of trade. Adjustments in respect of selling expenses have been granted in accordance with Article 2 (9) and (10) of the Basic Regulation.

(e) Dumping margins

(39) The dumping margins found, expressed as a percentage of the export price, at cif Community frontier level amount to :

— Borusan Group : 3,0 %,

— Yücel Boru Group : 7,6 %.

4. Venezuela

(40) Due to the absence of export sales to the Community during the investigation period, no dumping determination could be made in respect of Venezuela.

E. COMMUNITY INDUSTRY

(41) For the purpose of the current investigation, the Community industry consists of eight cooperating Community producers (see recital (11)), which represent approximately 70 % of Community production of the product concerned.

F. INJURY

(42) In order to assess the evolution of the situation of the Community industry, the Commission took into consideration the available information for the period beginning in 1990, when the first anti-dumping measures against Romania and the former Yugoslavia were adopted (see recitals (1) and (2)), and ending in November 1993 with the investigation period.

1. Consumption

(43) In order to calculate the apparent consumption of iron or non-alloy steel welded tubes in the Community, the Commission services added the total deliveries destined for the Community market of the Community production of the product concerned to the total imports into the Community falling under CN codes 7306 30 51, 7306 30 59, 7306 30 71 and 7306 30 78.

(44) On this basis, total consumption decreased by 23,2 % between 1990 and the investigation period from an average of 105 932 tonnes per month to an average of 81 334 tonnes per month.

2. Dumped imports

(a) *Volume and market share by country taken individually*

(45) Import statistics in respect of the successor Republics of the former Yugoslavia (which were available only from 1992) and information supplied by the cooperating companies showed that, during the period under consideration (see recital (42)), only Croatia continued to export to the Community, Fyrom ceased to export in 1990 and Bosnia-Herzegovina and Slovenia did not export to the Community.

(46) Imports from Croatia decreased continuously on average from 2 297 tonnes per month in 1990 to 1 584 tonnes per month in 1991, 1 293 tonnes per month in 1992 and to 1 123 tonnes per month during the investigation period in line with the corresponding market share which amounted to 2,2 % in 1990, 1,7 % in 1991, 1,4 % in 1992 and 1,4 % during the investigation period.

(47) During the same period, imports from Romania averaged (per month) 179 tonnes in 1990, 132 tonnes in 1991, 1 039 tonnes in 1992 and 800 tonnes during the investigation period. The corresponding market share varied accordingly from 0,2 % in 1990, 0,1 % in 1991, 1,2 % in 1992 to 0,9 % during the investigation period.

(48) Imports from Turkey show the following development, based on an average tonnage per month : 2 384 tonnes in 1990, 1 759 tonnes in 1991, 2 038 tonnes in 1992 and 3 038 tonnes during the period of investigation, i.e. an overall increase in volume of 27 %. The corresponding market shares were equivalent to 2,3 % in 1990, 1,9 % in 1991, 2,3 % in 1992 and 3,7 % during the period of investigation.

(49) Imports from Venezuela decreased from 1 595 tonnes per month in 1990, to 287 tonnes per month in 1991 and ceased in 1992.

(b) *Volume and market share of total imports*

(50) Total imports from the countries concerned showed the following development during the period under consideration on an average tonnage per month basis : 6 456 tonnes in 1990, 3 761 tonnes in 1991, 4 372 tonnes in 1992 and 4 960 tonnes during the period of investigation. The corresponding total market share amounted respectively to : 6,2 % in 1990, 4,0 % in 1991, 4,9 % in 1992 and 6,0 % during the investigation period.

(c) *Price undercutting*

(51) In order to assess the degree of price undercutting, the Commission services compared the average prices of the imports from Croatia, Romania and Turkey (cif Community frontier duty paid) with the Community producer's selling prices, calculated at ex-works level. In order to ensure that comparison was made at the same level of trade, export prices of the countries concerned had to be adjusted by the cost of handling up to the first independent

buyer in the Community. In the absence of any cooperation from importers of the product concerned in the Community during the current investigation, these margins were estimated on the basis of the information available to the Commission.

(52) The weighted average price undercutting amounted to :

— Croatia 8,0 %,

— Romania 0 %,

— Turkey

— Borusan Group 6,1 %,

— Yücel Boru Group 0,7 %.

3. Situation of the Community industry

(a) *Production*

(53) The volume of production of the cooperating Community producers decreased sharply between 1990 and the investigation period, from an average of 56 390 tonnes per month to an average of 46 946 tonnes per month, a decrease of 16,75 %.

(b) *Production capacity and capacity utilization*

(54) Regarding capacity, it should be noted that the product in question is generally manufactured on equipment which can also be used for manufacturing other categories of tubes which are not subject to the current review. Therefore, the quantification of capacity and assessment of the rate of capacity utilization specifically relevant to the product under investigation is generally difficult to establish with any precision.

(55) However, an indication of the trend of capacity utilization can be found by reference to data relating to those Community producers manufacturing, for the most part, the like product. On this basis, the rate of utilization of capacity of the Community industry decreased from an average of 59 % in 1990 to about 54 % in the investigation period.

It should be mentioned that the fall in production was not fully reflected in capacity utilization, as the industry in question was facing contracting demand and continued to restructure by streamlining or closing some production facilities.

(c) *Sales and market share*

(56) The total deliveries of the Community industry destined for the Community market, expressed in monthly averages, declined continuously from a level of 53 177 tonnes in 1990 to 46 492 tonnes in 1991, 42 671 tonnes in 1992 and to 41 397 tonnes during the investigation period, i.e. a loss in volume of sales of 22,15 %.

(57) Over the same period, the corresponding market share amounted to 50,2 % in 1990, 49,1 % in 1991, 47,4 % in 1992 and 50,9 % during the investigation period.

(d) *Sales prices*

(58) The products concerned by the current review comprise two main categories of steel tubes :

— tubes without coating (so-called 'black welded tubes'),

— galvanized welded tubes, i.e. coated with zinc.

Between 1990 and the investigation period, prices of the Community producers' like product decreased continuously, by 10 % for black tubes and 19 % for galvanized tubes.

In this context it should be mentioned that prices for the steel tubes concerned had peaked in 1990 under the combined effect of a very favourable market situation and the anti-dumping measures taken against the four countries concerned. In fact, between 1987 and 1990 prices had increased by about 15 % for black tubes and 22 % for galvanized tubes.

(e) *Profitability*

(59) It should first be mentioned that, during the period under review, the Community industry benefited from a sharp decline in the cost of raw materials used for manufacturing welded tubes, i.e. the cost of hot-rolled steel coils which are transformed during the production process and the cost of zinc used when tubes are further worked in the galvanizing process. However, due to the combined effects of the decrease in the rate of utilization of capacity and the corresponding increase of fixed costs, the reduction in the cost of raw materials resulted in only a small (but continuous) decline in the total cost of production for the Community producers.

(60) In 1990, the Community industry had benefited from a strongly improved domestic market, and subsequently a sizeable reduction of imports from dumped sources and their price-distorting effects after the imposition of anti-dumping measures. On the basis of the information available for representative Community producers, the Community industry had reached a generally profitable situation in 1990.

(61) However, the continuous decline in the cost of production and prices produced contrasting results, with some producers incurring substantial financial losses in 1992 and during the investigation period, while others were able to minimize the impact of the economic downturn and pressure on prices on their financial results.

(f) *Employment*

(62) The abovementioned restructuring process of the Community industry (see recital 55) was accompanied by a reduction of approximately 800 employees by the cooperating companies, which represents a decrease of one third of total employment between 1990 and the investigation period.

4. Conclusion

(63) It follows from the above findings that, despite the restructuring process that is underway and the existing anti-dumping measures, the Community industry's situation again deteriorated continuously until the investigation period, notably in terms of loss of production, market share and financial losses.

G. CAUSATION

(64) In order to determine the factors which prevented the Community industry from stemming the renewed downturn in its situation, as observed since 1990, the Commission has examined the following criteria, which were considered to be decisive in determining causation :

— functioning of existing anti-dumping measures,

— decrease of consumption,

— decrease of exports by Community producers to thrid countries,

— imports from other third countries.

1. Effect of existing anti-dumping measures

(65) The measures in force are based on the findings of investigations referable to a period of three to four years preceding 1990. Price undertakings were accepted by the Commission and designed to eliminate the injurious effect of the dumping.

(66) After the entry into force of the first anti-dumping measures in 1990, the total market share of the imports under investigation declined from 12,7 %, the level during the original investigation, to 6,2 % in 1990, falling further to 4,0 % in 1991, to recover slightly to 4,9 % in 1992 and again to 6 % during the investigation period (see recital 50).

The market shares, taken separately for each country concerned, have shifted. Romanian imports, which had almost disappeared after the imposition of anti-dumping measures, recovered somewhat but remained below 1 %. The market share of imports from Turkey also increased slightly to 3,7 %. However, taken together, the increase of the Turkish and Romanian market share was more than compensated for by the decline of imports from Croatia and the disappearance of imports from Venezuela, so that the overall effect on the Community industry was practically neutral.

During the period under consideration, (see recital 42), price undertakings have not been revised. Prices of Community producers increased sharply after the introduction of the measures and subsequently reached a level well above the prices of the undertaking, i.e. by about 15 % for black tubes and 20 % for galvanized tubes, allowing the Community industry to return to a satisfactory level of profitability.

If some price undercutting was found in the case of Croatian and Turkish imports, it did not exist for Romanian imports. In any case, imports from the three countries concerned were priced at significantly higher levels than imports from other third countries. Indeed, these imports were purchased at prices 17 % to 23 % below those of the Turkish products. Furthermore, the combined market share of Turkey and Romania amounted to 4,6 % in the investigation period which is to be compared to a share of 7 % of other low-priced imports (see recital 73).

It can thus be concluded that, from the outset, the anti-dumping measures taken have been effective and that the impact of the imports from the countries concerned on the situation of the Community industry was not clearly discernible during the period considered.

2. Effect of other factors

(a) *General*

(67) As, however, the analysis of the situation of the Community industry (see recitals 53 to 63) has revealed a renewed serious deterioration in sales,

prices and profitability between 1990 and the investigation period, consideration must be given to other factors which might have influenced this development.

(b) *Decrease in consumption*

(68) As indicated in recital 46, consumption steadily decreased from 1990 to the investigation period, a decline of 23,2 %. This figure practically equals the percentage of loss of sales by the Community industry on the Community market.

(69) Consequently, in terms of market share, the Community industry was able to maintain its position. The slight decline from 50,2 % in 1990 to 49,1 % in 1991 and 47,4 % in 1992 was mainly due to an increase of other imports not under investigation which was reversed during the investigation period so that the Community industry's share recovered to 50,9 %.

(c) *Decrease of exports by Community producers to third countries*

(70) During the period under consideration, total exports by Community producers to third countries amounted to an average of 11 413 tonnes per month in 1990, 14 064 tonnes per month in 1991, 11 888 tonnes per month in 1992 and 10 203 tonnes per month during the investigation period, which corresponds to an overall decrease of 10,6 %.

(d) *Imports from other countries*

(71) Imports from third countries other than those subject to review averaged 17 860 tonnes per month in 1990, 17 582 tonnes per month in 1991, 18 335 tonnes per month in 1992 and 15 176 tonnes per month during the investigaiton period.

(72) The corresponding market share developed as follows: 16,9 % in 1990, 18,6 % in 1991, 20,4 % in 1992 and 18,7 % during the investigation period.

(73) An analysis of the price pattern of these imports reveals that, for certain countries, representing an 8,5 % market share in 1992, price undercutting of between 12 % and 18 % was constantly practised by comparison to the prices of the countries subject to investigation and bound by price undertakings.

3. Conclusion

(74) As set out in recital 68, sales of the Community industry decreased almost in line with consumption, the disproportionately higher fall in 1991 and 1992 being attributable mainly to the increase in imports from third countries not under investigation. This trend was reversed during the investigation period, leaving the Community industry with a small gain of 0,7 % over the whole period.

(75) Under these circumstances, the continuous deterioration in the situation of the complainant Community industry, as reflected by sharply decreasing sales, production, capacity utilization, employment and a general lack of profitability, cannot be attributed to the imports under investigation. Although some of these imports, i.e. from Turkey, which are covered by price undertakings, showed a small increase of their market share, the effect of these imports in the Community cannot be considered material, given that they were constantly undercut by other imports.

In conclusion, the weakened situation of the Community industry does not appear to have been caused by the dumped imports taken in isolation.

H. LIKELIHOOD OF A RECURRENCE OF INJURY

1. General

(76) Having concluded that the existing anti-dumping measures have been effective in preventing further material injury caused by the imports under consideration and that the apparent lack of improvement of the situation of the Community industry was attributable to other factors, the investigation also analyzed the likelihood of a recurrence of material injury if the existing anti-dumping measures were lifted. It should be recalled in this respect that the circumstances which would lead to a renewal of material injury must be clearly foreseeable and the foreseen injury imminent.

2. Slovenia and Bosnia-Herzegovina

(77) No imports of the products concerned have been reported since separate trade statistics have been made available by Eurostat for these countries. Furthermore, according to the information available to the Commission, significant production facilities for the products concerned in these countries do not exist.

3. The Former Yugoslav Republic of Macedonia (Fyrom)

(78) No imports from this country have been recorded since separate trade statistics became available. According to the information available to the Commission there is sizeable capacity in Fyrom for the production of the primary material, hot rolled steel coils, and for the products under consideration which are derived from these coils. There is, however, no indication, under the prevailing circumstances in this country, which is practically isolated from international trade, that exports of the product concerned to the Community could be developed in the short term to the extent that they could cause material injury to the Community industry.

4. Venezuela

(79) Since 1992, imports from Venezuela have totally ceased. The welded tube industry in Venezuela has been developed to a sufficient extent to satisfy the requirements of the domestic oil industry, the principal user in this country, for its needs of tubes and pipes in exploitation, production, refining and distribution of its gas and liquid products.

(80) In the event of fluctuations in demand by the oil industry, excess production is usually exported to neighbouring countries on the American continent. Given the relatively high cost of transport for this product, it is unlikely that the lifting of the anti-dumping measures in force would create an incentive for the Venezuelan producer again to redirect exports to the Community to the extent that the likelihood of a recurrence of imminent injury would be clearly foreseen.

5. Croatia

(81) Imports from Croatia have declined continuously and were close to 1 % during the investigation period. More recent information received by the Commission from the Croatian exporter pursuant to the monitoring procedure of the undertaking in force confirms this declining tendency.

(82) This continuing retreat of Croatian exports from the Community, despite a substantial dumping margin, is explained by the tremendous internal difficulties encountered by the Croatian welded tube industry since the break-up of the Former Republic of Yugoslavia. Indeed, the Croatian producer faces a problem in replacing traditional raw material supplies from the former Yugoslav steel industry with imports which must be paid in hard currency. In addition, production activity is hampered by the surrounding military conflict. Therefore, it is most unlikely that an increase of injurious imports from this country is imminent.

6. Romania

(83) Imports from Romania, which has been a traditional supplier of welded tubes to the Community, had almost disappeared from the Community market, its market share falling to a *de minimis* level. This was mainly due to the difficulties encountered by this country in the wake of the reform of its centrally planned economic system which is still only progressing slowly. Tube production had almost come to a halt because the upstream steel industry could not supply the necessary raw materials or the spare parts necessary for the maintenance of the ageing production equipment which is mainly of Russian origin, to the extent that one large production facility of 200 000 tonnes capacity had to be scrapped. It is estimated that the effective production facilities in Romania declined from over 600 000 tonnes before the changes to less than 150 000 tonnes at present.

(84) In 1992 and during the investigation period a modest recovery of Romanian exports to the Community was observed. Their market share remained, however, at *de minimis* levels. The slight increase in Romanian exports after a decline to almost zero cannot be considered an indication that a sizeable increase in exports is imminent such that, should existing anti-dumping measures be lfited, exports would be likely to cause material injury to the Community industry, given the economic difficulties that exist in the Romanian steel and tube industry.

7. Turkey

(85) Turkey is the only country of those involved in the proceeding which, after the imposition of anti-dumping measures, maintained its market share and could even increase it during the investigation period, mainly at the expense of Venezuela and Croatia. With regard to prices, the Turkish exporters were bound by price undertakings which, as verified by the Commission, have been respected.

(86) In order to assess the likelihood that imports from Turkey would again expand to such an extent that they could cause injury to the Community industry, the Commission took into account the available production capacity in Turkey, prospects of consumption in the domestic market, export capacities and the likely behaviour regarding prices of the Turkish exporters which could be expected in the absence of price undertakings.

(87) Production capacities for the products in question of the major Turkish producers which cooperated with the Commission are substantial, amounting to about 700 000 tonnes per year. To this figure, 20 % should be added to take account of two samller producers which have only regional importance, which means that about 840 000 tonnes of capacity is available. No major increase in, or reduction of, capacity is planned in the near future. In contrast to the Community, which, being a mature economy, has a shrinking market for these products, consumption in Turkey has expanded and this tendency is forecast to continue in the future, although at a reduced rate. Consumption of welded tubes in Turkey is estimated at 392 000 in 1990, 520 000 tonnes in 1993 and is forecast to reach 557 000 tonnes in 1995.

(88) Assuming a maximum possible output of 90 %, the theoretical export potential would be 200 000 tonnes per year. Total Turkish exports during the period of investigation amounted to 76 000 tonnes, of which 45 % were directed to the Community and 55 % to other countries. If this trend were to continue in 1995, about 90 000 tonnes could be shipped to the Community. Although this calculation cannot be precise and relies on theoretical assumptions, it indicates that the Turkish tube industry has the potential to increase its exports to the Community substantially.

(89) Indeed, the information available on the development of Turkish exports to the Community after the investigation period shows that their volume and market share has continued to increase. Although at this stage the Commission has no detailed information to assess the effects on the Community industry, this evolution seems to reflect the considerable improvement of the Community market with regard to sales and prices. Monitoring of the undertakings accepted from the Turkish exporters, in particular analysis of their quarterly reports on export quantities and prices to date, reveals that not only have the undertakings been scrupulously respected but, where market conditions permit, even higher prices have been charged by the Turkish exporters.

(90) In conclusion, it is undeniable that imports from Turkey are potentially capable of causing injury to the Community industry. There is also a potential risk that Turkish exporters could be tempted to cut their prices if market conditions in the Community were to tighten again in the future. There are, however, no indications that such a situation is actually imminent and clearly foreseeable.

(91) Should the situation, nevertheless, deteriorate at a future stage to the extent that material injury is caused to the Community industry by dumping, it remains open to the Community industry to lodge a new complaint with the Commission.

I. REPEAL OF ANTI-DUMPING DUTIES

(92) In view of the foregoing, the anti-dumping duties in force on imports of certain welded tubes, of iron or non-alloy steel, originating in Romania, the former Yugoslavia (except Serbia and Montenegro), Turkey and Venezuela should be repealed and the proceedings thereby terminated. Consequently, the corresponding undertakings offered and accepted by Commission Decision 90/166/EEC and Commission Regulation (EEC) No 3617/90 have no further purpose,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 868/90 and Regulation (EEC) No 898/91 are hereby repealed.

Article 2

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

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

Done at Brussels, 18 December 1995.

For the Council

The President

J. BORRELL FONTELLES

COMMISSION DIRECTIVE 95/65/EC

of 14 December 1995

amending Directive 92/76/EEC recognizing protected zones exposed to particular plant health risks in the Community

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community [1], as last amended by Commission Directive 95/41/EC [2], and in particular the first subparagraph of Article 2 (1) (h) thereof,

Having regard to Commission Directive 92/76/EEC of 6 October 1992 recognizing protected zones exposed to particular plant health risks in the Community [3], as last amended by Directive 95/40/EC [4],

Whereas pursuant to Directive 92/76/EEC certain zones in the Community were recognized as 'protected zones' in respect of certain harmful organisms for a period expiring on 1 April 1996;

Whereas based on a request from Italy to be able to trade all citrus fruits with their leaves and peduncles and not just the fruit of *Citrus clementina* Hort. ex Tanaka, the protected zones recognized for Greece, France, Italy and Portugal in respect of *Citrus tristeza* virus (European isolates) should be modified to cover all fruit of *Citrus* L., *Fortunella* Swingle, *Poncirus* Raf. and their hybrids, with leaves and peduncles;

Whereas the measures provided for in this Directive are in accordance with the opinion of the Standing Committee and Plant Health,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The Annex to Directive 92/76/EEC is hereby amended as indicated in the Annex to this Directive.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive with effect from 1 January 1996. They shall immediately inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The procedure for such a reference shall be adopted by Member States.

2. Member States shall immediately communicate to the Commission the essential provisions of domestic law which they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 14 December 1995.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ No L 26, 31. 1. 1977, p. 20.
[2] OJ No L 182, 2. 8. 1995, p. 17.
[3] OJ No L 305, 21. 10. 1992, p. 12.
[4] OJ No L 182, 2. 8. 1995, p. 14.

ANNEX

Point (d) (4) is replaced by the following:

'4. *Citrus tristeza* virus (European isolates) harmful to fruits of *Citrus* L., *Fortunella* Swingle, *Poncirus* Raf., and their hybrids, with leaves and peduncles	Greece, France (Corsica), Italy, Portugal'

COMMISSION DIRECTIVE 95/66/EC

of 14 December 1995

amending certain Annexes to Council Directive 77/93/EEC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community [1], as last amended by Commission Directive 95/41/EC [2], and in particular Article 13, second subparagraph, third and fourth indents thereof,

Whereas certain provisions on fruits of *Citrus clementina* Hort. ex Tanaka, with leaves and peduncles established for protected zones recognized in respect of *Citrus tristeza* virus (European isolates) should be modified to take into account the movement of all fruit of *Citrus* L., *Fortunella* Swingle, *Poncirus* Raf. and their hybrids, with leaves and peduncles throughout the Community;

Whereas the amendments are in agreement with the requests of the Member States concerned;

Whereas the measures provided for in this Directive are in accordance with the opinion of the Standing Committee and Plant Health,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 77/93/EEC is hereby amended as indicated in the Annex to this Directive.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive on 1 January 1996. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. The Member States shall immediately communicate to the Commission all provisions of domestic law which they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.

Article 3

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities.*

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 14 December 1995.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ No L 26, 31. 1. 1977, p. 20.
[2] OJ No L 182, 2. 8. 1995, p. 17.

ANNEX

1. In Annex II, Part B (d), the entry is replaced by the following:

'*Citrus tristeza* virus (European isolates)	Fruits of *Citrus* L., *Fortunella* EL, F Swingle, *Poncirus* Raf., and, their hybrids, with leaves and peduncles	EL F (Corsica), I, P'

2. In Annex IV, Part A, Section II, point 31.2 is deleted.

3. In Annex IV, Part B, point 31 is replaced by the following:

'31. Fruits of *Citrus* L., *Fortunella* Swingle, *Poncirus* Raf., and their hybrids originating in E and F (except Corsica)	Without prejudice to the requirements applicable to the fruit in Annex IVAII (31.1): a) the fruits shall be free from leaves and peduncles or b) in the case of fruits with leaves or peduncles, official statement that the fruits are packed in closed containers which have been officially sealed and shall remain sealed during their transport through a protected zone, recognized for these fruits, and shall bear a distinguished mark to be reported on the passport	EL, F (Corsica), I, P'

4. In Annex V, Part A, I, point 1.6 is replaced by the following:

'1.6 Fruits of *Citrus* L., *Fortunella* Swingle, *Poncirus* Raf. and their hybrids, with leaves and peduncles'.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 17 April 1995

on the signature and provisional application of the Agreement between the European Community and Canada on fisheries in the context of the NAFO Convention

(95/546/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 in conjunction with Article 228 (3), first subparagraph thereof,

Having regard to the proposal from the Commission,

Whereas the European Community and Canada are committed to enhanced cooperation in the conservation and rational management of fish stocks, in particular within the framework of the Northwest Atlantic Fisheries Organization (NAFO);

Whereas in the light of their mutual interest in conservation, the European Community and Canada have agreed to collaborate further on the management arrangements for species covered by the NAFO Convention, and in particular for Greenland halibut;

Whereas their Agreement is reflected in an Agreed Minute, the Exchange of Letters, the Exchange of Notes and the Annexes thereto;

Whereas the European Community and Canada are committed to the adoption by NAFO of the measures and provisions as laid down in the Agreed Minute and to seek the support of other NAFO Contracting Parties;

Whereas this Agreement should be signed and applied provisionally in order to achieve immediately the desired objectives of the Parties,

HAS DECIDED AS FOLLOWS:

Article 1

1. The Agreement constituted in the form of an Agreed Minute, an Exchange of Letters, an Exchange of Notes and the Annexes thereto between the European Community and Canada on fisheries in the context of the NAFO Convention is hereby signed on behalf of the European Community.

2. The text of the Agreement is attached to this Decision.

3. This Agreement shall be applied provisionally upon its signature.

Article 2

The President of the Council hereby authorizes the Commission to sign the attached Agreed Minute, the Exchange of Letters, the Exchange of Notes and the Annexes thereto in order to bind provisionally the European Community.

Done at Brussels, 17 April 1995.

For the Council

The President

A. JUPPÉ

AGREEMENT

constituted in the form of an Agreed Minute, an Exchange of Letters, an Exchange of Notes and the Annexes thereto between the European Community and Canada on fisheries in the context of the NAFO Convention

AGREED MINUTE

The European Community and Canada have agreed as follows:

A. CONTROL AND ENFORCEMENT

1. The European Community and Canada, in recognition of their commitment to enhanced cooperation in the conservation and rational management of fish stocks, and the pivotal role of control and enforcement in ensuring such conservation, agree that the proposals set out in Annex I shall constitute the basis for a submission to be jointly prepared and made to the NAFO Fisheries Commission, for its consideration and approval, to establish a Protocol to strengthen the NAFO conservation and enforcement measures.

2. The European Community and Canada shall implement immediately on a provisional basis the control and enforcement measures contained in points II.1, II.2, II.3, II.4, II.7, II.8, II.9 (the proposed list of infringements and paragraphs (i), (iii) and (v) only), II.10 and II.11 of Annex I. In respect of point II.11.A, the Parties shall deploy observers on the vessels not later than 15 days following the signature of the Agreed Minute. Regarding point II.11.B, the satellite tracking devices on 35 % of the vessels shall be installed as rapidly as realistically possible when the vessels concerned make a port call or depart for fishing in the NAFO Regulatory Area.

3. The European Community and Canada commit themselves to seeking on an urgent basis the support of other NAFO Contracting Parties for the adoption of, and subsequent adherence to, the said Protocol in advance of special meetings of the NAFO Standing Committee on International Control (Stactic) starting in April 1995 and of the NAFO Fisheries Commission to be convened as early as possible thereafter in May 1995 at the request of the European Community and Canada. The Protocol shall enter into force on the signature of a majority of NAFO Contracting Parties in the form agreed to. The European Community and Canada are convinced that by September 1995 a majority of the NAFO Contracting Parties will have subscribed to the measures. The European Community and Canada shall make great efforts to obtain the signature to the Protocol of the other NAFO Contracting Parties.

4. Canada shall submit to the NAFO Executive Secretary, in advance of each annual NAFO meeting, a report on the conservation and enforcement measures in effect in its 200-mile zone for NAFO-managed stocks. The report shall deal with the range of matters dealt with in the NAFO conservation and enforcement measures.

5. The European Community and Canada shall cooperate to improve conservation and enforcement measures. Toward this end, Canada shall invite experts from the European Commission to exchange information and to brief them on Canadian conservation and enforcement measures in effect in the Canadian 200-mile zone for NAFO-managed stocks.

6. Under the pilot project for observers and satellite tracking described in Annex I, observers will act under the authority of the European Commission for the European Community and the Government of Canada for Canada, and will be placed on vessels as soon as possible in accordance with the provisions set out under point 2 above. Except in the case of *force majeure*, vessels without an observer will not be allowed to continue fishing in the NAFO Regulatory Area beyond the period referred to in point 2 above. The European Community and Canada will both monitor on a regular basis the effectiveness and efficiency of the observer scheme as part of the evaluation of the said Pilot Project.

B. TOTAL ALLOWABLE CATCH AND CATCH LIMITS

In light of their mutual interest in conservation, the European Community and Canada reaffirm their commitment to the level of 27 000 tonnes as the total allowable catch of Greenland halibut for 1995 in NAFO sub-areas 2 and 3. Bearing this in mind, and in the light of the particular circumstances associated with the management of the Greenland halibut resource in the NAFO Convention Area, the European Community and Canada agree to the management arrangements for Greenland halibut as set out in Annex II.

C. OTHER RELATED ISSUES

1. Canada shall repeal the provisions of the Regulation of 3 March 1995 pursuant to the Coastal Fisheries Protection Act which subjected vessels from Spain and Portugal to certain provisions of the Act and prohibited these vessels from fishing for Greenland halibut in the NAFO Regulatory Area. For the European Community, any re-insertion by Canada of vessels from any European Community Member State into its legislation which subjects vessels on the high seas to Canadian jurisdiction will be considered as a breach of this Agreed Minute.

2. For Canada, any systematic and sustained failure of the European Community to control its fishing vessels in the NAFO Regulatory Area which clearly has resulted in violations of a serious nature of NAFO conservation and enforcement measures may be considered as a breach of this Agreed Minute. The European Community and Canada shall consult before taking any action on the foregoing.

D. GENERAL PROVISIONS

1. The European Community and Canada maintain their respective positions on the conformity of the amendment of 25 May 1994 to Canada's Coastal Fisheries Protection Act, and subsequent regulations, with customary international law and the NAFO Convention. Nothing in this Agreed Minute shall prejudice any multilateral convention to which the European Community and Canada, or any Member State of the European Community and Canada, are parties, or their ability to preserve and defend their rights in conformity with international law, and the views of either Party with respect to any question relating to the Law of the Sea.

2. Any limitation to the NAFO Regulatory Area or any parts thereof of the measures referred to in this Agreed Minute shall not be deemed to affect or prejudice the position of the European Community with regard to the status of the areas within which coastal States exercise their fisheries jurisdiction.

E. IMPLEMENTATION

The provisions of this Agreed Minute, with its annexes as an integral part of it, shall be provisionally implemented by the European Community and Canada upon signature, pending its final approval through an exchange of notes.

This Agreed Minute shall cease to apply on 31 December 1995 or when the measures described in this Agreed Minute are adopted by NAFO, if this is earlier.

Brussels, 20 April 1995

On behalf of the European Community
Gianluigi GIOLA

For the Canadian Government
Jacques S. ROY

ANNEX I

PROPOSAL FOR IMPROVING FISHERIES CONTROL AND ENFORCEMENT

I. BASIS FOR CONSERVATION AND ENFORCEMENT STRATEGY

The strategy underlying this proposal comprises the following elements:

(a) simplification and strengthening of existing rules, making them more enforceable;

(b) establishment and enforcement of minimum fish size compatible with meshes in use in order to minimize discarding;

(c) encouragement of the practice of selective fisheries, with minimal by-catch;

(d) improvement of hail system;

(e) increased inspection on fishing grounds and on landings;

(f) increased transparency;

(g) pilot project for observers and satellite tracking system;

(h) a system for immediate response to alleged major infringements;

(i) reporting rules;

(j) use of legal process;

(k) penalties;

(l) effort control.

Any proposals to be adopted by NAFO shall take into account cost/benefit analysis and existing legal systems of Contracting Parties, including the principles of non-discrimination, proportionality and the right of appeal by fishermen.

II. PROPOSALS TO AMEND THE NAFO CONSERVATION AND ENFORCEMENT MEASURES

II.1. Inspections

Inspections of vessels shall be carried out in a non-discriminatory way. The number of inspections shall be based upon fleet size, taking also into account their compliance records. Contracting Parties shall ensure that their inspectorates take special care to avoid damage to the cargo or the gear being inspected. Interference with fishing activities and normal activities on board shall be minimized. Crews and vessels operating in conformity with the NAFO conservation and enforcement measures shall not be harassed. Inspections shall only aim to ascertain that NAFO rules are respected and not unduly hinder the activities of specific vessels, while at the same time not limiting the capability of NAFO inspectors to carry out their mandate.

II.2. Transmission of information from inspections

Any information on suspected illegal practices and any evidence of apparent infringements shall be transmitted swiftly to the inspection authorities of the Contracting Party of the vessel and to the NAFO Executive Secretary.

II.3. Increase of the inspection presence

Each Contracting Party having 10 or more vessels operating in the NAFO Regulatory Area (NRA) shall deploy at least one inspection vessel. Contracting Parties with fewer than 10 vessels shall cooperate in the deployment of inspection vessels.

Every Contracting Party shall have at least one inspector present in the NAFO Comvention Area (NCA) when vessels of that Contracting Party are operating in the NRA.

II.4. Improved hail system

A system of reporting of catch on board upon entry into and exit from the NRA will be associated with the hail system currently in practice.

Vessels with a satellite-based system of position reporting shall not be required to hail but shall submit catch reports to the NAFO Executive Secretary. Contracting Parties remain responsible for transmitting the hail information to the NAFO Executive Secretary. Contracting Parties whose vessels are so equipped shall notify the NAFO Executive Secretary of the names of such vessels.

II.5. Additional enforcement measures

In order to improve conservation and rationalize enforcement, the next Stactic meeting will study the issues of the protection of juvenile fish and the by-catch of regulated species and will make recommendations thereon to the next NAFO Fisheries Commission meeting.

In particular, the following issues shall be addressed:

— the addition of Greenland halibut to the list of species subject to a minimum fish size, with a length of (X) cm;

— the applicability of current discard rules in the NRA;

— the development of special rules for fish products, e.g. processed length equivalents;

— the problem of on-board production of fish meal and similar products;

— further measures to protect juvenile fish, e.g. area/seasonal closures;

— amendments to incidental by-catch limit measures so that where an 'others' quota or an individual Contracting Party quota has been taken or, on a case-by-case basis, a directed fishery has been prohibited, the incidental by-catch for that stock is not retained on board.

II.6. **Mesh size**

The derogation of 120 mm when using polyamide-type fibres shall be phased out in a period to be fixed by the Fisheries Commission.

II.7. **Dockside inspection**

Each Contracting Party shall ensure that all vessels engaged in fishing in the NRA for stocks subject to NAFO conservation and enforcement measures undergo a dockside inspection at each port call. Results of these inspections shall be provided to other Contracting Parties on request. Results of these inspections shall also be cross-checked with log books and results reported to the NAFO Executive Secretary on an annual basis.

Annual checks shall be made of the fish holds in order to certify the correctness of the fish hold plans.

II.8. **Effort plans and catch reporting**

For 1995, each Contracting Party shall inform the NAFO Executive Secretary of the fishing plan for the Greenland halibut fishery in the NRA and shall, at the end of the year, report on its implementation. If this system proves useful, it shall be extended to other fisheries.

For 1995, catches of Greenland halibut in the NRA shall be reported to the NAFO Executive Secretary no less frequently than every 48 hours, in accordance with the NAFO conservation and enforcement measures.

II.9. **Major infringements**

NAFO should establish a class of major infringements, to include:

(a) refusal to cooperate with an inspector or an observer;

(b) misreporting of catches;

(c) mesh size violations;

(d) hail system violations;

(e) interference with the satellite tracking system.

(i) If a NAFO inspector cites a vessel for having committed, to a serious extent, a major apparent infringement, the Contracting Party of this vessel shall ensure that the vessel concerned is inspected by a duly authorized inspector of that Contracting Party within 48 hours. In order to preserve the evidence, the NAFO inspector shall take all necessary measures to ensure security and continuity of the evidence, including, as appropriate, sealing the vessel's hold, and may remain on board the vessel until the duly authorized inspector arrives.

(ii) Where justified, the inspector of the Contracting Party of the vessel concerned shall, where duly authorized to do so, require the vessel to proceed immediately to a nearby port, chosen by the master, which should be either St Pierre, St John's, the Azores or the home port of the vessel, for a thorough inspection under the authority of the flag State and in the presence of a NAFO inspector from any other Contracting Party that wishes to participate. If the vessel is not called to port, the Contracting Party must provide due justification to the NAFO Executive Secretary in a timely manner.

(iii) Where a NAFO inspector cites a vessel for having committed a major apparent infringement, the inspector shall immediately report this to the NAFO Executive Secretary, who shall in turn immediately report, for information purposes, to the other NAFO Contracting Parties with an inspection vessel in the NCA.

(iv) Where a vessel is required to proceed to port for a thorough inspection pursuant to paragraph (ii), a NAFO inspector from another Contracting Party may, subject to the consent of the Contracting Party of the vessel, board the vessel as it is proceeding to port, may remain on board the vessel as it proceeds to port and may be present during the inspection of the vessel in port.

(v) If an apparent infringement of the NAFO conservation and enforcement measures has been detected which in the view of the duly authorized inspector is sufficiently serious, the inspector shall take all necessary measures to ensure security and continuity of the evidence including, as appropriate, sealing the vessel's hold for eventual dockside inspection.

II.10. **Follow up on apparent infringements**

There shall be a transparent and effective legal process to follow up apparent infringements using all necessary evidence available from all sources, including evidence from other Contracting Parties as required for effective prosecution. The Parties shall make a semi-annual report to the NAFO Executive Secretary on the status of legal proceedings on a case-by-case basis, in sufficient detail for transparency, subject to domestic law, particularly, when convictions are imposed, regarding level of fines, value of forfeited fish and/or gear, and including an explanation if no action is taken.

The penalties provided in legislation shall be such as to provide an effective deterrent. Such penalties may include refusal, suspension or withdrawal of the authorization to fish in the NRA.

II.11. **Pilot project for observers and satellite tracking**

In order to improve compliance with NAFO conservation and enforcement measures for their vessels fishing under the NAFO Convention, the Contracting Parties agree to implement a pilot project to provide for properly trained and qualified observers on all vessels fishing in the NRA and satellite-tracking devices on 35 % of their respective vessels fishing in the NRA. Contracting Parties shall take all necessary measures to ensure that observers are able to carry out their duties and that the master and crew of the Contracting Party vessels extend all necessary cooperation to observers. Contracting Parties shall provide to the NAFO Executive Secretary lists of the observers they will be placing on vessels in the NRA.

A. Observers

1. Each Contracting Party shall require its vessels operating under the NAFO Convention to accept observers on the basis of the following:

   (a) each Contracting Party shall have the primary responsibility to obtain, for placement on its vessels, independent and impartial observers;

   (b) in cases where a Contracting Party has not placed an observer on a vessel, any other Contracting Party may, subject to the consent of the Contracting Party of the vessel, place an observer on board until that Contracting Party provides a replacement in accordance with paragraph (a);

   (c) no vessel shall be required to carry nore than one observer pursuant to this pilot project at any time.

2. Observers shall monitor a vessel's compliance with the relevant NAFO conservation and enforcement measures. In particular the observers shall:

   (a) record and report upon the fishing activities of the vessel and shall verify the position of the vessel when engaged in fishing;

   (b) observe and estimate catches taken with a view to identifying catch composition, monitor discarding, by-catches and the taking of undersized species;

   (c) record the gear, mesh sizes and attachments employed by the master;

   (d) verify entries made to the logbooks (species composition quantities, round and processed weight, and hail reports).

3. Observers shall collect catch and effort data on a set-by-set basis. This data shall include location (latitude/longitude), depth, time of net on the bottom, catch composition and discards.

4. Observers shall carry out such scientific work, for example, collecting samples, as requested by the Fisheries Commission based on the advice of the Scientific Council.

5. In the case where the observer is deployed on a vessel equipped with devices for automatic remote position recording facilities, the observer shall monitor the functioning of, and report upon any interference with, the satellite system. In order better to distinguish fishing operations from steaming and to contribute to an *a posteriori* calibration of the signals registered by the receiving station, the observer shall maintain detailed reports on the daily activity of the vessel.

6. When an apparent infringement is identified by an observer, the observer shall, within 24 hours, report it both to a NAFO inspection vessel, using an established code, and to the NAFO Executive Secretary.

7. Within 30 days following completion of an observer's assignment on a vessel, the observer shall provide a report to the Contracting Party of the vessel and to the NAFO Executive Secretary who shall make it available to any Contracting Party that requests it.

8. Subject to any other arrangements between the Parties, the salary of an observer shall be covered by the sending Contracting Party. The vessel on which an observer is placed shall provide suitable food and lodging during his deployment.

B. Satellite tracking

1. Contracting Parties agree that 35 % of their respective vessels fishing in the NRA shall be equipped with an autonomous system able to transmit automatically satellite signals to a land-based receiving station permitting a continuous tracking of the position of the vessel by the Contracting Party of the vessel. Contracting Parties shall endeavour to test several systems of satellite tracking.

2. Contracting parties whose vessels fish a minimum of 300 days in the NRA are subject to satellite-based position monitoring (1).

3. Each Contracting Party shall install at least one receiving station associated to the satellite tracking system.

4. Each Contracting Party shall transmit, on a real-time basis, entry and exit messages for its vessels equipped with satellite devices to the NAFO Executive Secretary, who in turn shall transmit such information to Contracting Parties with an inspection vessel in the NCA. Contracting Parties shall cooperate with other Contracting Parties which have a NAFO inspection vessel or aircraft in the NCA in order to exchange information on a real-time basis on the geographical distribution of fishing vessels equipped with satellite devices and, on specific request, information related to the identification of a vessel.

5. Subject to any other arrangements between Contracting Parties, each Contracting Party shall pay all costs associated with the satellite tracking system.

C. Analysis

1. Each Contracting Party shall prepare a report on the results of the pilot project from the perspective of efficiency and effectiveness, including:

   (a) overall effectiveness of the project in improving compliance with NAFO conservation and enforcement measures;

   (b) the effectiveness of the different components of the project;

   (c) costs associated with observers and satellite tracking;

   (d) a summary of observers' reports, specifying type and number of observed infractions or important events;

   (e) estimations of fishing effort from observers as compared to initial estimation by satellite monitoring;

   (f) analysis of the efficiency in terms of cost/benefit, the latter being expressed in terms of compliance with rules and volume of data received for fisheries management.

2. The reports shall be submitted to the NAFO Executive Secretary in time for their consideration at the NAFO Annual Meeting of September 1997 and, based on these reports, the Parties agree to establish a permanent scheme that will ensure that the degree of control and enforcement in the NRA provided by the project, as indicated above, is maintained.

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(1) Canada will, in any case, apply the scheme on its vessels fishing in the NRA.

ANNEX II

QUOTAS FOR GREENLAND HALIBUT

I. NAFO DECISIONS FOR 1995

The European Community and Canada will jointly propose to NAFO for 1995:

(a) the TAC for 2+3 Greenland halibut shall be divided as follows:

— 2+3K (Canadian 200 miles): 7 000 tonnes,

— 3LMNO: 20 000 tonnes;

(b) the 7 000 t allocation for 2+3K (within Canadian 200 miles) for Greenland halibut shall be allocated to Canada.

II. VOLUNTARY ARRANGEMENTS FOR 1995

(a) Canada's catches by its vessels for Greenland halibut will not exceed 10 000 tonnes, subject to any more stringent conservation decisions that Canada may take in light of further scientific advice.

(b) The European Community's further catches by its vessels for Greenland halibut will not exceed 5 013 tonnes from 16 April 1995

(c) The European Community and Canada will not permit their vessels to fish for species covered by the NAFO Convention in the NAFO Regulatory Area beyond the 15-day period referred to under point A.2 of the Agreed Minute until the improved fisheries control and enforcement measures set out therein are being implemented.

Beyond agreed catch limits, no by-catches of Greenland halibut shall be retained on board.

III. 1996 AND THEREAFTER

The European Community and Canada will jointly propose to NAFO for 1996 and thereafter:

(a) NAFO will manage Greenland halibut in 3LMNO. The allocations will be in the ratio of 10 : 3 for the European Community and Canada (aside from allocations to other Contracting Parties).

(b) On the basis of NAFO Scientific Council advice, Canada will manage Greenland halibut in Canadian waters in 2+3K.

(c) NAFO Scientific Council will provide scientific advice on Greenland halibut for units 0+1, 2+3K and 3LMNO.

Letter from Canada

Brussels, 16 April 1995

Sir,

With reference to the 16 April 1995 Agreed Minute between the European Community and Canada, I can confirm that the posting of a bond for the release of the vessel 'Estai' and the payment of bail for the release of its master cannot be interpreted as meaning that the European Community or its Member States recognize the legality of the arrest or the jurisdiction of Canada beyond the Canadian 200-mile zone against fishing vessels flying the flag of another State.

I can also confirm that, expeditiously, the Attorney General of Canada will consider the public interest in his decision on staying the prosecution against the vessel 'Estai' and its master; in such case, the bond, bail and catch or its proceeds will be returned to the master.

Please accept, Sir, the assurance of my highest consideration.

For the Government of Canada
Jacques S. ROY

Letter from the European Community

Brussels, 16 April 1995

Sir,

I have the honour to acknowledge receipt of your letter of today's date, which reads as follows :

'With reference to the 16 April 1995 Agreed Minute between the European Community and Canada, I can confrim that the posting of a bond for the release of the vessel "Estai" and the payment of bail for the release of its master cannot be interpreted as meaning that the European Community or its Member states recognize the legality of the arrest or the jurisdiction of Canada beyond the Canadian 200-miles zone against fishing vessels flying the flag of another State.

I can also confrim that, expeditiously, the Attorney General of Canada will consider the public interest in his decision on staying the prosecution against the vessel "Estai" and its master ; in such case, the bond, bail and catch or its proceeds will be returned to the master.'

In reference to the second paragraph of your letter, I should point out that, for the European Community, the stay of prosecution against the 'Estai' and its master is essential for the application of the said Agreed Minute, and therefore the bond, bail and the catch or its proceeds must be returned to the master on the date of the signature of the Agreed Minute.

I have the further honour to inform you that, with this understanding, the European Community is in agreement with the contents of your letter.

Please accept, Sir, the assurance of my highest consideration.

On behalf of the European Community
Gianluigi GIOLA

NOTE FROM CANADA

Brussels, 16 April 1995

Sir,

To facilitate adoption by other NAFO Contracting Parties of the measures set out in Annex I to the Agreed Minute, where necessary, Canada is ready to pay the cost, other than room and board, of observers on board the vessels of such NAFO Contracting Parties. With reference to Annex I, point II.11 to the Agreed Minute, Canada will facilitate the deployment of the observers on the European Community vessels.

For the Government of Canada

Jacques S. ROY

NOTE FROM THE EUROPEAN COMMUNITY

Sir,

I have the honour to acknowledge receipt of your note of today's date which reads as follows :

'To facilitate adoption by other NAFO Contracting Parties of the measures set out in Annex I to the Agreed Minute, where necessary, Canada is ready to pay the cost, other than room and board, of observers on board the vessels of such NAFO Contracting Parties. With reference to Annex I, point II.11, to the Agreed Minute, Canada will facilitate the deployment of the observers on the European Community vessels.'

Furthermore, I would like to inform you that in respect of Annex I, point II.11, the European Community, under point A.2 of the Agreed Minute, will make every effort to install the said satellite tracking devices within the next two months. If, for technical reasons, this is not possible, it is agreed that the European Community and Canada will discuss the matter further.

I have the honour to inform you that the European Community, with this understanding, is in agreement with the contents of your note.

On behalf of the European Community
Gianluigi GIOLA

Letter from the European Union to the Government of Canada

Brussels, 19 April 1995

Sir,

I have the honour to inform you that, for the European Community, the Agreed Minute of 16 April 1995, and in particular paragraph III (a) of Annex II, implies that the Community quota for Greenland halibut for 1996 and for ensuing years in zone 3LMNO will in any event be fixed at 55,35 %.

The European Community hopes that, owing to joint efforts, additional quotas may be obtained, in full compliance with the historic and legitimate rights of all the NAFO States.

On behalf of the European Community
Leon BRITTAN

COMMISSION

COMMISSION DECISION

of 26 July 1995

giving conditional approval to the aid granted by France to the bank Crédit Lyonnais

(Only the French text is authentic)

(Text with EEA relevance)

(95/547/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Articles 92 and 93 thereof,

Having regard to the Agreement on the European Economic Area, and in particular Articles 61 and 62 thereof,

Having, in accordance with the abovementioned Articles, given interested parties formal notice to submit their comments [1],

Whereas :

1. INTRODUCTION

By letter dated 2 May 1995 [SG/95/D/5500], the Commission informed the French authorities of its decision to initiate the procedure provided for in Article 93 (2) of the EC Treaty in respect of State aid granted to the publicly owned bank Crédit Lyonnais (hereinafter referred to as 'CL').

At the end of 1993 CL was the leading European banking group in terms of total assets (nearly FF 2 000 billion), employing over 71 000 people. Its business included commercial, investment and merchant banking, third-party fund management, insurance and other activities allied to banking. CL operated in France and abroad, with some 900 branches in Europe outside France and 800 in the rest of the world.

On 31 December 1993 the majority shareholder in CL was the French State, which held 55 % of the capital and 76 % of the voting rights. The other ordinary shareholders were Thomson-CSF (a subsidiary of the publicly owned Thomson group, with just under 20 % of the voting rights) and Caisse des Dépôts et Consignations (a publicly owned credit institution, with 4 % of the voting rights). The rest of the capital (22 %) was accounted for by preference shares quoted on the stock exchange.

After almost five years of rapid growth, CL recorded losses in 1992 (FF 1,8 billion) and 1993 (FF 6,9 billion). These were very heavy losses in proportion to CL's own funds, and its solvency ratio — the ratio of own funds to risk-adjusted assets — would have fallen below the 8 % legal minimum if the French authorities, acting at the request of the authority responsible for supervising the French banking system (the Commission Bancaire), had not taken financial support measures in 1994, essentially consisting of a capital increase and the underwriting by the State of certain non-performing assets. At the beginning of 1995 it became clear that CL would be recording further losses which would threaten its solvency; the French Government put together a new rescue package, involving the setting-up of another specific hived-off vehicle to take over FF 135 billion of assets, including CL's non-performing or poorly performing assets. The setting-up of this vehicle limited the accounting loss for 1994 to FF 12,1 billion.

The crisis affecting CL seems to be linked to a large extent to the bank's aggressive lending and investment policy in the 1980s and at the beginning of the 1990s, without there being sufficiently strict monitoring of exposure. Between 1988 and 1993 total assets almost doubled, while the value of CL's industrial portfolio increased almost five-fold to FF 50 billion. CL's assets on the property market exceeded FF 100 billion, placing the bank among the leading group of French credit institu-

[1] OJ No C 121, 17. 5. 1995, p. 4.

tions lending to property developers, with a higher proportion of business than was reflected in its position on the market. Furthermore, in an attempt to expand its activities in Europe and the rest of the world further, CL acquired a number of foreign banks at very high prices (for example, Chase Banque de Commerce in Belgium, Banco Comercial Español and Banca Jover in Spain, Credito Bergamasco and Banca Lombarda in Italy, BfG in Germany and Slavenburg Bank in the Netherlands).

On the liabilities side of the balance sheet, CL pursued, against a background of growing competition, a debt policy entailing high financing costs. A deterioration in the quality of its assets then caused the bank's rating to fall and added to its funding costs on the markets. At the same time, the rise in overheads continued to exceed the growth in total assets. In order to sustain CL's development, the French Government provided the bank, directly or indirectly, with considerable resources (more than FF 17 billion), particularly through transfers of public company securities and through cross-shareholdings (Rhône-Poulenc, Usinor-Sacilor, Aérospatiale, Altus). While this increased the bank's own funds for accounting purposes, it undermined the group's results owing to the low return on these holdings and the consolidation of the losses incurred by some of these enterprises.

The slowdown in economic activity, which caused property and stock market prices to fall and borrowers' situations to worsen, further accentuated the bank's problems. The interest margin narrowed appreciably, while long-term holdings in the industrial sector showed low or negative returns.

Following an initial examination of the case, the Commission had decided that the measures taken to support CL contained appreciable State aid components which could not be disclosed at that stage and which, on the basis of the information available at that time, were compatible with the common market.

2. GENERAL DESCRIPTION OF THE AID MEASURES

The measures taken by the French Government to support CL comprise a capital increase of FF 4,9 billion and the underwriting by the State of the risks and costs associated with assets transferred to a separate ring-fenced vehicle in what has been termed a 'hive-off' *(opération de défaisance)*. Under the first rescue plan, which was put into effect in 1994, the State underwrote only FF 18,4 billion of the FF 42 billion of assets transferred. In 1995, with the transfer of further assets, the State has underwritten the entire net value of all the assets transferred in 1994 and 1995 (almost FF 135 billion) and the interest on the loan of FF 145 billion granted by CL to a public company named SPBI to finance the hived-off vehicle.

The capital increase was subscribed in July 1994 by the three main shareholders, namely the State (acting through SPBI, a partnership controlled by the State and Thomson SIEG, a subsidiary of Thomson CSF), Thomson CSF and the Caisse des Dépôts et Consignations, in proportion to their holdings in CL's capital. Following this operation, the French Government's direct and indirect holding in CL rose from 78 % to 80,7 %.

Equity warrants were distributed to the shareholders in return for their investment. Each warrant entitles the holder to subscribe for a new share at a price of FF 774 per share within five years. The price is equal to the net asset value per share estimated on the basis of the 1993 accounts.

In the 1994 hive-off, almost FF 42 billion of non-performing property loans for which insufficient provision had been made, out of a total of more than FF 100 billion in property loans outstanding, were transferred to a CL subsidiary company set up for the purpose, called OIG. This company bought the loans at their net book value, paying with the money provided by a participating loan from SPBI. This participating loan was in turn financed by means of a loan from CL to SPBI. The three publicly owned shareholders of CL undertook to cover any losses on the realization of the assets, up to a ceiling of FF 14,4 billion, and part of the burden of refinancing the loan from CL to SPBI in the first two years, amounting to FF 2 billion a year. The State underwrote the assets transferred, an operation which was entered in the accounts for 1993, and CL was able to reduce the level of provisions and write-downs for non-performing assets and so to continue in business. In effect, the State had enabled CL to acquire a secure asset in place of doubtful assets which needed substantial provisions.

In 1995, in an operation to be entered in the 1994 accounts, a new hive-off vehicle has been set up : this is Consortium de Réalisations (CDR), a wholly-owned subsidiary of CL. Under the plan supplied by the French authorities, this subsidiary is to buy CL assets amounting to almost FF 190 billion, notably those held by OIG, including FF 55 billion in liabilities. The assets concerned consist of property assets essentially grouped in OIG, banking subsidiaries (SBT, SDBO and Colbert), financial backing for the film industry, and industrial holdings ; all of these are to be sold off or liquidated. The plan is that

80 % of the assets will be sold in five years and, if market conditions permit, at least 50 % will have been sold in three years. The healthy parts of the banking subsidiaries transferred to CDR will either be sold off to third parties or returned to CL by 31 December 1995, so that at the end of the 1995 financial year no active banking organization will any longer be involved in CDR.

To enable it to buy CL's assets, CDR is to receive a participating loan of FF 135 billion from SPBI. SPBI is to obtain financing from CL in the form of a non-participating loan of not more than FF 145 billion. It will then be in a position to grant the participating loan of FF 135 billion to CDR and to buy zero-coupon bonds for approximately FF 10 billion. These bonds will enable SPBI to show a return of about FF 35 billion by the end of 2014, and this is intended to enable it to absorb whatever losses CDR has made by then.

CL's loan to SPBI and SPBI's loan to CDR both reach maturity on 31 December 2014. CL's loan is to be repaid in instalments as and when assets are sold, the amount repayable each time being the amount thus realized. The annual rate of interest is to be 7 % in 1995, and 85 % of the money market rate in 1996 and thereafter. The participating loan given by SPBI to CDR is to be partially repaid at the end of each financial year: SPBI is to be repaid an amount equal to assets disposed of during the year and, if there are any losses on disposals, it will abandon claims on CDR to an amount equal to the losses shown by CDR.

As a result of the participating loan mechanism, therefore, CDR's losses will be borne by SPBI, that is to say by the State, up to the ceiling of FF 135 billion. Were CDR's losses to exceed that amount, they would be borne by CL, CDR's sole shareholder. CL consequently has a State guarantee in respect of the repayment of its loan to SPBI, which means that CDR's accounts do not have to be consolidated with those of the CL group for either prudential or accounting purposes. The mechanism thus enables CL to reduce the provisions and write-downs it has to make and to comply with the solvency ratio.

In return, SPBI will have a claim on CL under a 'better fortunes' clause. It is to receive a contribution of 34 % of CL's consolidated net profit (before account is taken of that contribution and the annual allocation to the fund for general banking risks and before imposition of French corporation tax), plus 26 % of that fraction of the profit exceeding 4 % of the group's consolidated capital (i.e. approximately FF 1 billion). The French authorities have also told the Commission that the State may deposit its CL shares with SPBI for a fixed term, in which case dividends and any proceeds on the projected privatization of CL would accrue to SPBI.

Under the contract of agreed objectives between the State and CL, CL is entitled to buy back certain industrial and commercial holdings at market value, up to an amount not exceeding 10 % of the present value of its portfolio of holdings, that is to say about FF 5 billion. In addition, any healthy parts of the banking subsidiaries transferred to CDR which are not sold to third parties will have to be bought back by CL before 31 December 1995, with the remainder being wound up.

According to the agreement, CL will provide CDR with assistance under the terms of a service contract which includes a profit-sharing clause in respect of certain assets, the details of which are to be settled later by agreement between the parties. However, the French authorities have since verbally confirmed that this clause is to be eliminated.

3. APPLICATION OF THE STATE AID RULES TO BANKS

3.1. Applicability of the State aid rules to banks and assessment of the existence of State aid

In examining State measures to support banks, it must first be borne in mind that the Treaty contains no specific rules governing State aid for credit institutions. The Commission is aware, however, of the special nature of the banking sector and of the great sensitivity of financial markets, even where difficulties are limited to one or other institution; this has to be borne in mind in applying the State aid rules.

In Directive 89/647/EEC [1] on a solvency ratio for credit institutions, the Council of the European Communities stated that 'in a common banking market, institutions are required to enter into competition with one another and [...] the adoption of common solvency standards in the form of a minimum ratio will prevent distortions of competition and strengthen the Community banking system'.

[1] OJ No L 386, 30. 12. 1989, p. 14.

In the same Directive, the Council also took the view that 'the development of common standards for own funds in relation to assets and off-balance-sheet items exposed to credit risk is [. . .] an essential aspect of the harmonization necessary for the achievement of the mutual recognition of supervision techniques and thus the completion of the internal banking market'.

These points are based on recognition of the fact that a minimum solvency ratio level constitutes, at one and the same time, a criterion of equal competitive conditions and one of the criteria for a bank's viability. However, State measures which have the effect of giving financial support to banks in difficulty to enable them to satisfy Community prudential standards may also contain State aid components. The Commission must therefore establish whether the State aid rules in the Treaty are being complied with in order to prevent any incompatible distortion of competition.

In a competitive environment, credit institutions are free to choose, subject to prudential requirements and the control of their supervisory authorities, the investment policy and the risk/yield combination of their asset portfolios which they consider to be most appropriate. A daring and aggressive policy may yield higher expected returns but it also entails a higher level of risk if it is not adequately controlled. The identification, control and limitation of these risks, which vary in nature and are frequently interconnected, constitute one of the basis aspects of the banker's trade. Where major risks lead to actual losses, these may reduce the bank's profits and affect the amount of own funds and the solvency ratio. A reduction in risk activities or an increase in capital may become necessary to restore the minimum required level of own funds and the ratio (8 %). Faced with such a situation, the bank's shareholders may provide additional resources if they believe they will see an adequate return on their investment. They will normally call for restructuring measures to be taken to reduce the level of risk.

Given that the alternative to a bank's winding-up is frequently a more costly operation overall than for an industrial enterprise owing to the — by definition — higher ratio of third-party funds to own funds and to the often greater responsibility of majority shareholders towards depositors, and given that the confidence of depositors must be preserved, the banking supervisory authorities impose constant and very strict controls on the management of banks and on shareholders in order to prevent the negative effects of a petition for bankruptcy.

They carry out inspections and may require corrective measures to be taken if they consider them to be necessary. Where prudential rules are infringed, they have a number of means of restoring normal banking activity conditions, ranging from warnings to the withdrawal of a credit institution's licence. They may also ask shareholders to provide support for the bank's recovery, particularly if its bankruptcy may have an undesirable negative impact on depositor confidence and perhaps on financial markets. This impact may be very great and even be out of proportion to the difficulties faced by the individual bank in question.

If the bank cannot be recapitalized by its shareholders or purchased by another institution, various solutions are possible : filing for bankruptcy, application of a mechanism for a controlled liquidation or sale by lots, or collective intervention by a number of other banks with the aim of preventing the possible undesirable negative effects mentioned above. If, without being under any obligation to do so, the private sector also invests substantial sums in a rescue operation, it may be concluded that no State aid is involved.

According to the scale of the possible crisis affecting the financial system, the supervisory authorities may act. In the case of publicly-owned banks, the State may also be called on to intervene as a shareholder.

If the State is providing all or most of the financial support, even at the request of the supervisory authorities, the Commission has to evaluate any State aid component in the measures taken by the State. Here, the Commission generally applies the test of the private market-economy investor as set out in its communication on public undertakings [1]. That communication states that there is an aid component in a transaction if it would not have been acceptable to a private investor operating under normal market conditions.

Turning to the question of public holdings in company capital, the Commission made clear its view in a 1984 communication [2] that such a transaction would not be acceptable to a private investor, and that the presence of aid could therefore be presumed, where the financial position of the company is such that a normal return (in dividends or capital gains) cannot be expected within a reasonable time from the capital invested or where the risks

[1] Commission communication to the Member States on the application of Articles 92 and 93 of the EC Treaty and of Article 5 of Commission Directive 80/723/EEC to public undertakings in the manufacturing sector (OJ No C 307, 13. 11. 1993).

[2] *Bulletin of the European Communities*, No 9, 1984.

involved in such a transaction are too high or extend over too long a period.

In the same way, the Commission takes the view that there is a presumption of State aid in a State guarantee if the guarantee is necessary to the survival of the company — in other words, if the aid component is equal to the amount guaranteed — and if it lasts for an exceptional length of time or entails a very high level of risk.

To enable the Commission to establish whether the private market-economy investor test is satisfied, it must be shown that the State in its capacity as shareholder is indeed acting as a private investor would. A coherent and detailed restructuring plan must be presented which shows that it can reasonably be supposed that there will be a normal return on the State's investment in the whole operation which would be acceptable to a private investor in a market economy. Otherwise, there is a State aid component.

Article 10 (3) of the abovementioned Directive 89/647/EEC on the solvency ratio also stipulates that 'if the ratio falls below 8 % the competent authorities shall ensure that the credit institution in question takes appropriate measures to restore the ratio to the agreed minimum as quickly as possible'. This provision calls for three points to be made. First, an obligation is imposed on the supervisory authorities to ensure that appropriate measures are taken to restore the bank's solvency. Clearly, to be appropriate such measures must not only restore the ratio from an accounting viewpoint but must also entail more substantial action designed to ensure that the bank is effectively restructured and is restored to permanent health so that the same problems are not encountered in the future.

Secondly, it must be pointed out that the supervision obligation is justified, as is emphasized in the preamble to the Directive, by the need to prevent any crisis of confidence and to maintain fair competition. Continual strict supervision is very important because it may entail corrective measures designed to restrict banks' exposures and prevent a crisis and its possible disastrous consequences, and so limit the amount of resources needed for any rescue operation. Monitoring by the supervisory authorities therefore helps to minimize any aid required for recovery.

Since the Directive's aim is to safeguard not only the stability of the system but also equal competitive conditions, the supervisory role which the Directive assigns to the supervisory authorities through monitoring of the solvency ratio has to be carried out within the framework of the rules governing competition, and in particular those relating to State aid, in order to ensure fair competition. The supervisory authorities must therefore ensure that credit institutions do not incur too many risks which may affect the solvency ratio and which are underpinned by explicit or implicit State support because the institutions in question are publicly owned or are 'too big to fail'. An automatic injection of capital to meet the solvency ratio requirement or any other equivalent measure by the State would have the effect of endorsing the failing institution's unfair competitive practice prior to the crisis.

Finally, it should be pointed out that this provision of the Directive does not impose restoration of the ratio at any price and by any means. It is clear, however, that failure to comply with solvency standards entails withdrawal of the credit institution's authorization and, consequently, its winding-up or bankruptcy. According to point (d) of Article 8 (1) of Council Directive 77/780/EEC [1], insufficiency of own funds constitutes a ground for the competent supervisory authorities to withdraw a credit institution's authorization [2].

Even where national rules provide for compulsory recapitalization of a bank in difficulty, such recapitalization would constitute aid if it were not granted under normal conditions that were acceptable to a private investor in terms of return. In comparing the actions of the State and those of a market-economy investor, the evaluation of the amount of aid must be based on a comparison between the cost of the operation and its correctly discounted value [3].

Even if State intervention is judged to be necessary for reasons which go beyond the problems of the aided institution, that does not remove the obligation to check that the solution involving least distortion has been chosen; where major distortion is inevitable, a substantial *quid pro quo* must be required which benefits other sector operators and offsets the negative effects and the limitation of the possibilities for more radical but sometimes unavoidable solutions that apply in the industrial sector, which is less sensitive to difficulties encountered by an individual enterprise.

[1] OJ No L 322, 17. 12. 1977, p. 30.
[2] It is also possible in principle for the supervisory authorities to waive the 8 % ratio requirement temporarily provided that the required level is quickly restored.
[3] Commission communication to the Member States published in OJ No C 307, 13. 11. 1993, in particular point 37.

In conclusion, the State aid rules must also be applied to banks in order to determine whether there is an aid component in a State measure taken in support of a bank in difficulty, the distortions which such support creates and the conditions the State must meet to ensure that the aid is in line with the common interest.

3.2. Assessment of the compatibility of State aid for one or more banks

If it determines that the measures under consideration do constitute State aid falling within the scope of Article 92 (1) of the Treaty, the Commission has then to establish whether that aid is compatible with the common market.

Where circumstances outside the control of the banks cause a crisis of confidence in the system, the State may need to give its support to all credit institutions in order to avoid the negative impact of such a systemic crisis. In the case of a true systemic crisis, therefore, the derogation provided for in point (b) of Article 92 (3) may be invoked in order 'to remedy a serious disturbance in the economy of a Member State'. For aid to be compatible with the common market, it must be granted in a neutral fashion from the viewpoint of the competition of the State concerned; it must cover the whole of the banking system and must be confined to what is strictly necessary.

While difficulties encountered by one or a number of banks do not necessarily lead to a crisis of confidence throughout the system, the failure of a single bank of some size, though due to internal management errors, may place a number of other credit institutions which are financially linked to it in difficulty, thereby causing a more general crisis. State support may be necessary but that should not mean unconditional support for the failing institution, and the support should not be provided without serious action being taken on the definitive restructuring and on the individual limitation of the competitive distortion caused by the aid.

In assessing whether or not aid granted to large banks is compatible with the common market, the Commission checks that the aid does not adversely affect trading conditions to an extent contrary to the common interest, in accordance with point (a) or (c) of Article 92 (3). It must therefore verify that a coherent and realistic recovery plan has been duly notified. As regards the recovery plan, it bears in mind that in certain situations special measures may be needed to prevent the undesirable repercussions which the failure of a large bank could have on financial markets. The need to ensure that measures are in line with the common interest may require the impossibility of an institution becoming bankrupt to be offset by major restrictions on its competitive strength.

In its guidelines of 27 July 1994 on State aid for rescuing and restructuring firms in difficulty [1], the Commission stated that, in order not to undermine the common interest and therefore to be declared compatible with the common market, State aid had to comply with the following four principles:

(a) the aid must restore the viability of the firm within a reasonable timescale;

(b) the aid must be in proportion to the restructuring costs and benefits and must not exceed what is strictly necessary;

(c) in order to limit distortions of competition for competitors, aid measures must have the least distorting effect on competition possible and the firm must make a significant financial contribution to the restructuring costs;

(d) measures must be taken to compensate competitors as far as possible for the adverse effects of aid.

The Commission takes the view that these four general principles can be applied to banks provided that account is taken of any undesirable negative effects of applying them on the financial system and on public confidence in the banking sector and of the need to comply with Community rules in the banking sphere.

Where the State is the main shareholder of the bank in crisis, its role as shareholder must be separated from its role as the supervisory authority required to safeguard confidence in the banking system. This latter task may lead the State to take measures in support of the bank that are additional to what is really necessary to restore the bank's viability. The Commission can therefore take a more favourable view of support measures adopted by independent supervisory authorities, especially in the case of publicly owned banks, if they guarantee the neutrality of State intervention and equal competitive conditions.

4. THE FRENCH AUTHORITIES' REPLIES TO THE REQUESTS FOR INFORMATION MADE BY THE COMMISSION IN ITS DECISION TO INITIATE THE PROCEDURE

In its decision to initiate the procedure provided for in Article 93 (2) of the Treaty, the Commission expressed its opinion on the general outline of the recovery plan. It accepted that an attempt was being made to tackle the

[1] OJ No C 368, 23. 12. 1994, p. 12.

bank's fundamental problem, that a major effort was being demanded of CL and that account was being taken of the legitimate interests of competitors by curbing CL's expansion and reducing its activities in certain areas. It noted that further recapitalization had been avoided, that unproductive assets had been hived-off from the bank and were to be sold and that CL was to refocus on its core business. In assessing the compatibility of the aid, the Commission also confirmed that it would give special weight to the effort demanded of CL, and particularly to the slimming-down of the balance sheet, to the principle of a 'better fortunes' clause which has the effect of moderating future expansion by CL, and to the far-reaching rationalization of its banking activities, including further large reductions in staffing and geographical spread.

Nevertheless, the Commission believed that there were important points which needed clarification. Without further information, the Commission could not conclude that the plan was compatible with the common market. It also reaffirmed the general principles governing State aid to firms in difficulty, namely that aid be confined to the strict minimum so that the main recovery effort was made by the firm itself, that there should be a *quid pro quo* sufficient to offset the distorting effect which aid on this scale would have on competition, and that a restructuring plan enabling the firm to return to viability within a reasonable time should be fully implemented.

The Commission particularly asked for further information regarding :

(a) the detailed lists of the assets transferred, referred to in the agreement concluded between the State and CL, and the assessments carried out by the consultant banks and by the Commission Bancaire ;

(b) the restructuring plan, broken down by activity and geographically, showing CL's return to viability ;

(c) the separation between CDR and CL, and the arrangements regarding CL's stake in the monitoring of CDR's management ;

(d) the arrangements for the repurchase by CL of the hived-off assets ;

(e) the possible carry-over of tax losses ;

(f) the total State cover for all of SPBI's liabilities ;

(g) the cost of restructuring the hived-off assets in order to sell them ;

(h) the conditions for privatizing CL, particularly regarding the future of the constraints imposed on CL following such privatization ;

(i) the possible condition regarding the withdrawal of SPBI's minority shareholders ;

(j) the sale of FF 100 billion of assets outside the CDR/SPBI mechanism ;

(k) any other sale on the periphery or in the field of CL's core activities ;

(l) OIG's activities in 1994, including, for example, its financial dealings.

It is necessary next to set out the information provided by the French authorities. That information was supplied in writing (letters of 26 and 28 April, 23 June and 6 July, registered on 27 April (A/33402), 3 May 1995 (A/33499), 26 June (A/34961) and 7 July (A/35317) respectively) or verbally during discussions between representatives of the Commission, the French Government and CL (held on 28 April, 17 May, 20 and 27 June, and 5 July 1995).

4. (a) The aim of point (a) was first to carry out a check on the hived-off assets and their transfer prices. The Commission also needed further information to enable it to estimate the aid content of the rescue measures more precisely. The support effectively provided by the State has to be quantified in order to determine what can be expected of the recipient in return and to ensure that the aid is limited to what is strictly necessary.

As regards the accounting check, CL has reported the transfer of FF 190 billion of assets, to which FF 55 billion of liabilities are linked. An examination of the documents sent shows that the net amount of hived-off assets (securities plus claims) is some FF 130 billion. To this amount must be added the transfer of FF 16 billion of quantifiable guarantees and a number of other, non-quantifiable guarantees : these consist in particular of potential risks likely to arise from liability guarantees provided for third companies by CL or its subsidiaries, from disputes and from commitments contracted by legal persons controlled by CDR. The table below shows the purchase values of the assets, broken down by broad categories, as communicated by CL :

Table 1

Transfer values of hived-off assets risks

(in billion FF)

	Securities	Claims	Total assets	Quantifiable guarantees
CLBN and film industry	2,3	18,7	21	2,4
Other financial assets (1)	14,4	48,9	63,3	11,1
Other non-financial assets (2)	34,8	11,1	45,9	2,8
Total assets	51,5	78,7	130,2	16,3

(1) [. . .]
(2) [. . .] (*)

The transfer prices of the assets are set as follows :

— claims, fixed-interest securities and shares in non-consolidated companies : book value at 31 December 1994 net of provisions (except for claims on the MGM group which are being transferred at their gross value),

— shares in consolidated companies : prices are set such that they do not cause any variation in the consolidated own funds of the CL group as at 31 December 1993.

Given that, under the agreement between the State and CL, the transfers will take place with retroactive effect from 1 January 1994, the yield and costs arising from the hived-off assets over the period between 1 January 1994 and the date of transfer had to be transferred to CDR. In accordance with this principle, the transfer prices of the securities have been increased by an amount of interest calculated at a rate of 4,845 % (85 % of the money market rate for 1994, i.e. 5,7 %). In the case of claims, the principle has been applied on a standard basis : CL is waiving the right to reimbursement of financing costs and is retaining interest yield where that has been entered in the accounts.

4. (b) In its decision to initiate the procedure, the Commission requested that it be provided with CL's recovery plan to enable it to assess the compatibility of the aid, and in particular the capital increase. The Commission requested more detailed financial information on CL's various economic and geographical sectors of activity in order to establish that the aid did not exceed what was strictly necessary and that CL could return to viability without further support from the State in the future. This information is essential if the Commission is to determine whether or not CL's reference scenario for the next five years is realistic and, in particular, if there is a prospect of reducing CL's operating ratio (that is to say the ratio of overheads plus depreciation to net receipts from banking) in four years from its current level of 81 % to a level below that of its main competitors (i.e. around 70 %), thereby producing a corresponding improvement in CL's results.

The French authorities have transmitted the business plan drawn up by CL. With a view to restoring CL's capacity to generate profits, the business plan analyses the main problems responsible for the bank's difficulties, namely excessive and poorly controlled growth, runaway overheads and insufficient control over exposure. Following this analysis, the plan divides into three main areas :

(a) a process of refocusing on priority activities, with a freeze on significant external expansion. CL will continue its commercial banking activities in France (with a further segmentation of its customer base, the development of new distribution channels and measures to maximize the performance of its branch network) and to provide banking facilities for the large companies and major investors of the world. It will also reduce the global geographical spread of its activities : retail banking activities outside Europe and ancillary banking activities outside Europe will be sold off. CL plans in particular to sell all its Latin American subsidiaries in 1995. Other sales will take place in its international network. CL will also sell or close those retail banking activities in Europe which have no prospect of producing a satisfactory return. In this context, CL has already closed all its retail banking establishments in the United Kingdom this year. The figures set out in the business plan include the sale of CLBN in 1995 and the sale of other foreign subsidiaries in subsequent

(*) Throughout the text, blanks between square brackets indicate business secrets which have been omitted.

years following their restructuring. All other things being equal, this refocusing operation will lead to an estimated reduction in CL's balance sheet of some FF 100 billion over a four-year period, leaving aside the transfer of assets to the hived-off structure.

(b) Improved productivity, as reflected in the reduction in the operating ratio (overheads plus depreciation/net receipts from banking) from more than 80 % to 70 % in four years. The measures taken in this regard fall under two main headings, the first of which covers action on per capita wage costs and the reduction in staffing. At the end of the first phase of the plan in 1994, 1 500 jobs had been eliminated in France. The aim is to reduce jobs by some 2 400 in 1995. The final phase of the plan — covering the period from 31 March 1996 to 31 March 1997 — should bring a comparable improvement in productivity. It was on that basis that the provisions were made for restructuring in 1994. In Europe the aim is to cut the workforce from [...] in June 1994 to [...] in December 1995. The number of people employed in commercial banking outside Europe (currently 11 600) will be reduced [...] as a result of the strategic refocusing operation. To this first type of measures must be added the reduction in other costs, especially at administrative level.

(c) Monitoring and control of risks — an objective which CL expects to achieve mainly through reorganization of its commitment function, measurement of the cost of risk and improved recovery, in addition to the beneficial effect of the hived-off risk vehicle.

The table below shows the CL group's main accounting aggregates after restructuring for 1994-99, as presented by CL.

Table 2

Estimated changes in the CL group's accounting aggregates (1)

(in billion FF)

	1994	1995	1996	1997	1998	1999 ... 2014
Net receipts from banking	[...]	[...]	[...]	[...]	[...]	[...]
Gross operating result	[...]	[...]	[...]	[...]	[...]	[...]
Participating clause	—	(0,3)	(0,5)	(1,1)	(1,9)	(2,3) (6,0)
Net result before tax	[...]	[...]	[...]	[...]	[...]	[...]
Tax	[...]	[...]	[...]	[...]	[...]	[...]
Net result, of which	(11,1)	1,8	2,3	2,9	3,6	3,9 13,6
— the group's share	(12,1)	0,7	0,9	1,3	1,9	2,3 4,2

(1) The results after 1999 are based on the assumption of a growth in pre-tax profits of 4 % a year and the reinvestment of the previous year's net profit at the money-market rate used for drawing up the business plan, i.e. 4.67 %.

The forecasts for the basic activities and the figures available in the business plan for 1995-96 are an aggregate of the forecasts transmitted by operational managements and a number of specifically targeted measures relating mainly to net receipts from banking and overheads as broadly defined, the results of which were then allocated to the basic entities.

For the years 1997, 1998 and 1999, the forecast was made not by reference to the most basic unit level but in a more general manner for each of the group's main activities.

CL's business plan is based on the following hypotheses:

— that short-term interest rates will remain low throughout the period in question in Europe (in France 4,78 % in 1995 and 4,67 % thereafter) but will rise in the United States (from 6,06 % to 6,45 %),

— that long-term interest rates will remain stable,

— that the US Dollar's position will improve compared with 1994 and the DM/FF parity will remain stable,

— that the economic environment will reflect the expected improvement in economic trends in Europe, thereby permitting a reduction in the amount allocated to provisions up to 1997.

The results were presented by CL with the following comments:

— net receipts from banking will be down in 1995 [...] and in 1996 as a result of the change in the 7 % return on the CL loan to SPBI to 85 % of the money-market rate (i.e. 4 % according to the interest-rate hypothesis adopted for the modelling exercise). In subsequent years, the positive impact of SPBI's reimbursements to CL as hived-off assets are sold will be offset by the sale of certain European subsidiaries and by restructuring effects,

— overheads and depreciation will diminish throughout the life of the plan. The restructuring measurers will have their automatic impact linked to the reduction in the workforce,

— the operating ratio will show a constant improvement, falling from [...] in 1994 to [...] in 1996 and, finally, to [...] in 1999,

— the trend in net allocations to provisions is based on the assumption that the catching-up process will be completed in [...], the high point of the banking cycle,

— the other elements include the life assurance contribution [...] and the exceptional capital gains and losses realized on sales.

Table 3 shows the trend of CL's profitability ratio according to the business plan (group results before deduction of participating clause in relation to capital).

Table 3

Return on capital of Crédit Lyonnais

(in billion FF)

	1994	1995	1996	1997	1998	1999
Results (1) (a)	(12,1)	1	1,4	2,4	3,8	4,6
Group capital (2) (b)	31,4	31,8	32,7	34,0	35,9	37,1
Profitability ratio (a/b) not significant	n.a.	3,1 %	4,3 %	7,0 %	10,6 %	12,4 %

(1) Group results prior to deduction of participating clause.

(2) Group capital, including fund for general banking risks, after participating clause and distribution (dividends will be paid as from 1999).

4. (c) When it initiated the procedure, the Commission requested a clearer separation between the hived-off structure (CDR) and CL in order to ensure independent control of the management and sale or liquidation of the transferred assets. The Commission felt that, even though savings could have been made in the management of certain areas (notably banking and property) by the CL teams, there was a clear risk of conflicts of interest arising. These possible conflicts of interest must be eliminated through a clear separation between CDR and CL and through greater direct influence by the State. The same concern has been expressed by the interested parties.

In the course of the procedure, the French authorities provided the Commission with the final version of the articles of the agreement between the State and CL concerning the management of CDR, and that version indicates that the initial draft has been amended. According to those amendments, the appointment of CDR's managing agents, which company law entrusts to the shareholder CL, will be submitted to the State for approval. An advisory monitoring committee is also to be set up which will consist of three members appointed by SPBI under the direct control of the Minister for Economic Affairs, two members appointed by CL and five experts appointed by the Minister for Economic Affairs. According to the agreement, the appointment of the members nominated by CL is subject to the Minister's approval.

The advisory committee has very extensive powers. It will have to express a view on all major decisions committing CDR or its subsidiaries and concerning, for example, sales of assets, additional financing operations or disputes which exceed thresholds laid

down in the agreement and which may subsequently be amended by the committee's rules of procedure. Although, legally speaking, these opinions are merely advisory, they have the effect, if negative, of ruling out financial responsibility on the part of SPBI. In practice, the advisory committee will have the power to reject such operations.

In completing its tasks, the committee will be able to carry out audits of assets or transactions effected. In particular, selling instructions will, unless expressly approved by the committee, be entrusted to third-party banks to ensure an independent evaluation. This safeguard will also apply to the management of assets, which, if necessary, will be entrusted to another establishment.

As regards the profit-sharing clause designed to encourage CL to manage the hived-off structure well, the French authorities have made it known informally that the article of the agreement relating to that clause will not be implemented.

4. (d) With regard to the possible repurchase by CL of certain hived-off assets, Annex 12 to the agreement requires any selling instructions to be entrusted to third-party banks and CL will have to request the express and prior agreement of SPBI before acquiring an asset. Particularly in the case of a planned sale to a third party other than the CDR group, a purchase by CL must be carried out on terms, especially regarding price, that at least match those proposed by the third party other than the CDR group. In the event of a spontaneous sale at any time as part of the management of the assets, SPBI will be able to require CL to compete with third parties. In this case and in the case of the sale of the hived-off banks, the price of acquisition by CL will, if SPBI so requests, be set jointly by two commercial banks, appointed by CL and SPBI respectively as competent experts.

4. (e) The Commission had also taken the view that the possibility open to CL to carry over tax losses was a problem which had to be dealt with according to the principles laid down in the rules governing restructuring aid. The complainants also called for this possibility to be eliminated.

At the end of 1994 the tax group made up of CL and 71 of its subsidiaries had a loss carry-over of the order of FF 29 billion, the result mainly of the activities of the parent company in metropolitan France. According to CL's forecasts, the group's result for tax purposes should be slightly positive and should thus consume part of the tax loss which can be carried over for five years only, except for that part of the loss arising from the depreciation of property assets (i.e. FF 4,8 billion), which can be carried over indefinitely.

[. . .]

The French authorities have also confirmed that, in the event of a privatization of CL together with the probable transfer of the 'better fortunes' clause, the possibility of carrying over losses can in any case be reviewed in such a way as to make any such carry-over impossible.

4. (f) The Commission had stated that it could not declare total State cover which might undergo major variations to be compatible with the common market. Whilst it is aware that the precise cost of the underwriting to the State is very difficult to determine now, given the volatility of the value of the assets, the Commission must obtain an estimate of the final cost of the operation to the State, even within a range between two extreme values, in order to be able to assess compliance with the State aid rules, particularly as regards the limitation of the aid to what is strictly necessary and the compensating arrangements. In the event of the approved cost overshooting, the Commission will re-examine the case.

Furthermore, it should be pointed out that, as SPBI is a partnership with two partners — the State and Thomson SIEG — and Thomson SIEG's liability is limited to FF 1 000 according to SPBI's articles, the State remains solely responsible for SPBI's net liabilities. Although this liability is unlimited, the amount of SPBI's net liabilities can be estimated as the difference between CL's loan to SPBI (FF 145 billion) and SPBI's receipts, notably those from the zero-coupon bonds, the 'better fortunes' clause, the participating loan to CDR and the counter-guarantee provided by CDC and Thomson CSF against part of OIG's losses.

The French authorities have confirmed that the State's underwriting (through SPBI) of CDR's risks and costs is limited to the amount of SPBI's participating loan to CDR, i.e. FF 135 billion, and that a lower limit could not be set without jeopardizing the approval of the deconsolidation of the hived-off structure from CL's accounts by the auditors and the supervisory authorities.

4. (g) The aim of the hiving-off mechanism is to enable CL to avoid entering substantial provisions in the accounts, estimated with the auditors' technical assistance, to be FF 60 billion. This amount includes FF [...] billion of quantifiable risks estimated on the basis of the 30 June 1994 accounts (including the FF [...] billion of quantifiable guarantees referred to at point 4 (a)), FF [...] billion of carrying costs for the 1994 financial year and FF [...] billion of provisions for the first half of 1994 against exceptional situations. According to the information supplied by the French authorities, the gross carrying cost for 1995 can be estimated at some FF 4 billion. No estimate can be made for the following years.

4. (h) Given the length of the period in which the financial mechanism for supporting CL is to be applied (20 years), the Commission had requested clarification concerning CL's future privatization, and, in particular, concerning any amendments to the plan's conditions in such an eventuality, especially as regards the 'better fortunes' clause and the cover provided by the State.

The French authorities have indicated that privatization of CL remains their objective but that neither the date nor the conditions governing such privatization can be set given the uncertainty over the time needed for restructuring the bank. However, an initial examination will be carried out in five years' time to check whether or not CL can be privatized. Before then, there will have been a detailed stocktaking on 31 December 1997 of the implementation of the recovery plan in order to review, where appropriate, its parameters. CL's privatization will be conditional upon the State, via SPBI, securing a position of financial balance from the unravelling of the financial arrangements. With this in mind, the French authorities have confirmed that the French Government has no intention of abandoning, without adequate compensation at the time of privatization, the clause entitling SPBI to a share of CL's profits. Consultant banks will then assess whether the compensation is adequate.

In the course of the discussions between the Commission's representatives and the French authorities, the latter reaffirmed their intention to privatize CL, in principle within five years if the business plan is observed and the bank is restored to viability.

The French authorities have also confirmed that the proceeds of privatization will contribute to the final balancing of SPBI. With that in mind, the Government's holding in CL may be transferred to SPBI.

4. (i) The Commission had requested more detailed information on the involvement of the minority shareholders (in particular, Thomson and CDC) in CL's recovery plan, and in particular on the possible condition regarding the withdrawal of those shareholders from SPBI.

The French authorities have emphasized that Thomson CSF and CDC remain guarantors of OIG's losses if they exceed FF 12,3 billion, subject to a ceiling of FF 1,77 billion for Thomson CSF and then, if necessary, to one of FF 300 million for CDC. The call date for this commitment has been put back to 31 December 2012.

As regards SPBI, the French authorities have pointed out that it is a partnership with two partners : the State and Thomson SIEG, a subsidiary of Thomson CSF. According to SPBI's articles, Thomson SIEG's liability is limited to the amount of its participation in SPBI, namely FF 1 000. No provision is made for the withdrawal of Thomson SIEG.

4. (j) The French authorities had announced that CL would reduce the size of its balance sheet by at least FF 100 billion as soon as possible, leaving aside the effects of creating CDR. They have confirmed this reduction, specifying that it may take place through disinvestment (whether of a banking or non-banking nature), disposals of claims, securitization and sales of securities.

The authorities have stated, in particular, that the entire banking network in Latin America has been put up for sale, selling instructions have been issued or plans for such sales have been drawn up for other international components of the group, the Banca Lombarda in Italy has been sold, and CLBN (Netherlands) and a specialist French subsidiary have been put up for sale. The sales undertaken account for more than FF 120 billion of assets in CL's consolidated balance sheet, excluding securitization (almost FF 14 billion).

4. (k) The business plan provides for CL's operations to be refocused on the two core activities of commercial banking in France and providing banking facilities for large enterprises and major investors of the world. CL has stated that retail banking activities outside Europe and ancillary banking activities outside Europe are to be sold off. The French authorities have not provided details of any additional sales.

4. (I) The French authorities have provided the Commission with a provisional report on OIG's activities and accounts. The 1994 results are not very significant since the start-up has been very slow. Assets totalling FF 2 billion have been sold, while the cost of carrying the assets in the portfolio has corresponded to FF 2,5 billion of new funds. That amount increased to FF 3,3 billion in March 1995 owing to the continuing very weak situation of the property market.

5. COMMENTS RECEIVED IN THE COURSE OF THE PROCEDURE

5.1. Reactions of interested third parties

Banque Nationale de Paris (hereinafter referred to as 'BNP') and Société Générale, two French banks of comparable size to CL, have transmitted their comments on this case to the Commission. As the two sets of comments received are very similar, their arguments are set out below as a single presentation.

The association of employee and former employee shareholders of the CL group has expressed its concern to the Commission regarding CL's future, particularly with regard to the reduction in its size. It has also pointed out that the aggressive and daring policy pursued by CL during the second half of the 1980s was explicitly supported by the French Government.

The Office of the United Kingdom's Permanent Representative to the European Union and the British Bankers' Association have also sent two letters expressing their agreement with the Commission's approach to the application of State aid rules to banks, whilst at the same time stressing the need to preserve economic operators' confidence in the reliability of the banking system. As regards CL, they argue that the Commission should ensure that the aid is limited to what is strictly necessary and that CL should provide a substantial *quid pro quo* in the form of asset sales and a size reduction.

The Office of the Danish Permanent Representative to the European Union also sent a letter expressing its approval of the approach adopted by the Commission. However, the Danish comments arrived after the expiry of the reply deadline set in the Commission's notice published in the *Official Journal of the European Communities* and they are therefore simply reported for information purposes. The Danish authorities have also stressed that in certain cases urgent and immediate measures need to be taken to prevent the danger that the filing for bankruptcy by one or more major banks leads to a systemic crisis.

The arguments put forward by the French banks are summed up below:

I. the rescue plan does not provide a clear indication of the strategic objective sought. Without a clear and significant reduction in the geographical spread and range of CL's activities, the State support is likely simply to reconstruct the identical bank;

II. the capital committed does not yield a normal return. The plan comprises an amount of State aid, net of CL's contributions, of between FF 50 billion and FF 62 billion (value as at 1 January 1995). This amount is obtained by adding together the discounted values of the capital increase (FF 5,3 billion) and the hiving-off operation (between FF 54 billion and FF 66 billion) and deducting the discounted return from the zero-coupon bonds (FF 7,8 billion) and the 'better fortunes' clause (FF 1 billion). The discounting rate used (7,81 %) has been obtained from the French authority's estimates of the value of the zero coupon. The estimate of the cost of the hiving-off operation has been based on the assumption that the entire portfolio of transferred assets will be sold within five years and that a carrying cost of between 5 % and 6 % will have to be borne each year;

III. the plan will create serious competitive distortions which are not offset by any significant restructuring effort by CL. According to the complainants, the highly aggressive policy pursued by CL during the period from 1987 to 1993, and particularly its acquisition of banking and industrial holdings at very high prices, had already largely been financed by the State (through the transfer of almost FF 20 billion of capital, whereas self-financing accounted for less than FF 6 billion). Furthermore, through its disproportionate activity, CL has been a major factor in the worsening property crisis in France. Before the hiving-off operation, CL accounts for almost a third of total lending to property developers (FF 105 billion out of FF 324 billion), more than twice the total commitments of BNP and Société Générale, institutions of similar size to CL. In view of this, the conditions governing the plan's implementation impose few constraints, and CL's slimming-down exercise is purely a possibility given that the rationalization measures taken in France by CL are of the same type and scale as those of its competitors (e.g. in 1994 the workforce employed by CL in metropolitan France fell by 2 % over the same area of activity, compared with a reduction in BNP's workforce in metropolitan France of 2,3 %) (1);

IV. the following corrective measures should therefore be envisaged:

(1) BNP reports that in the period from 1992, 1993 and 1994 French public banks, faced with losses of some FF 40 billion, received public fund injections of FF 25 billion and guarantees for hiving-off operations amounting to more than FF 180 billion.

1. the management of CDR should be independent in order to prevent any possible conflict of interest (the capital, the managing bodies and the staff should be totally independent of CL);

2. Altus, SDBO and Colbert should remain part of the CL group (which should itself bear the costs connected with the liquidation of those banks);

3. there should be a ceiling on the State guarantee;

4. the State operating subsidy provided for CL, which stems from the substitution in CL's accounts of the hived-off non-profitable assets by the SPBI loan, should be greatly reduced;

5. the carrying-over of tax losses should be cancelled;

6. the 'better fortunes' clause must be locked in for the period initially planned (20 years), whether CL is privatized or not;

7. CL should sell substantial parts of its operations, both within and outside Europe;

8. CL's commitments should be clearly specified and identified and should be irrevocable; furthermore, an annual public report should provide details of the application of the plan.

Most of the comments made by the two French banks, which had already been taken into account by the Commission when the procedure was initiated — either in the assessment of the aid content or in the request for information — are discussed in greater detail in the assessment of the aid content of the operation and in the examination of its compatibility.

However, the Commission takes the view that some of the complainants' arguments cannot be accepted, particularly those referred to at points 2 and 4. Point 3 is not pertinent to the problem of the Commission's assessment of the aid content of this guarantee.

The complainants' call for Altus, SDBO and Colbert not to be transferred to the hived-off vehicle would not seem to be acceptable, for two reasons. First, if those subsidiaries were to remain part of the consolidated CL group, the group would need an additional capital increase of at least FF 9 billion to meet the auditors' demands regarding provisions. Secondly, if those subsidiaries have not been sold or liquidated by the end of 1995, all of them will be taken over by CL. The repurchase price will be set by two independent commercial banks.

With regard to the reduction in the operating subsidy, and in particular the argument that the cost of carrying the hived-off assets has to be added to the amount of losses estimated by the auditors, the Commission regards this argument as incorrect since it means that the aid would be counted twice since, according to the French authorities, this amount of losses includes any asset-carrying cost.

5.2. The French authorities' response to the reactions of third parties

The arguments put forward by third parties have been discussed with the French authorities at the regular meetings held between them and the Commission's representatives. Their comments are included in the Commission's assessment of the operation and the examination of its compatibility (points 6 and 7).

6. ASSESSMENT

6.1. Confirmation of the aid content of the financial support for CL

Since CL is a State-controlled bank, the Commission will apply the market economy investor principle in order to determine whether there is a State aid element in the financial assistance being given to the bank.

The reorganization measures taken in 1994 and continued in 1995 can be regarded as a single restructuring process which the aid granted in 1994 and 1995 is intended to support.

6.1.1. *Capital injection*

On the basis of the documents supplied, the Commission takes the view that the capital increase in May 1994 was unlikely at the time to ensure future viability. The capital increase must be regarded as having been essential for the bank's survival, since its solvency ratio had fallen below the 8 % minimum. However, the operation was not part of a [...] recovery plan for the bank.

In addition, the price of the increase seems to have been based on an overestimate of the bank's value. The French authorities have pointed out that the estimate had been certified by [...]. But there are several factors which suggest that a private investor would not have accepted that estimate as a basis for investing in CL.

Before subscribing fresh capital, a private investor would have called for a thorough study of CL's assets and accounts and for a detailed recovery plan ; but [. . .], which was not asked to review CL's main assets, made its assessment on the basis of information supplied by CL, most of it a matter of public record, and was not put in a position to verify that information fully. Moreover, the value of the net assets was estimated on the basis of the 1993 accounts, which did not appear to reflect their real values, especially in the case of the industrial portfolio and the banking assets. A private investor would also have taken the view that some assets, particularly in the industrial portfolio, whose yield was lower than the cost of financing them, would be a burden on the bank's future profits. A further reduction in the value of the net assets could therefore have been deemed necessary.

Consequently, instead of being able to count on a reasonable return on its May 1994 investment without having to provide additional financing, the State has had to consider fresh financial support for CL.

In addition, Directive 89/647/EEC requires supervisory authorities to ensure that a bank whose solvency ratio falls below 8 % takes the necessary steps to restore the proper level as rapidly as possible, by recapitalizing or by reducing its liabilities, failing which it must cease activities. But such recapitalization and liabilities-reducing exercises may constitute State aid if they do not take place on normal market terms. Thus, the solvency ratio is a constraint which was imposed because it was felt that there was a minimum level of solvency below which a bank could not function soundly. The requirement is thus one of the tests of a bank's viability and, at the same time, ensures that banks compete with one another on an equal footing.

Accordingly, the conclusion must be that a market economy investor would not have agreed, as the French Government did in May 1994, to inject capital into CL at a price of FF 774 per share without a [. . .] study of the bank's accounts and without a [. . .] restructuring plan showing that CL would return to viability within a reasonable period. On the basis of the available information, therefore, the capital increase of FF 4,9 billion must be regarded as constituting State aid.

6.1.2. *State guarantee as part of the first hive-off operation*

Moving on to the State's underwriting of FF 18,4 billion as part of the 1994 hive-off, it must be concluded that there is a State aid component here too. In opening the proceeding, the Commission had taken the view, accepted by the French Government, that such cover was necessary to the survival of CL since otherwise the provisions needed would have exhausted the bank's reserves and rendered it insolvent. Without such cover, or some other operation on the same scale, CL would have had to go into liquidation.

In addition, there is no fixed risk premium on the guarantee, although there is a 'better fortunes' clause. Even so, given the overestimate of the non-performing assets and the fact that there was no certainty that there would be a return to better fortunes, that clause had no practical value. The overestimate meant that the provisions being underwritten were insufficient, as [. . .] stated in its report on CL, so that the guarantee would very likely have been taken up. Because the cover was necessary to the survival of CL and no return was expected, the aid component in the guarantee is practically equal to the cover extended.

In addition, it should be noted that this operation took place some three years after the change in the economic situation in this sector. During that period, CL had made [. . .] no provisions against the assets acquired, which nonetheless continued to increase, while a number of experts estimated that provisions should have been made against a [. . .] proportion of the property loans.

The Commission had also rejected the argument put forward by the French Government that such cover did not constitute State aid because it had been provided by shareholders at the request of the Commission Bancaire and formed part of a hiving-off mechanism which has also been used by other French banks. Indeed, there are other special features which distinguish CL's case from that of other French banks which have adopted similar hiving-off mechanisms. First, CL made no significant losses on the nominal value of the assets transferred to OIG, because the State had underwritten the risks of the new vehicle by virtue of the transfer of the assets at their net book value, and the provisions made by CL were almost negligible in relation to the nominal value of the assets.

It would also seem, from the information received, that, among such hiving-off mechanisms, CL's special vehicle OIG is the only one whose risks are underwritten by the

State. That cover enabled CL to keep those liabilities in its books in 1994 without needing to make additional provisions or reconstitute its own funds, as required by the rules on the solvency of credit institutions. The other French banks do not seem to have been given the same advantage : they had to set up special companies outside the scope of their consolidated accounts and the risks were covered through their own financial holding companies and not by their ultimate shareholders.

The payment of FF 4 billion to CL for servicing the loan made to the special vehicle seems peculiar to the mechanism in CL's case. Payment of this carrying cost clearly has to be considered State aid additional to the aid constituted by the cover itself.

It must be concluded, therefore, that there is substantial State aid in the hiving-off mechanism, and particularly in the State's underwriting of the risks attaching to the assets transferred and of the loan-servicing costs.

6.1.3. *Second hive-off operation*

In 1995, under the second rescue plan, the hiving-off mechanism was adapted in order to allow for further potential losses that would have exceeded CL's original own funds. The French authorities have stated that the arrangement envisaged was carried out at the request of the Commission Bancaire and is the only one which would satisfy the many constraints imposed on a recovery plan : the protection of depositors, compliance with the provisions of banking, commercial and stock-exchange law, minimization of the cost of the plan to the taxpayer, avoidance of any distortion of competition ; and the protection of the property of the State and of the minority shareholders.

They have also stated that the cost to the State of any alternative solution would be far higher, that complete State cover for the assets transferred is necessary if they are to be removed from CL's consolidated accounts and those accounts certified, and that the 'better fortunes' clause, together with the proceeds of asset sales, the zero-coupon bonds and the privatization of the bank, will meet the cost of the State cover provided, including the interest payable on the CL loan to SPBI.

The Commission, though, takes the view that the hiving-off mechanism, and in particular the cover of the risks and costs of the mechanism extended by the State, constitutes State aid. That it is State aid can be deduced from the fact that it is necessary to CL's survival, that its duration is unusually long, that the degree of risk is very high, and that no adequate return for the cover can be expected since it is subject to wide variations which CL is unable to meet.

On the basis of the available information, the Commission takes the view that there is no reason to believe that the total foreseeable cost of this mechanism to the French State is any lower than the cost to the State as a shareholder in the event of a supervised liquidation or any other solution involving sale or restructuring, bearing in mind the possible constraints imposed by national or Community rules governing the various possible scenarios. Those rules may mean that the costs of a liquidation are higher in the banking sector than in industry.

In addition, there are grounds for concluding that the cost to the State would have been much lower if it had acted earlier. If the State had intervened to restrict CL's excessive growth, it would also have limited the risks to which CL was exposed, buoyed up by the substantial support provided by its shareholder, and hence reduced the final cost of rescuing CL.

It should be recalled here that CL's aggressive policy, which was not properly supervised, and the poor quality of its assets, had already prompted Moody's credit rating agency to reduce the bank's credit rating in 1991 to two points below the maximum. However, the credit rating still remained above the actual quality of CL's portfolio, since it received preferential treatment in the form of the guarantee provided by the State, which was the bank's principal shareholder.

Moreover, a number of elements had already alerted the French authorities at the start of 1992 : the reversal in the economy, with its clear effects on CL's assets in the property and industrial sectors ; the fragile position of CLBN, in particular because of its involvement with CL in the MGM affair ; the consequences of stakes in loss-making publicly-owned companies such as Usinor-Sacilor ; and the poor operations revealed by the Commission Bancaire's initial enquiries into a number of subsidiaries in the group, such as Altus.

Despite this, CL continued its [...] expansionist policy. The balance-sheet total rose from FF 1 600 billion (end of 1991) to almost FF 2 000 billion (end of 1993), an

increase of 25 % in two years ; half of this was accounted for by the takeover of BfG in Germany in December 1992. At the same time, CL strengthened its presence in America, Asia and Africa ; the industrial and commercial portfolio, which was almost FF 38 billion at the end of 1991, was to reach some FF 50 billion by the end of 1993 (+30 %). It is clear, therefore, that closer supervision of CL's expansion would have limited the recovery costs. Accordingly, the rescue plan is late.

It should be noted that the French authorities have not presented an alternative solution in the form of supervised liquidation or sale in blocks, or an assessment of the costs. If such a solution had been adopted, and even if its costs had been close to those of the rescue plan selected, it is clear that this solution would have had a significantly less distortive effect on competition. Thus, applying the principle of proportionality, this solution should have been chosen.

[...]

Although the reasons which prompted the French authorities to opt for a rescue plan accompanied by substantial State financial support are understandable, that does not mean that the significant adverse effects of such a solution on competition may be ignored. Such effects require a substantial *quid pro quo.*

Lastly, it must be seen as very probable that the cost to the State of the rescue operation would have been lower if a detailed and comprehensive analysis, including an appropriate rescue plan, had been prepared when the State first took action, or even before.

To sum up, the Commission takes the view that, on the basis of the information available, the capital increase, the different aspects of the CDR/SPBI mechanism and the State's underwriting of the assets transferred include substantial elements of State aid.

6.2. Assessment of the business plan

CL's business plan seems to tackle the bank's fundamental problems and enable CL to return to viability. However, a number of points need clarification.

First, given that the rescue package for CL enables it to restore its solvency ratio to 8,3 % while keeping to a minimum the amount paid by the State at present, it is reasonable to conclude that the aid is not significantly higher than the strict minimum which is currently necessary. Nonetheless, a substantial *quid pro quo* is also needed to ensure that CL is not reconstituted as before, that it bears a significant proportion of the restructuring costs and that it provides appropriate compensation to competitors to offset the distortion of competition caused by the aid.

According to the information provided by the French authorities concerning future movements in CL's own funds, the restructuring plan allows CL to become viable again with an adequate solvency ratio. With a rate of increase in the group's own funds (18 % in five years) above the rate of growth of the weighted assets (4,6 %), the solvency ratio will improve.

It is relatively easy to estimate the movement in the solvency ratio and its value at the end of the restructuring period on the basis of CL's estimates of the growth of its weighted assets and of the group's own funds, and making the particularly prudent assumption that residual own funds (minority interests and supplementary own funds) will remain constant at 1994 levels (almost FF 50 billion). This exercise shows that the solvency ratio will remain above the statutory minimum during the entire recovery period (table 4).

Table 4

Analysis of CL's solvency ratio

(in billion FF)

	1994	1995	1996	1997	1998	1999
Weighted assets (b)	974	970	1 006	1 019	1 019	1 019
Total own funds (1) (a), of which :	81,0	81,4	82,3	83,6	85,5	86,6
— original, of which :	[...]	[...]	[...]	[...]	[...]	[...]
— group share (2)	[...]	[...]	[...]	[...]	[...]	[...]
— supplementary	[...]	[...]	[...]	[...]	[...]	[...]
Solvency ratio (a/b)	8,3 %	8,4 %	8,2 %	8,2 %	8,4 %	8,5 %

(1) Total own funds are the sum of the group's share of own funds, as estimated by CL, and supplementary own funds, estimated by the Commission as constant at 1994 levels, i.e. FF 50 billion.

(2) Including the fund for general banking risks.

However, the assumptions made in the business plan seem to be somewhat optimistic. The business plan assumes that nominal and real interest rates will fall in 1995 to a low level (4,78 %) and remain stable thereafter (4,67 %). But the expected fall in interest rates has so far been rather limited. Current short-term interest rates are around 7,2 %, or 2,4 percentage points higher. In a situation where inflation remains low (1), this means high interest rates in real terms. Past experience of bank recoveries and studies carried out by the Commission Bancaire show that it is much more difficult for a bank to recover when real interest rates are high.

In particular, the studies presented by the Commission Bancaire in its annual reports reveal that, in general, there is a positive relationship between real interest rates and the minimum return that banks must obtain on average from their credit operations to reward their borrowed resources and cover the cost of intermediation (break-even point for banks).

Monetary tightening reduces demand for credit and increases competition between credit institutions, the effect of which is to reduce banking margins. In addition, the flat interest-rate curve in France (short-term rates are at almost the same level as long-term rates) penalizes market activities and increases the carrying cost of immovable assets. Lastly, the cost of funds for the weaker credit institutions increases since they have a lower credit rating, in particular for long-term borrowing (2).

Thus, the assumption that CL can catch up with, and even overtake, its competitors by the end of 1999 in terms of its operating ratio seems optimistic. That would mean CL increasing its market share. However, it seems more realistic to suppose that the efforts made during this period by its competitors to improve their productivity will prevent CL from overtaking them. Catching-up is possible when there is wastage and inefficiencies that can be eliminated, but doing better than the competition would mean assuming that CL can introduce new management systems that are more efficient and more profitable than those of its competitors and with which they are not familiar. This objective therefore seems ambitious.

In addition, the planned improvement in costs must not be overestimated. In particular, any reduction in personnel costs in France is limited by the current system of redundancies, which makes it difficult to replace older staff with younger staff who are better prepared for the introduction, spread and intensive use of computerized systems. Although redundancy programmes have been drawn up with the agreement of the trade unions to encourage voluntary redundancies of excess staff, it would seem difficult to take further steps to keep and attract more valuable staff and to improve their productivity.

Alongside [...] is the fact that [...] covering 2000-2014 [...]. The business plan forecasts annual growth of 4 % for profits after tax; with annual inflation of some 2 %, that means an automatic annual real rate of growth of 2 % for net profits, *ceteris paribus*. It is clear that this arithmetical approach is not realistic. If there is only marginal growth in the banking sector, such an assumption implies growth in CL's market share. That is unacceptable.

For all the above reasons, it therefore seems more appropriate to assume that actual profits will be stable after CL's recovery. The rate of return on own funds assumed for 1999 (12,4 %) confirms CL's return to viability, whilst the automatic increases in the following years would seem overly optimistic.

Accordingly, a more prudent estimate should be made of CL's ability to stage a recovery. Naturally, this means that the forecast revenue for the State (income from the 'better fortunes' clause, and income accruing to the State as a shareholder in the form of dividends and transfers to retained profits) must be revised downwards by a sensitivity analysis based on the assumption of a nominal rate of growth of 2 % for profit after tax for the period 2000-2014.

6.3. Quantification of the amount of State aid

It is very difficult to quantify the cost to the State of rescuing CL because it is not easy to assess the aid content of the hive-off mechanism. It is not possible to give an accurate figure for the aid content of the State guarantee of the assets transferred to the hive-off vehicle because of the difficulties in quantifying the risk attaching to the assets. Producing a meaningful estimate of the aid content of the guarantee would require detailed valuations of all the hived-off assets. Such valuations can be carried out only by professional auditors. Accordingly, the Commission wished to examine the findings of the different assessments made by a number of experts, in particular the Commission Bancaire, CL's new auditors, and the advising banks.

(1) Inflation in France is currently 1,6 %.
(2) CL's long-term credit rating remains very low: BBB+ with the American rating agency Standard and Poor's, and A3 with Moody's.

An indicative estimate of the aid content of the State guarantee can be made by first looking at the amount of own funds that CL would have needed to satisfy the solvency ratio if the risk had not been underwritten by the State. The Commission made such an estimate when it opened the proceeding. The main purpose of the State cover of the total net value of the hived-off assets is to enable CL to remove the hived-off vehicle from its consolidated accounts, thus avoiding the need to make provisions (either to write assets down to their book value or to meet carrying costs) and to increase its own funds under the rules on the solvency of credit institutions, which would have had a substantial impact on the State budget.

Using information provided by the French authorities, this method has produced a more accurate estimate of the gross amount of the operation. The amount includes FF 4,9 billion of capital increase, FF 60 billion in provisions (1), and some FF 4 billion relating to the mechanical effect on the own funds requirements associated with deconsolidation, making a total of almost FF 69 billion.

However, as the French authorities have stressed, the aim of the mechanism is to avoid CL having to record these losses now and to defer them for several years, hence enabling them to be offset by the different elements of the mechanism. The French authorities state that the deficit arising on the waiver of claims on CDR will be offset by a 'better fortunes' clause involving levies in favour of SPBI, any capital gains on assets transferred recorded at their net value in SPBI's accounts and the proceeds from the sale of CL shares by SPBI when CL is privatized. The amount outstanding at the end of the operation in 2014 will be met out of the proceeds of the zero-coupon loan, up to a maximum of FF 35 billion.

To examine the validity of this argument, the expected return on the operation for the State as a shareholder must be compared with the costs that the State has to bear. Of course, all the nominal amounts of actual costs and expected income from the mechanism in the relatively near future, in particular the final losses and income from the 'better fortunes' clause, from the dividends and from the zero-coupon loan, must be compared correctly. That means that any future value must be discounted in the appropriate manner.

(1) See below for detail.

The reason for the Commission having to use this approach is first the French authorities' argument that the operation has a zero net final cost to the State, and secondly the estimate, submitted in the course of the proceeding by competing banks, of FF 50-62 billion for the net present value of the aid.

In addition, this method of assessing State aid was defined by the Commission in its 1993 communication (2), in which it confirmed that, in order to assess State aid, the behaviour of the State had to be compared to that of a private investor. In particular, it stated that, 'a market economy investor would normally provide equity finance if the present value (future cash flows discounted at the company's cost of capital or in-house discount rate) of expected future cash flows from the intended project (accruing to the investor by way of dividend payments and/or capital gains and adjusted for risk) exceed the new outlay.' The Commission also stated: 'This aid element consists in the cost of the investment less the value of the investment, appropriately discounted'.

In evaluating the capital injections and the expected income in the form of dividends and/or capital gains, the discount rate must be the rate that the capital markets would have used in order to assess the return on their contribution.

According to estimates made by a number of experts, including CL, the appropriate rate of return for capital invested in a bank is of the order of 12 %. The same estimate may be arrived at by looking at the average rate of return over the last four years of a sample of major international banks (3). Thus, the target rate of return on own funds set by CL is of the same order of magnitude; the expected rate in 1999, after recovery, is 12,4 %. Accordingly, the Commission takes the view that a rate of 12 % may be regarded as appropriate for calculating the present value of future income for the State.

Three elements must be taken into account in arriving at an assessment of the net cost to the State of the operation. First, it should be noted that since SPBI is a partnership owned by the State, it enjoys a full guarantee by its share-

(2) OJ No C 307, 13. 11. 1993, in particular points 35 and 37.
(3) The sample comprises 20 banks; two French, three Swiss, three German, two Dutch, four British, five American and one Japanese, and hence involves 80 observations (Source : IBCA).

holder. The aid component of the operation includes not only the losses on the participating loan in CDR but also the costs of financing SPBI.

Secondly, in the case at issue the method must be based on the fact that CL's value without the rescue plan would have been zero because its losses would have exhausted CL's own funds. Accordingly, the gross amount of the aid must include the zero-coupon loan, the income from the 'better fortunes' clause (the 'levy') and the share of profits accruing to the State as a direct and indirect shareholder (Thomson and CDC), in the form of dividends and transfers to retained profits.

Lastly, it should be noted that the actual net financial contributions made by CL to the CDR/SPBI mechanism under the 'better fortunes' clause must be reduced by the tax revenue foregone by the State in order to enable CL to contribute to the costs of the operation. Since the clause is a levy on profits before French taxation, the State will forfeit the taxes normally due to it as the collector of taxes.

Accordingly, the aid comprises the following elements:

(i) the capital injection;

(ii) the waiver of the claim on CDR under the participating loan of FF 135 billion granted by SPBI and guaranteed by the State, after taking into account any income, the asset-carrying costs and the costs of restructuring the assets;

(iii) the net cost of carrying other hived-off assets, i.e. the difference between the cost to SPBI of the loan granted by CL and the income for SPBI from the participating loan granted to CDR.

The following costs should also be included:

(iv) the discounted future income from the zero-coupon bond;

(v) the discounted future income from the 'better fortunes' clause and the share of profits expected to accrue to the State directly and indirectly (Thomson and CDC), reduced by the tax revenue foregone by the State because of the clause.

The capital injection of FF 4,9 billion was completed in July 1994; the present value of the injection is FF 5,2 billion.

With regard to item (ii), it should be noted that the maximum loss incurred by SPBI on CDR cannot exceed the amount of the participating loan, unless SPBI makes further loans to CDR [1]. A number of elements should, in principle, be taken into account to estimate this loss: the current unrealized losses on these assets, their carrying cost or cost of disposal, sales proceeds, the probability of the guarantees being taken up, and market trends. Such an estimate is particularly difficult because of the nature of the assets and the volatility of market conditions.

To simplify matters, the hived-off assets can be separated into two groups, the first composed of assets that are unprofitable or not very profitable and on which it is reasonable to assume that all the provisions to be made were concentrated, the second comprising more profitable assets. With regard to the first group, the French authorities had initially stated that the foreseeable loss was equal to the estimates of the need for provisions made with the assistance of the auditors, i.e. about FF 50 billion. After looking at the findings of the various analyses carried out by the French authorities with the cooperation of the auditors, the Commission Bancaire and the advising banks, the Commission concluded that to this amount had to be added CL's provisions for the first quarter of 1994 and the carrying costs for the 1994 financial year, which were also transferred to CDR; in total these amount to approximately FF 9,8 billion.

The cost of financing the more profitable assets (iii) should be added to this amount; the carrying cost of these assets is borne by SPBI, which is financed by CL. The interest rate on the loan granted by CL is 7 % for 1995 and thereafter 85 % of the money-market rate. Assuming that all the assets are sold within five years at a steady rate [2], and if the money-market rate is a constant 4,7 % (the rate used by CL to prepare the business plan), this cost may be estimated at some FF 11 billion (present value).

[1] The French authorities have stated that the additional credit line of up to FF 10 billion was envisaged only as a precautionary measure and could not be established before 1 January 1998. On that date, the partial repayments already made by SPBI mean that the total amount used should, in any event, remain below the initial amount of FF 135 billion.

[2] In fact, the plan is to sell 80 % of the assets within five years. However, the difference for the purposes of the calculation below is only marginal.

Table 5

Cost to SPBI of the loan from CL to finance the hived-off assets (1)

(in billion FF)

	1995	1996	1997	1998	1999	Total
Amount of assets to be financed	[...]	[...]	[...]	[...]	[...]	[...]
Nominal cost of loan	[...]	[...]	[...]	[...]	[...]	[...]
Present value of nominal cost	[...]	[...]	[...]	[...]	[...]	[...]

(1) The rate used for the present value calculation is the rate used to calculate CL's contribution through the zero coupon (7,8 %). It is assumed that all the assets will be sold within five years at a steady rate.

The income from the most profitable assets should be deducted from this amount. The French authorities estimate the nominal value of this income at some FF 5,2 billion, or FF 4,1 billion in present value. Accordingly, the net carrying cost of the other hived-off assets may be estimated at approximately FF 7 billion.

These total costs to the State (some FF 72 billion) must be deducted from the income accruing to the State from the zero coupon (iv), from the 'better fortunes' clause and the income accruing to the State as a shareholder in the form of dividends and transfers to retained profits (v).

The zero coupon of FF 10 billion (iv) should produce proceeds of FF 35 billion in twenty years, implying a rate of interest of 7,8 %. Thus, the present value of those proceeds, discounted at the same rate, is some FF 8 billion (value at 1 January 1995).

Of course, in order to estimate the extent of CL's contribution to the financing of the mechanism, all the revenue expected for the State on the basis of the recovery plan should be taken into account, i.e. all types of profits, whether in the form of a levy for the hiving-off vehicle under the 'better fortunes' clause or whether available after tax for the State as a shareholder, which are paid as dividends or taken to reserves (v). It should be noted that by also deducting from the cost of the operation the present value of future normal dividends (paid out or retained) that the State will receive directly or indirectly (Thomson and CDC), account is taken of the value of any privatization or, in the absence of privatization, of the present value of CL after restructuring, using the net present value of future cash flows.

Through the 'better fortunes' clause, the State as a shareholder must be regarded as losing the dividends to which it would normally be entitled as a direct and indirect shareholder in CL (with 71 % of the share capital (1)) and as the tax collector. That is why CL's net contribution to the costs of the hiving-off mechanism is limited. Without the clause, the State would have received some 35 % of the profits in the form of taxation and 71 % of the amount available to shareholders (81 % of the profits), whereas, with the clause, it immediately receives some 47 % of the profits (2) and, in total, 90 % of the profits. At the same time, however, it loses some of the French taxes (approximately one sixth of the amount receivable under the clause) that it would otherwise have received. The surplus for the State arising from the clause is therefore 9 % of the profits, i.e. some FF 3 billion over twenty years (present value).

It is therefore clear that what the State gains on the one hand from the clause it loses on the other in taxation and normal dividends, except for that portion of the levy under the clause that the State raises [...]. However, the clause is an obligation producing a restraining effect on CL, all the more so since the levy under the clause is made before provisions for the fund for general banking risks.

Under the business plan, the present value of the levy under the 'better fortunes' clause and the present value of profits accruing to the State as a shareholder are estimated at FF 18 billion and FF 12 billion respectively.

However, the Commission takes the view that the business plan is based on somewhat optimistic assumptions (see point 6.2). The money-market rate is currently much higher than the rate used in the estimates in the business plan for 1995. Analysis of previous cases of bank recoveries and studies of banks' break-even points suggest that the recovery of a bank is often more difficult against a background of low inflation and high real interest rates than vice-versa. In addition, it would seem unlikely that CL will be able to reduce its overheads so quickly (18 %

(1) Since Groupe Thomson is controlled by the State, which holds some 50 % of the shares.

(2) Average rate adjusted to forecast profits in the business plan of percentages of 34 % and 60 %.

in four years), although this reduction is necessary if CL is to catch up its competitors. Lastly, it should also be noted that the model in the business plan from 2000-2014 is based on an assumption of automatic growth of profits after tax of 4 % per annum, which does not seem either realistic [. . .].

For all these reasons, therefore, it seems more logical to assume that actual profits will stabilize after CL's recovery. The rate of return on own funds assumed for 1999 (12,4 %) confirms CL's return to viability, whilst the automatic increase assumed in subsequent years seems too optimistic. This means that the income from the 'better fortunes' clause and the revenue accruing to the State as a shareholder in terms of dividends or retained profits must be revised downwards. A sensitivity analysis based on the assumption of nominal growth of profits after taxation of 2 % gives an estimate for these two components of FF 15 billion and FF 10 billion respectively.

However, this estimate cannot be regarded as definitive because the State loses part of its normal tax take because of the clause. Account must be taken of this effect when calculating the cost of the State intervention since the intervention is justified by the possibility of benefiting from a return to better fortunes. Even though this tax concession is applicable to private and public investors alike, it applies only to firms in difficulty. In principle, therefore, such a concession constitutes State aid.

As mentioned above, the levy under the clause is applied before French taxes. Given that CL's tax losses have been deferred for five years and that almost half CL's revenue is generated abroad, the shortfall of taxation can be estimated at 17,5 % of the present value of income from the clause from 2000 to 2014, or FF 2 billion. This amount must be deducted from the present value of the clause. Accordingly, a more accurate estimate of the value of the 'better fortunes' clause is FF 13 billion.

Table 6

Gross income from the CL recovery operation accruing to the State for the period 1995-2014 (1)

(in billion FF)

	'Better fortunes' clause	State share of profits
Optimistic assumption in business plan		
Nominal value	67	38
Present value	18	12
Moderate assumption used		
Nominal value	51	33
Present value	15	10
Moderate assumption corrected for tax effects		
Present value	13	10

(1) An internal rate of return of 12 % was used to calculate the present value of future profits.

To sum up, the estimates of the different components of the operation to rescue CL are set out below:

(i) capital injection with a present value of FF 5,2 billion;

(ii) waiver of claim by SPBI on CDR under the participating loan; maximum amount FF 135 billion and estimated at FF 60 billion, after taking account of the income and carrying costs and restructuring costs of unprofitable assets and assets with low profitability;

(iii) the net carrying cost of other hived-off assets, FF 7 billion, i.e. the difference between the cost to SPBI of the loan granted by CL (FF 11 billion) and the income for SPBI from the participating loan granted to CDR (FF 4 billion).

The following costs of the mechanism should be taken into account:

(iv) present value of future income from the zero-coupon bond, some FF 8 billion;

(v) total value of future income received by the State under the 'better fortunes' clause and in its capacity

as a shareholder, corrected by the sensitivity analysis: estimated at FF 23 billion.

The balance of some FF 41 billion is the present-value estimate of the net cost of the mechanism to the State, and on which the Commission has based its examination of whether the aid is compatible with the common market. However, given the high degree of uncertainty concerning certain aspects of the plan, in particular with regard to CDR's losses and SPBI's future income, a margin of error of ± 10 % on the above costs (FF 36 billion excluding the capital injection) must be assumed. Accordingly, the estimate of the maximum net cost of the State intervention is FF 45 billion.

6.4. Other elements of assessment

The Commission notes the statement by the French authorities that it will be possible to consider privatizing CL only once the bank has recovered. Under the business plan presented by the French authorities, CL returns to viability in 1999. The Commission takes the view that the business plan is sufficiently realistic and achievable, at least until 2000. Accordingly, it also takes the view that privatization could take place after 1999.

On the basis of the information received from the French authorities, the Commission considers that the question of the role of Thomson SIEG and of CDC in the operation to support CL is not relevant to the questions that the Commission has to examine.

6.5. Distortion of trade between Member States

The liberalization of financial services and the integration of financial markets are making intra-Community trade more and more sensitive to distortions of competition.

Aid to an international bank such as CL, which provides loans and other forms of financing to firms that are in competition with one another on international markets and offers financial services in competition with other European credit institutions, while at the same time expanding its activities abroad through a network of branches outside France, is clearly liable to have a distorting effect on intra-Community trade. In particular, the aid in question enables CL to save and restructure a number of foreign subsidiaries, in particular in the Netherlands, Spain, Portugal and Germany, which are in competition with other Community financial institutions.

It should be noted that half of CL's assets are currently located outside France, a substantial part of which are within the Community, that the purpose of the aid to CL is, in large part, to cover sizeable losses outside France but within the Community, and that the aid in question will enable CL to remain on the market elsewhere in the Community.

It must consequently be held that the increase in capital and the State's underwriting of risks are caught by Article 92 (1) of the Treaty because they are liable to constitute State aid and to distort trade within the common market.

7. COMPATIBILITY OF THE AID

7.1. General

After evaluating the presence of State aid in the financial support measures for CL, it must now be examined whether the aid is compatible with the common market under Article 92 (2) and (3) of the Treaty.

It must be borne in mind, first of all, that this is not aid with a social character granted to individual consumers, nor aid to facilitate the development of certain regions of France.

Half of CL's assets, and therefore probably the same proportion of its activities, are located outside France. Its activities in France are spread throughout the country but are concentrated in medium-sized and large urban areas.

Nor is the aid designed to remedy a serious disturbance in the economy, since it is intended to remedy the difficulties of a single recipient, CL, rather than those of all enterprises in the sector. Furthermore, the Commission considers that CL's problems do not stem from a systemic banking crisis in France, although CL is not the only French bank in difficulty; some other banks, including public banks, are also facing difficulties. The causes of CL's losses are specific to it and appear to be connected to a large extent with the aggressive lending and investment policy the bank pursued in the second half of the 1980s, without there being sufficiently strict monitoring of risks and evaluation of assets acquired. However, although the Commission is aware of the special sensitivity of financial markets and of the possible undesirable negative consequences that the bankruptcy of a bank such as CL might have, the aid granted cannot be considered either to be of common European interest.

Consequently, only the derogation provided for in point (c) of Article 92 (3) can be considered.

As mentioned above, the compatibility of such measures with the common market has to be assessed in accordance with the special rules on aid for rescuing and restructuring firms in difficulty, with account also being taken of the effect of State intervention on the financial system in the Member State concerned. In the particular case of banking, the Commission takes the view that rescuing and restructuring aid may be compatible as long as the four conditions set out above (point 3.2) are met.

The Commission has to establish, in particular, whether the distorting effect of the State aid on competition is offset by anything solid compensation in the restructuring plan. Such a *quid pro quo* is necessary if the aid is not to be declared contrary to the common interest.

Given the colossal amount of aid involved, which is also intended to cover the losses incurred from assets acquired by CL during its period of aggressive expansion in the 1980s, CL's contribution must be both substantial and accompanied by a reduction in its commercial presence; at the same time, the need to restore and maintain CL's viability has to be met. This contribution must contain a real and substantial *quid pro quo* for the further reason that the bankruptcy solution is ruled out since it would have an undesirable and disproportionate negative impact on other credit institutions and on the financial markets. That solution would probably have been adopted in the case of any non-banking private enterprise recording such colossal losses. The competitive distortion created by the aid is therefore very marked and must be matched by a corresponding *quid pro quo*. It should be pointed out that the deficit will not be made up, even after 20 years, by the projected profits.

7.2. Questions arising from the Commission's assessment and conditions governing acceptance of the aid

7.2.1. *Separation between CL and CDR*

In the light of the amendments made by the French authorities to the mechanism for controlling CDR, as described above, the Commission considers that the danger of a conflict of interests arising will be eliminated if the committees and the team leaders are independent of CL. The teams themselves should be financially answerable to CDR. It is also necessary to ensure that the committees responsible for managing the hived-off assets are independent of CL.

As regards the profit-sharing clause introduced to encourage CL to manage the hived-off vehicle well, the Commission considers that, once a clear separation between CL and CDR has been achieved, this clause will no longer be necessary and will therefore have to be eliminated, as the French authorities have already informally accepted.

7.2.2. *Repurchase of the hived-off assets*

With regard to the possibility of CL repurchasing certain hived-off assets, the Commission considers that the amendments to the rules on the management of CDR have not solved this problem.

The Commission considers that, in permitting CL to repurchase all or part of the transferred holdings at market prices after having transferred them to CDR at their book value just because it could no longer finance them — on the grounds that it could then still maintain its favourable commercial relationships with the enterprises in question — CL would benefit from the aid twice, an outcome which cannot be defended for competition reasons.

The Commission takes the view, however, that, if CL considers it appropriate to repurchase certain assets, that possibility should not confer an undue advantage on CL. In its opinion, therefore, CL should be able to repurchase hived-off assets, to the limited extent indicated in the contract of appeal objectives, only at the price at which the assets were transferred to CDR or at the market price if that is higher than the price at which the assets were transferred to CDR.

7.2.3. *Carry-over of tax losses*

The Commission applies the principles underlying the rules on restructuring aid to the carry-over of losses for tax purposes. Those rules stipulate that any loss offset by aid cannot be carried over for tax purposes. The 1994 losses, which correspond to the capital increase of FF 4,9 billion, cannot therefore be carried over for tax purposes.

With regard to residual tax losses, the Commission is asking the French authorities to rule out the possibility of a carry-over of tax losses for CL at the time of privatization if the 'better fortunes' clause is transferred.

7.2.4. *Reduction of FF 100 billion of assets and sales in the banking network*

In order to restrict the amount of aid to what is strictly necessary and to provide an adequate *quid pro quo* without undermining CL's future viability, a significant contribution is necessary in terms of a reduction in CL's size. While it is aware of the need for confidentiality in this regard, the Commission must ensure that this reduction in CL's size is actually achieved.

The business plan provides for CL's activities to be refocused on two core areas, namely commercial banking in France and banking services for large companies and major investors of the world. CL has stated that its retail banking activities outside Europe and its ancillary banking activities outside Europe will be sold off, together with certain unprofitable retail banking subsidiaries in Europe (see point 4 (j)). The Commission notes that the following sales or liquidations have already been carried out or are to be carried out between now and 1998 :

(a) certain French subsidiaries specializing [...] (1995);

(b) CLBN (Netherlands), CLBS (Sweden), Banca Lombarda (Italy) and all the retail banking establishments in the United Kingdom (1995);

(c) other European subsidiaries;

(d) all the Latin American subsidiaries (1995);

(e) other subsidiaries in the international network outside Europe.

The sales undertaken in 1995 account for more than FF 120 billion of assets in CL's consolidated balance sheet. The French authorities have also stated that CL is planning almost FF 14 billion of securitization. However, the Commission considers that securitization is not a valid *quid pro quo* for the aid since it means that CL simply transfers the risk involved in the assets in question, while maintaining commercial links with its clients.

The Commission is not convinced that the abovementioned sales will reduce the size of CL's balance sheet to such an extent — leaving aside the simple restructuring effect — to constitute a sufficient *quid pro quo*. The sales envisaged in the business plan involve those less profitable activities which CL would have had to sell in any case, even if it had received no aid.

Given the colossal amount of aid involved and the distorting effects on competition, the Commission considers that CL should make a significant effort by making an adequate contribution to the restructuring costs and by compensating its competitors for those distortions. It should be pointed out in this connection that a number of CL's banking subsidiaries and branches abroad were acquired as a result of the aggressive policy which has been pursued by CL in recent years — only possible with State support — and which could not have been pursued by any other European bank for lack of resources. The sales envisaged in the business plan can clearly not be regarded as constituting appropriate compensation for the aid in question.

The sale of non-profitable or poorly performing subsidiaries must therefore be accompanied by the sale of profitable subsidiaries or branches, which will enable CL to finance its restructuring as far as possible through its own resources. As some subsidiaries need to be restructured before they can be sold, the sales can in principle be extended over a three-year period starting from the date of this Decision.

The French authorities have informed the Commission that, in accordance with the commitments given by the French Government [...], CL will be required to reduce its commercial capacity by cutting its business activities abroad, including the European banking network, by at least 35 % by the end of 1998.

If this objective cannot be achieved by the deadline set without major losses being incurred and without the shareholder in question having to provide further financial support, in particular to ensure that the Community solvency ratio is observed, the Commission will re-examine the possibility of perhaps extending this deadline.

CL will not be able to use the proceeds from the sale to purchase other banking networks or activities but must use them to finance the restructuring of other activities, for example [...]. CL can derive special benefit from the proceeds of selling the subsidiaries by using them to restructure loss-making subsidiaries; the return on such restructuring — in the form of the elimination of substantial losses — is especially high.

7.2.5. Privatization and transfer of the 'better fortunes' clause

In the course of the discussions between the Commission's representatives and the French authorities, the latter reaffirmed their intention to privatize CL, explaining that the privatization process would be launched once the bank's economic and financial situation had been corrected. If the business plan is observed, CL's economic and financial situation will be restored, and the bank will again become viable, within five years.

The Commission takes a favourable view of the French authority's wish to privatize CL because this will help the recovery plan to succeed and will reduce the competitive distortions. Privatization will have the effect of limiting the life of the mechanism (20 years) and therefore the uncertainty over the risks and net costs of the mechanism. It will therefore reduce the scale of the aid; such a reduction will be guaranteed if the proceeds of privatization are paid to SPBI. At the same time, privatization will limit the distorting effect of the aid which would otherwise be spread over 20 years.

Given that any amendment of the plan's clauses, particularly at the time of CL's privatization, could have the effect of altering the final cost to the State, any such amendment will have to be notified to the Commission before it is carried out in order to enable the Commission to check that those amendments are compatible with the common market. The Commission will have to be notified if privatization is delayed for more than five years. Furthermore, the transfer of the participating 'better fortunes' clause against payment will have to be carried out at the market price, which will be independently assessed.

The Commission takes the view that, even if, for the State as shareholder, the sale of CL with or without these clauses does not in principle make any difference in economic terms (apart from the effect on the minority private shareholders), given that the transfer of the clause against payment will have the effect of increasing the selling price by an amount equal to its discounted value, the consequences for competitors may be different.

A sale to the public which is coupled with an announcement that the clause is to be cancelled should normally lead to a corresponding increase in the shares to be sold by the State which fully reflects the market value of that clause.

7.3. Monitoring and supervision of the implementation of CL's recovery plan

The Commission considers that the proper implementation of the plan should be supervised, particularly as regards the slimming-down of the balance sheet, the refocusing on core activities, the rationalization of those activities and CL's contribution to the hived-off vehicle in the form of a levy or dividends. In accordance with the rules on restructuring aid, the Commission takes the view that such aid should normally be necessary only once.

The French authorities will therefore have to submit the following documents to the Commission every six months:

(a) a detailed report on the application of the plan, together with the reports submitted to Parliament;

(b) the balance sheets, profit and loss accounts, and reports of the directors of the companies involved in the hiving-off operation, namely OIG, CDR, SPBI and CL;

(c) a list of the hived-off assets that have been liquidated or sold, with details of selling prices, the names of purchasers, and the names of the banks to which selling instructions have been given;

(d) a detailed list of abandonments of CDR claims to be set against the participating loan granted by SPBI;

(e) a detailed list of the banking assets sold by CL outside the hived-off mechanism, together with an evaluation, based on objective and verifiable criteria, of the reduction in its commercial operations abroad;

(f) detailed figures for CL's contributions to the hived-off structure in the form of a levy or dividends.

Any intention to amend the plan as communicated to and approved by the Commission, particularly at the time of privatization, will have to be notified to the Commission before it is carried out.

8. CONCLUSIONS

In conclusion, the capital increase carried out in 1994, the State's underwriting of the risks and costs of the transferred assets, as amended in 1995, and the other elements of the hiving-off mechanism contain appreciable State aid components within the meaning of Article 92 (1) of the Treaty. The estimate of the discounted net cost to the State arising from the scheme is FF 5,2 billion for the capital increase and FF 36 billion for the underwriting. Given the uncertainty regarding certain aspects of the plan, a margin of variation of approximately 10 % needs to be incorporated into the value of the State intervention, leaving aside the capital increase. The maximum estimate of the discounted net cost is therefore FF 45 billion.

These measures have been carefully examined in the light of point (c) of Article 92 (3) of the Treaty to establish whether they can be regarded as being compatible with the common market. In view of the arguments set out above, the aid granted to CL would seem to meet the conditions laid down in the guidelines on aid for rescuing and restructuring firms in difficulty. Consequently, and subject to compliance with a number of conditions, some of which constitute an essential *quid pro quo* for the substantial aid if the common interest is to be met, the aid can be exempted from the ban laid down in Article 92 (1) of the EC Treaty and Article 61 (1) of the EEA Agreement since it is compatible with the common market according to the provisions of point (c) of Article 92 (3) of the EC Treaty and point (c) of Article 61 (3) of the EEA Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The aid contained in the recovery plan for Crédit Lyonnais in the form of a capital increase of FF 4,9 billion, the underwriting of the risks and costs associated with the assets transferred to the hiving-off structure (up to a maximum of FF 135 billion) and tax concessions inherent in the 'better fortunes' clause, the total net cost of which

to the State, taking into account the revenue accruing to the State, is estimated at a maximum of FF 45 billion, is hereby declared to be compatible with the common market and with the EEA Agreement under point (c) of Article 92 (3) of the EC Treaty and point (c) of Article 61 (3) of the EEA Agreement.

Article 2

The aid referred to in Article 1 is authorized subject to France meeting the following conditions and commitments :

(a) it must ensure that all the recovery measures and all the arrangements provided for under the scheme described in Article 1 are implemented ;

(b) it must not amend the conditions laid down in the recovery plan, except with the Commission's prior agreement. At all events, the 'better fortunes' clause may be transferred no earlier than at the time of the privatization of Crédit Lyonnais, and only at the market price ; that price will be verified by independent assessments ;

(c) it must ensure, given the size of the estimated overall cost of the scheme to the State of FF 45 billion, that the commercial capacity of Crédit Lyonnais is reduced by means of a cut of at least 35 % in its commercial operations abroad, including its European banking network, by the end of 1998 in accordance with the commitments given by France [...]. If that objective cannot be achieved by the deadline set without causing substantial losses that require the shareholder in question to provide further financial assistance in order in particular to ensure compliance with the Community solvency ratio, the Commission undertakes to examine the possibility of extending that deadline. If the costs of the scheme, estimated at FF 45 billion, are exceeded, it will be necessary to re-examine the scale of the reduction in the commercial operations of Crédit Lyonnais as accepted by [...] ;

(d) it must prevent Crédit Lyonnais from benefiting from a carry-over of tax losses in respect of the 1994 tax loss covered by the capital increase of FF 4,9 billion ;

(e) it must prevent Crédit Lyonnais from repurchasing hived-off industrial and commercial assets, except at the price at which the assets were transferred to CDR or at the market price if that is higher than the price at which the assets were transferred to CDR, and at all events subject to an overall limit of FF 5 billion ;

(f) it must prevent Crédit Lyonnais from sharing in any of the proceeds of sales from CDR ;

(g) it must achieve a separation between CDR and Crédit Lyonnais as regards their managers, their administration and the system of monitoring and supervising the management of the hived-off assets ;

(h) it must ensure that the committees responsible for managing the hived-off assets are independent of Crédit Lyonnais ;

(i) it must eliminate any possibility of a carry-over of residual tax losses for years prior to 1995 for Crédit Lyonnais if, at the time of privatization, the 'better fortunes' clause is transferred ;

(j) it must ensure that Crédit Lyonnais uses the proceeds of sales to restructure non-performing assets and activities ;

(k) it must ensure that Crédit Lyonnais pays to SPBI the levy sums in accordance with the 'better fortunes' clause ;

(l) it must pay to SPBI the proceeds of privatizing Crédit Lyonnais, particularly those deriving from the sale of the shares currently held by SPBI, and ask Parliament to endorse payment to SPBI of the proceeds of privatizing the remaining shares.

Article 3

The Commission has taken account of the French authorities' statement that their firm objective is to privatize Crédit Lyonnais and that the anticipated recovery should enable it to be ready for privatization within five years. Any deferment of privatization beyond five years will have to be notified to the Commission.

Article 4

The French authorities must cooperate fully in monitoring compliance with this Decision and must submit the following documents to the Commission every six months as from 1 March 1995 :

(a) a detailed report on the application of the plan, together with the reports presented to Parliament ;

(b) the balance sheets, profit and loss accounts, and reports of the directors of the companies involved in the hiving-off operation, namely OIG, CDR, SPBI and Crédit Lyonnais ;

(c) a list of the hived-off assets that are liquidated or sold, with details of selling prices, the names of purchasers, and the names of the banks to which the selling instructions have been given ;

(d) a detailed list of abandonments of CDR claims to be set against the participating loan granted by SPBI ;

(e) a detailed list of the banking assets sold by Crédit Lyonnais outside the hived-off vehicle, with an evaluation, based on objective and verifiable criteria, of the reduction in its commercial operations abroad ;

(f) detailed figures for Crédit Lyonnais's contributions to the hived-off vehicle in the form of a levy or dividends.

The Commission may ask for these documents and the implementation of the plan to be assessed by means of special audits.

Article 5

This Decision is addressed to the French Republic.

Done at Brussels, 26 July 1995.

For the Commission

Karel VAN MIERT

Member of the Commission

CORRIGENDA

Corrigendum to Council Regulation (EC) No 2937/95 of 20 December 1995 amending Regulation (EEC) No 2887/93 by imposing an additional anti-dumping duty on imports of certain electronic weighing scales originating in Singapore

(Official Journal of the European Communities No L 307 of 20 December 1995)

In the Contents and in the title on page 30:

for: '20 December 1995',
read: '18 December 1995';

and on page 33:

for: 'Done at Brussels, 20 December 1995.',
read: 'Done at Brussels, 18 December 1995.'