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Contents

I *Acts whose publication is obligatory*

Commission Regulation (EEC) No 918/93 of 20 April 1993 fixing the import levies on cereals and on wheat or rye flour, groats and meal	1
Commission Regulation (EEC) No 919/93 of 20 April 1993 fixing the premiums to be added to the import levies on cereals, flour and malt	3
* Commission Regulation (EEC) No 920/93 of 15 April 1993 imposing a provisional anti-dumping duty on imports of certain magnetic disks (3, 5 microdisks) originating in Japan, Taiwan and the People's Republic of China	5
Commission Regulation (EEC) No 921/93 of 20 April 1993 suspending the preferential customs duties and re-establishing the Common Customs Tariff duty on imports of uniflorous (standard) carnations originating in Israel	19
Commission Regulation (EEC) No 922/93 of 20 April 1993 suspending the preferential customs duties and re-introducing the Common Customs Tariff duty on imports of multiflorous (spray) carnations originating in Israel	21
Commission Regulation (EEC) No 923/93 of 20 April 1993 fixing the import levies on white sugar and raw sugar	23
Commission Regulation (EEC) No 924/93 of 20 April 1993 altering the basic amount of the import levies on syrups and certain other products in the sugar sector	25
Commission Regulation (EEC) No 925/93 of 20 April 1993 fixing the agricultural conversion rates	27

II *Acts whose publication is not obligatory*

Council

* Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts	29
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2

(Continued overleaf)

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

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

Commission

93/221/EEC :

- * **Commission Decision of 26 March 1993 approving the Spanish programme of agricultural income aid for farmers in Extremadura (districts of Don Benito, Puebla de Alcocer, Castuera, Trujillo and Logrosán) 35**

93/222/EEC :

- * **Commission Decision of 26 March 1993 approving the Spanish programme of agricultural income aid for farmers in Castile-La Mancha 36**

93/223/EEC :

- * **Commission Decision of 26 March 1993 approving the Spanish programme of agricultural income Aid for farmers in Andalusia 37**

93/224/EEC :

- * **Commission Decision of 29 March 1993 on the establishment of an addendum to the Community support framework for Community structural assistance in the improvement of the conditions under which agricultural and forestry products are processed and marketed in Germany (excluding the five new Länder) 38**

93/225/EEC :

- * **Commission Decision of 29 March 1993 amending the Seventh Council Decision 85/356/EEC on the equivalence of seed produced in third countries 40**

I

(Acts whose publication is obligatory)

**COMMISSION REGULATION (EEC) No 918/93
of 20 April 1993**

fixing the import levies on cereals and on wheat or rye flour, groats and meal

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

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EEC) No 1738/92 ⁽²⁾, and in particular Article 13 (5) 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⁾, and in particular Article 5 thereof,

Whereas the import levies on cereals, wheat and rye flour, and wheat groats and meal were fixed by Commission Regulation (EEC) No 762/93 ⁽⁴⁾ and subsequent amending Regulations;

Whereas, in order to make it possible for the levy arrangements to function normally, the representative market rate established during the reference period from 19 April

1993, as regards floating currencies, should be used to calculate the levies;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 762/93 to today's offer prices and quotations known to the Commission that the levies at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies to be charged on products listed in Article 1 (a), (b) and (c) of Regulation (EEC) No 2727/75 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 21 April 1993.

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

Done at Brussels, 20 April 1993.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 180, 1. 7. 1992, p. 1.

⁽³⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 79, 1. 4. 1993, p. 11.

ANNEX

to the Commission Regulation of 20 April 1993 fixing the import levies on cereals and on wheat or rye flour, groats and meal

(ECU/tonne)

CN code	Third countries (*)
0709 90 60	136,67 ⁽²⁾ ⁽³⁾
0712 90 19	136,67 ⁽²⁾ ⁽³⁾
1001 10 00	180,03 ⁽¹⁾ ⁽²⁾
1001 90 91	142,12
1001 90 99	142,12 ⁽²⁾
1002 00 00	153,48 ⁽⁴⁾
1003 00 10	137,61
1003 00 20	137,61
1003 00 80	137,61 ⁽²⁾
1004 00 00	113,72
1005 10 90	136,67 ⁽²⁾ ⁽³⁾
1005 90 00	136,67 ⁽²⁾ ⁽³⁾
1007 00 90	148,84 ⁽⁴⁾
1008 10 00	52,71 ⁽²⁾
1008 20 00	96,53 ⁽⁴⁾
1008 30 00	57,08 ⁽⁵⁾
1008 90 10	(7)
1008 90 90	57,08
1101 00 00	211,61 ⁽²⁾
1102 10 00	227,32
1103 11 30	290,62
1103 11 50	290,62
1103 11 90	227,06

- (1) Where durum wheat originating in Morocco is transported directly from that country to the Community, the levy is reduced by ECU 0,60/tonne.
- (2) In accordance with Regulation (EEC) No 715/90 the levies are not applied to products imported directly into the French overseas departments, originating in the African, Caribbean and Pacific States.
- (3) Where maize originating in the ACP is imported into the Community the levy is reduced by ECU 1,81/tonne.
- (4) Where millet and sorghum originating in the ACP is imported into the Community the levy is applied in accordance with Regulation (EEC) No 715/90.
- (5) Where durum wheat and canary seed produced in Turkey are transported directly from that country to the Community, the levy is reduced by ECU 0,60/tonne.
- (6) The import levy charged on rye produced in Turkey and transported directly from that country to the Community is laid down in Council Regulation (EEC) No 1180/77 (OJ No L 142, 9. 6. 1977, p. 10), as last amended by Regulation (EEC) No 1902/92 (OJ No L 192, 11. 7. 1992, p. 3), and Commission Regulation (EEC) No 2622/71 (OJ No L 271, 10. 12. 1971, p. 22), as amended by Regulation (EEC) No 560/91 (OJ No L 62, 8. 3. 1991, p. 26).
- (7) The levy applicable to rye shall be charged on imports of the product falling within CN code 1008 90 10 (triticale).
- (8) No levy applies to OCT originating products according to Article 101 (1) of Decision 91/482/EEC.
- (9) Products falling within this code, imported from Poland, Czechoslovakia or Hungary under the Interim Agreements concluded between those countries and the Community, and in respect of which EUR.1 certificates issued in accordance with Regulation (EEC) No 585/92 have been presented, are subject to the levies set out in the Annex to that Regulation.

COMMISSION REGULATION (EEC) No 919/93**of 20 April 1993****fixing the premiums to be added to the import levies on cereals, flour and malt**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EEC) No 1738/92 ⁽²⁾, and in particular Article 15 (6) 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⁾, and in particular Article 5 thereof,

Whereas the premiums to be added to the levies on cereals and malt were fixed by Commission Regulation (EEC) No 3874/92 ⁽⁴⁾ and subsequent amending Regulations;

Whereas, in order to make it possible for the levy arrangements to function normally, the representative market rate established during the reference period from 19 April

1993, as regards floating currencies, should be used to calculate the levies;

Whereas, on the basis of today's cif prices and cif forward delivery prices, the premiums at present in force, which are to be added to the levies, should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The premiums referred to in Article 15 of Regulation (EEC) No 2727/75 to be added to the import levies fixed in advance in respect of cereals and malt coming from third countries shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 21 April 1993.

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

Done at Brussels, 20 April 1993.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 180, 1. 7. 1992, p. 1.

⁽³⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 390, 31. 12. 1992, p. 121.

ANNEX

to the Commission Regulation of 20 April 1993 fixing the premiums to be added to the import levies on cereals, flour and malt

A. Cereals and flour

(ECU/tonne)

CN code	Current	1st period	2nd period	3rd period
	4	5	6	7
0709 90 60	0	0	0	0
0712 90 19	0	0	0	0
1001 10 00	0	0	0	0
1001 90 91	0	0	0	2,26
1001 90 99	0	0	0	2,26
1002 00 00	0	0	0	0
1003 00 10	0	0	0	0
1003 00 20	0	0	0	0
1003 00 80	0	0	0	0
1004 00 00	0	0	0	0
1005 10 90	0	0	0	0
1005 90 00	0	0	0	0
1007 00 90	0	0	0	0
1008 10 00	0	0	0	0
1008 20 00	0	0	0	0
1008 30 00	0	0	0	0
1008 90 90	0	0	0	0
1101 00 00	0	0	0	3,17

B. Malt

(ECU/tonne)

CN code	Current	1st period	2nd period	3rd period	4th period
	4	5	6	7	8
1107 10 11	0	0	0	4,02	4,02
1107 10 19	0	0	0	3,01	3,01
1107 10 91	0	0	0	0	0
1107 10 99	0	0	0	0	0
1107 20 00	0	0	0	0	0

COMMISSION REGULATION (EEC) No 920/93

of 15 April 1993

imposing a provisional anti-dumping duty on imports of certain magnetic disks (3,5" microdisks) originating in Japan, Taiwan and the People's Republic of China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

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

Whereas :

A. PROCEDURE

- (1) In July 1991 the Commission announced, by a notice published in the *Official Journal of the European Communities*⁽²⁾, the initiation of an anti-dumping proceeding concerning imports into the Community of certain magnetic disks (3,5" microdisks) originating in Japan, Taiwan and the People's Republic of China, and commenced an investigation.

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

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

- (2) The Commission officially advised the producers, exporters and importers known to be concerned, the representatives of the exporting countries, and the complainants, and gave the parties directly

concerned the opportunity to make their views known in writing and to request a hearing.

A number of producers in the countries concerned, some importers in the Community related to producers in Japan, certain exporters in Hong Kong of 3,5" microdisks said to originate in the People's Republic of China and some non-complainant Community producers made their views known in writing. All parties who so requested were granted a hearing.

- (3) The Commission sent questionnaires to parties known to be concerned and received detailed information from the complainant Community producers, certain producers in Taiwan and the People's Republic of China and certain exporters in Hong Kong of 3,5" microdisks said to originate in the People's Republic of China. Information received from all but one Japanese producer was incomplete.

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

(a) Complainant Community producers

Belgium :

— Sentinel Computer Products Europe, NV, Wellen ;

France :

— RPS, Rhône Poulenc Systems, Noisy Le Grand ;

Germany :

— Boeder AG, Flörsheim am Main ;

Italy :

— Balteadisk SpA, Arnad ;

(b) Japanese producers

— Hitachi - Maxell Ltd, Tokyo,

— Memorex Telex Japan Ltd, Tokyo,

— Memorex Copal Corporation Ltd, Fukushima ;

(c) Taiwanese producers

— CIS Technology Inc., Hsin-Chu,

— Megamedia Corporation, Taipei ;

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No C 174, 5. 7. 1991, p. 16.

(d) Hong Kong exporters of 3,5" microdisks originating in the People's Republic of China

- Hanny Magnetics Ltd,
- Lambda Magnetic Ltd,
- Prime Standard Ltd ;

(e) Importers and reselling companies in the Community related to Japanese producers*France :*

- Memorex Computer Supplies ;

Germany :

- Maxell Europe GmbH,
- Memorex Computer Supplies,
- Sony Deutschland GmbH,
- TDK Electronics Europe GmbH ;

Netherlands :

- Memorex Telex Distribution ;

UK :

- Maxell UK Ltd,
- Memorex Computer Supplies,
- Sony UK Ltd,
- TDK UK Ltd.

- (5) The investigation of dumping covered the period from 1 April 1990 to 31 March 1991 (the investigation period).
- (6) This investigation has exceeded the normal time period of one year because of the volume and complexity of the data gathered and examined.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT**(i) Description of the product concerned**

- (7) The product covered by the complaint and for which the proceeding was opened is 3,5" microdisks, used to record and store encoded digital computer information (CN code ex 8523 20 90).
- (8) The microdisks concerned are available in various types, depending on their storage capacity and on the way in which they are marketed. However, no significant differences in the basic physical characteristics and technology of the various types exist. Furthermore, these types show a high degree of interchangeability.
- (9) One Japanese producer requested that 3,5" microdisks with a storage capacity of four megabytes and above should be excluded from the scope of the proceeding. In support of its request, the producer in question argued that four megabyte and higher

capacity 3,5" microdisks differ from lower capacity 3,5" microdisks in physical and technical characteristics as well as in end use.

These arguments are, however, not convincing since, despite some alleged differences in the technology used for the manufacture of both four megabyte and higher capacity 3,5" microdisks and other 3,5" microdisks, their basic physical characteristics and end uses are essentially the same, and all 3,5" microdisks are, to a large extent, interchangeable.

- (10) In these circumstances, all 3,5" microdisks should be considered as one product for the purpose of this proceeding.

(ii) Like product

- (11) The investigation showed that the various types of microdisks concerned sold on the domestic markets of Japan and Taiwan were alike to those exported from these two countries, and the People's Republic of China to the Community.
- (12) Likewise, the various types of microdisks manufactured in the Community and those exported to the Community from the three countries in question use the same basic technology and are alike in their essential physical characteristics and in their end uses. They have, therefore, to be considered as a like product in accordance with Article 2 (12) of Regulation (EEC) No 2423/88.

C. INDIVIDUAL TREATMENT OF CHINESE EXPORTERS

- (13) All producers in the People's Republic of China who replied fully to the Commission's questionnaire, and exported the product concerned to the Community during the investigation period, claimed to be foreign investment companies, either with the status of joint venture, or with a majority shareholding by a foreign investor, and consequently, claimed to operate in an environment very similar to that of market economy companies.

These producers, therefore, requested that the Commission make individual company findings for each of them. In support of this request, some of the producers concerned submitted documentation of their status.

In this respect, it is considered that, with regard to exports from a non-market economy country, individual treatment must remain a strict exception, to be applied solely in cases where the producer concerned has provided evidence that it is free to establish export prices without the influence of the State authorities. Indeed, individual determinations are inappropriate since the State, through its

control, could modify the pattern of production and trade, so as to take advantage of the lowest determination and thus undermine the effectiveness of any measures. The sole fact that a company has the status of joint venture, or a majority shareholding by a foreign investor, is thus not sufficient to justify an individual determination for companies operating in the People's Republic of China. On the basis of the information submitted by all but one of the companies concerned, it was found that either the Chinese State authorities held majority shareholdings or that the absence of State influence on the business decisions of these companies had not been demonstrated.

- (14) For one company, however, which was fully owned by a foreign investor, it was found, on the basis of its Articles of Association and other relevant documents concerning the establishment and functioning of the company that, in addition to being profit orientated with the freedom to transfer profits outside the People's Republic of China, it was totally independent in the administration of its business and in the setting of export prices.

D. DUMPING

(i) Normal value

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

(a) *Japan*

- (15) Only one Japanese producer submitted information on its domestic selling prices and costs of production. Whilst it proved possible in the on-the-spot investigation to verify the costs of production provided by this producer, the data in respect of domestic sales made available to the Commission were incomplete, and did not allow a satisfactory verification of domestic selling prices.
- (16) Normal value for this Japanese producer was, therefore, established on the basis of the facts available in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88. In this respect, the most reasonable basis was considered to be the cost of production of the producer concerned plus a reasonable profit margin. In accordance with Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88, the selling, general and administrative expenses to be added to the manufacturing costs

were calculated by reference to the domestic sales made by the producer concerned in the same business sector, since no identifiable profitable domestic sales of the like product could be established, either for the producer concerned or other producers in Japan. As to the profit margin used, in the absence of information with regard to domestic sales made in the same business sector by either the producer concerned or other producers in Japan, the Commission has based its provisional determination on a margin of 15 % profit as alleged by the complainant with regard to sales of the like product on the Japanese domestic market, which is considered to be a reasonable level for this type of product on the Japanese market.

- (17) In the complete absence of information from the other Japanese producers concerned, the normal values thus established were considered the best and most reasonable basis for the determination of normal value for these producers, in accordance with the said Article 7 (7) (b).

(b) *Taiwan*

- (18) For one of the two Taiwanese producers who responded to the Commission's questionnaire, normal value was established, in accordance with Article 2 (3) and (4) of Regulation (EEC) No 2423/88, on the basis of the price actually paid in the ordinary course of trade for domestic sales of the like product, which were made in sufficient quantities to permit a proper comparison.
- (19) As to the other Taiwanese producer, it was found that the volume of its domestic sales of the like product represented less than 5 % of its exports to the Community of the product concerned. In accordance with normal practice confirmed by the case-law of the Court of Justice of the European Communities, domestic sales of this producer were thus considered to have been made in insufficient quantities to permit a proper comparison. Normal value had, therefore, to be constructed in accordance with Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88 on the basis of the manufacturing costs of the producer concerned and, in the absence of suitable data on expenses and profits of the producer concerned on the domestic market because of the insufficient quantities sold in that market, an amount for selling, general and administrative expenses and profit, calculated by reference to the expenses incurred and the profit realized by the other Taiwanese producer on sales of the like product on its domestic market.

(c) *People's Republic of China*

- (20) Since the People's Republic of China is a non-market economy country, normal value was based on data obtained in a market economy. To this effect, the complainant suggested that normal value be determined on the basis of domestic selling prices of the like product in Taiwan, i.e. an analogue market economy, as provided for in Article 2 (5) of Regulation (EEC) No 2423/88.
- (21) One Chinese producer argued to the contrary that normal value should be based on the prices at which the like product manufactured by this producer was sold to the USA, where most of its products were sold. Alternatively, this producer proposed that, as nearly all components used to manufacture the product concerned were sourced from related companies in market economy countries, i.e. USA and Hong Kong, normal value should be constructed by taking account of these costs as incurred by the Chinese producer concerned, the remaining costs being established on the basis of the analogue market economy.
- (22) In this respect, Article 2 (5) of Regulation (EEC) No 2423/88 sets out the criteria for the establishment of normal value, and neither prices to other countries, nor costs incurred by the producer concerned, meet these criteria. Accordingly, the arguments of this producer cannot be accepted.
- (23) As regards the selection of a market economy country, Taiwan is considered to be an appropriate and not unreasonable market, where a number of producers compete for sales of the product concerned. It is similar to the People's Republic of China in its dependence on the supply of certain components used in the manufacturing process. In addition, the production volume of the product concerned by the two Taiwanese companies investigated was representative when compared with the volume of exports from the People's Republic of China to the Community. Therefore, the Commission has established normal value for the People's Republic of China on the basis of the weighted average normal value determined for the two Taiwanese producers concerned.

(ii) **Export price**(a) *General*

- (24) For one producer in Taiwan and the producers concerned in the People's Republic of China, prac-

tically all exports to the Community in the investigation period were considered. For the other producer in Taiwan, exports to the Community in the investigation period of 'fall-out' microdisks, i.e. production rejects, were excluded from the establishment of the export price. In agreement with the producers concerned in Japan, the export transactions taken into account during the investigation period, covered more than 75 % of their total exports to the Community in the same period.

(b) *Japan*

- (25) Since almost all export sales by the Japanese producers concerned were made to related importers in the Community, export prices for these sales were constructed, in accordance with Article 2 (8) (b) of Regulation (EEC) No 2423/88, on the basis of the price at which the imported product was first resold to an independent buyer in the Community. In constructing these export prices, allowances were made for all costs incurred between importation and resale and for a profit margin of 5 %, which is provisionally considered to be reasonable on the basis of those profits made by independent importers in the electronics sector.
- (26) One of the Japanese producers concerned refused to submit information with regard to the costs incurred between importation and resale in respect of its central distribution centre in the Community. Consequently, these costs were established on the basis of the facts available, in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88. For this producer, the costs incurred by another Japanese producer, with a similar distribution structure in the Community, were considered to be the most reasonable basis for determining the costs in question.

The same Japanese producer also refused to supply information with regard to the prices charged by its related importer in the Community to two large independent customers, on the grounds that the sales to other customers, already reported, represented more than 80 % of the total exports to the Community by this producer. However, since these two customers each represented about 5 % of the total sales in the Community of the producer concerned, it was considered that the prices charged to these two customers were not necessarily in line with the average prices charged to other customers in the Community. In these circumstances, and in accordance with the said Article 7 (7) (b), the Commission has considered selling

prices to these two customers to be at the level of the lowest prices found to have been charged in the Community by this producer for the product concerned, and constructed the corresponding export prices as outlined in recital 23. Any other approach would have constituted a bonus for non-cooperation.

Furthermore, the Japanese producer concerned was the only one found to have made export sales directly to an independent buyer in the Community. Export prices for these sales were established on the prices actually paid for the product concerned sold for export to the Community, in accordance with Article 2 (8) (a) of Regulation (EEC) No 2423/88.

(c) *Taiwan*

- (27) Export prices for the two Taiwanese producers concerned were determined, for the purpose of the provisional findings, on the basis of the prices actually paid for the product sold for export to the Community, in accordance with Article 2 (8) (a) of Regulation (EEC) No 2423/88.

(d) *People's Republic of China*

- (28) All but one of the Chinese producers made all their sales to the Community through Hong Kong. In these circumstances, where exports were made directly to the Community or through Hong Kong by the producer itself, export prices were determined on the basis of the prices actually paid for the product sold for export to the Community.

Where exports were made through related companies in Hong Kong to independent buyers in the Community, export prices were determined on the basis of the export price to the Community from the company in Hong Kong.

Where exports were made to related importers in the Community, export prices were constructed on the basis of the price at which the imported product was first resold to an independent buyer in the Community. In constructing the export price, allowances were made for all costs incurred by the related importer between importation and resale. Allowance was also made for a profit margin of 5 %, which is provisionally considered to be

reasonable on the basis of those profits made by independent importers in the electronics sector.

(iii) **Comparison**

- (29) The normal value, by product type, was compared with the export price for the corresponding type, transaction by transaction, at the same level of trade, and on an ex-works basis. For the purposes of a fair comparison, adjustments were made in accordance with Article 2 (9) and (10) of Regulation (EEC) No 2423/88 in respect of differences affecting price comparability, such as differences in physical characteristics and in selling expenses for which satisfactory evidence was submitted.
- (30) As regards physical characteristics, normal value for one of the two producers in Taiwan was adjusted to take account of the lower degree of certification, i.e. the testing of the performance of the diskette which influences its market value, of some exports of the product concerned to the Community, when compared to the like product sold on the domestic market.
- (31) One Chinese producer claimed that normal value should be adjusted to take account of the fact that its exports to the Community in the investigation period consisted only of uncertified 3,5" micro-disks. The Commission considered this claim to be substantiated, and an appropriate allowance was granted.
- (32) As to the allowances in respect of selling expenses, adjustments were made, as appropriate, to both normal value and export price in respect of transport, insurance, handling, packing, payment terms, salesmen's salaries and commissions.
- (33) One Taiwanese producer and one Japanese producer claimed adjustments to normal value in respect of after sales technical assistance expenses incurred in domestic sales of the like product. However, no satisfactory evidence was supplied by either producer on the exact nature and amount of the expenses concerned, and the claim was therefore rejected.
- (iv) **Dumping margins**
- (34) The comparison showed the existence of dumping, the dumping margins being equal to the amount by which the normal value, as established, exceeds the price for export to the Community.

- (35) For the reasons stated in recital 13, a general dumping margin has been established for all the Chinese producers concerned, with the exception of the one wholly foreign-owned company mentioned in recital 14.
- (36) The weighted average dumping margins for each producer, expressed as a percentage of the free-at-Community-frontier price are as follows:

Japan

— Memorex :	41,3 %,
— TDK :	41,6 %,
— Hitachi-Maxell :	37,3 %,
— Sony :	60,1 % ;

Taiwan

— Megamedia :	33,5 %,
— CIS Technology :	20,4 % ;

People's Republic of China

— General Dumping Margin :	41,5 %,
— Hanny Zhuhai :	35,6 %.

- (37) For those producers in Japan and Taiwan which neither replied to the Commission's questionnaire nor otherwise made themselves known, the dumping margin was determined on the basis of the facts available in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88. In this respect, it was considered that, in the light of the proportion of total imports into the Community covered by the companies in each of these countries which had cooperated in the investigation, the findings made with regard to these companies provided the most appropriate basis for the determination of the dumping margin.

Indeed, the Commission considered that it would have provided a bonus for non-cooperation, and may lead to circumvention of anti-dumping measures, should any of the producers concerned be deemed to have dumped at levels lower than the highest found for any producer or group of producers in the exporting country concerned which had cooperated.

It is, therefore, considered appropriate to use, for the producers concerned, the highest dumping margin found in the respective country.

- (38) One Japanese exporter who replied to the Commission's questionnaire stated it did not produce or sell domestically the product concerned.

The Commission found that the purchases of the product concerned by this trader from Japanese producers were sales for export by these producers and should form part of the calculation of their dumping margins. However, as the latter did not make themselves known to the Commission, by requesting and completing the questionnaire established for that purpose, no individual calculation of dumping was possible.

E. COMMUNITY INDUSTRY

- (39) In examining whether the complainants constitute a major proportion of the total Community production of the like product, the Commission requested the cooperation of all non-complainant producers in the Community known to be concerned, and took into account the information submitted by those that agreed to cooperate.

The Commission also had to take account of the fact that some of producers in the Community are related to the producers in the exporting countries concerned, and that others, without such relationships, imported the dumped product themselves. The Commission had, therefore, to decide whether these groups of producers should be excluded from the term Community industry, according to the first indent of Article 4 (5) of Regulation (EEC) No 2423/88.

- (40) In this respect, the constant practice of the Community institutions has been that the exclusion of such producers in the Community must be decided on a case-by-case basis, on reasonable and equitable grounds, and by taking into consideration all the legal and economic aspects involved. These institutions have, on several occasions, concluded that an exclusion is justified where the producers in the Community either participated in the dumping practices, are shielded from their effects, or where they benefit unduly from them.
- (41) In the present case, the investigation has shown that some producers in the Community, which have corporate links with the producers in Japan, sell both their Community-produced 3,5" microdisks and the dumped 3,5" microdisks imported from their parent companies in Japan through the same corporate sales channels in the Community.

In addition, the prices of the Community-produced product are aligned to those of that imported from Japan, since the price behaviour on the Community market for all microdisks, whether produced in Japan or in the Community, is controlled by the Japanese parent company.

- (42) In these circumstances, the Commission concludes, for the purposes of its provisional findings, that these producers participate in the dumping practices of the Japanese parent companies and, through a policy of transfer prices, are not only shielded from the effects of the dumping but even benefit from it.

Furthermore, the transfer prices at which these producers import the product concerned, and its components, from related producers in Japan would distort the economic assessment of the Community industry, should these producers be included in the definition of this industry.

It is, therefore, concluded that the producers concerned have to be excluded from the term 'Community industry', in accordance with Article 4 (5) of Regulation (EEC) No 2423/88.

- (43) Some of the complainant producers imported the product under investigation from producers for which dumping was found. The Commission considers that these importing producers are not participating in the dumping practices, since independent importers are not involved in dumping. Moreover, the level of imports in the investigation period by all but one of these producers did not, on an individual basis, exceed 7 % of their total sales in the Community in the same period. Such a low level of imports cannot, therefore, have shielded the producers concerned from the effects of dumping nor have substantially benefited them. Indeed, the small advantages which these producers may have obtained from these imports are by far offset by the disadvantages from the dumping.

- (44) During the investigation period, one complainant Community producer imported 3,5" microdisks found to be originating in the countries concerned in quantities which can be considered substantial, in so far as they amounted to nearly one-third of the total sales by this producer in the Community. It was found that the Community producer in question was already a well-established and efficient manufacturer of the previous 5,25" diskette format, with an extensive customer base, and that its decision to import was made in order to maintain this base with regard to the new 3,5" diskette format, while its own production of this format was insufficient. Due to the threat arising from the low

prices of the dumped imports of the new format, this producer had no other reasonable choice than to cover its sales programme, for an intermediate period and to the required extent, with imported products. These imports have, therefore, to be considered as necessary to defend a competitive position and a reasonable market share with regard to the new format. This act of self defence cannot be considered as undue benefit from the dumping.

- (45) One Japanese exporter argued that two of the complainant producers should be excluded from the term 'Community industry' on the grounds that the degree of State ownership or control of these companies was such that they were not exposed to the normal market forces operating in a market economy. In this respect, the Commission notes that capital holding by the State is irrelevant to the definition of the Community industry.

- (46) In the light of the above circumstances, it is provisionally considered that there are no reasons for the exclusion of any of the complainant producers from the definition of the Community industry.

- (47) On the basis of the above considerations, the share of the total Community production of the product concerned held by the complainant producers during the investigation period amounted to approximately 77 %.

F. INJURY

(i) Cumulation of the effects of the dumped imports

- (48) In establishing the impact of the dumped imports on the Community industry, the Commission has considered the effect of all dumped imports from the countries concerned by the investigation. In analysing whether cumulation of these imports is appropriate, the Commission has considered the comparability of the product imported from the countries concerned in terms of the following criteria: similarity in physical characteristics, interchangeability of end uses, significance of the volumes imported, simultaneous competition in the Community with each other and with the like product manufactured by the Community industry, and similarity of channels of distribution and price behaviour in the Community market of the producers in each country.

(49) Some of the producers concerned in Japan claimed, for the purpose of the injury assessment, that imports of 3,5" microdisks from this country should not be cumulated with imports from Taiwan and the People's Republic of China, as the effects of the Japanese product on the Community market were wholly different in terms of product quality, import volume, pricing and market strategy. These Japanese producers argued that their exports to the Community consist almost exclusively of 3,5" microdisks addressed to the high-quality, high-priced, branded segment of the market, and that they, therefore, do not compete with low quality imports from Taiwan and the People's Republic of China, which are concentrated in the low-priced segments, where only the Community industry is active. It is also argued that imports of the product concerned from Japan have rapidly declined, whereas imports from the other two exporting countries concerned have increased significantly.

(50) The Commission found that imports during the investigation period of the product concerned originating in Japan were by no means concentrated in the branded segment, but concerned, in substantial quantities, the various types of 3,5" microdisks available in the Community market, i.e. branded and unbranded diskettes in the two main storage capacities.

As to the volume of the dumped imports from Japan, it increased from 64,5 million units in 1988 to 116,6 million units in 1990, peaking at 131,5 million units in 1989. It showed a certain further decline to 103,6 million units during the investigation period. This evolution has to be seen in the light of a switch by the Japanese producers concerned to production in the Community and in other third countries. Notwithstanding this decline, the volume of dumped imports from Japan remains at a high level and is nearly twice the volume of dumped imports from the other two countries concerned taken together. The arguments of the Japanese producers have, therefore, to be rejected.

(51) After examination of the facts, it was found that the 3,5" microdisks imported from each of the countries concerned are, on a type-by-type basis, alike in all respects, interchangeable and marketed in the Community within a comparable period and under similar commercial policies. These imports compete with each other and with the like product manufactured by the Community industry. It was also found that there was no clear distinction in the price behaviour in the Community of the produ-

cers in each of the countries concerned. In addition, the volume of the dumped imports from each of these countries could, in no instance, be considered negligible.

(52) In these circumstances and in accordance with the standard practice of the Community institutions, it is considered that there are sufficient grounds to cumulate the imports from all the countries concerned.

(ii) Volume and market share of the dumped imports

(53) Since the CN code under which 3,5" microdisks fall also covers other magnetic disks and unrecorded media components thereof, no precise figures concerning total imports and total consumption of the product concerned were available. However, the information obtained during the investigation does not put in question the estimates made by the complainant with regard to the proportion of 3,5" microdisks in total imports from the countries concerned under the said CN code which, in addition, have not been contested by the other parties to the proceeding. Thus, these estimates, together with further data obtained during the investigation, allowed the Commission to reasonably assess the Community consumption of the product concerned.

On this basis, the volume of the dumped imports into the Community of the product concerned originating in the exporting countries subject of the proceeding, were 74 million units in 1988, 142 million units in 1989, and 156 million units in 1990 and during the investigation period, i.e. an increase of more than 110 % since 1988.

(54) The development of these imports, assessed in the light of the apparent Community consumption, led to a combined market share of the Community market held by the exporting countries concerned which was 37,2 % in 1988, peaked at 43,3 % in 1989 and was 33,8 % during the investigation period. This decline in market share is exclusively due to a fall in imports of the product concerned originating in Japan which, since 1989, appear to have been progressively replaced by production of the Japanese companies concerned in other third countries and in the Community.

(iii) Prices of dumped imports

(55) Prices of the imported product from the countries concerned have undergone a rapid decline since

1988. In many cases, these prices have decreased by more than 75 %, which appears to be much greater than could be reasonably expected from economies of scale and the learning-curve effect of this industry.

These prices were, during the investigation period, significantly below the prices practised by the Community industry. Price undercutting was established, for each of the producers in the exporting countries concerned investigated, by comparing their prices for sales to the first independent customer in the Community with the weighted average prices of the Community industry. In general, the comparison was made for the markets of the United Kingdom, Germany, France and Italy, which together represent most of the Community market for the product concerned, and to which are addressed more than 75 % of the dumped imports in question.

This comparison was made on a per-product-type basis for each of the types imported which were considered for the dumping determination. To ensure price comparability, adjustments were made with regard to differences in physical characteristics between the product concerned exported to the Community from Taiwan and the People's Republic of China, and the product manufactured in the Community. These adjustments were those outlined in recitals 30 and 31. Adjustments were also made in respect of customs duty and the importer's profit margin mentioned in recitals 25 and 28 to the extent it was applicable.

The results of the comparison showed margins of undercutting for practically all the producers investigated. The weighted average undercutting ranged from 0,5 to 16,6 % for Japan, from 13,6 to 20,4 % for Taiwan, and from 22,02 to 34,4 % for the People's Republic of China.

(iv) Situation of the Community industry

(a) Production and capacity utilization

- (56) The volume of production of the product concerned by the Community industry increased from 37 million units in 1989, the first full year in which production by all the complainant producers became operational, to 55 million units in 1990, and to 59 million units in the investigation period. This absolute increase in production has, however,

to be assessed in the light of the recent establishment of the Community industry, and the growth in demand for the product concerned in the Community, with the total Community market increasing from 170 million units in 1988, 294 million units in 1989, and 398 million units in 1990 to 425 million units in the investigation period. Thus, the production volume of the Community industry is below the level that could have been attained, and, in the opinion of the Commission, would have been obtained in the absence of the imports concerned. The Community industry, therefore, suffered suppression of production.

- (57) This production suppression may also be observed with regard to capacity utilization rates which, during the investigation period, were still, on average, at a low level of 63 %, and even below 50 % for some of the complainant Community producers. These rates are thus far from a reasonable level of capacity utilization which would have enabled the Community industry to benefit fully from economies of scale.

(b) Sales, stocks and market share

- (58) The volume of sales in the Community of the product concerned by the Community industry was in line with that of production and, therefore, equally suppressed. Consequently, year-end stock levels did not reveal a real trend. This development in sales volume, compared to that of the apparent Community consumption, shows a market share which has stagnated at around 12 % since 1989, notwithstanding the start-up phase of the Community industry, when market share could have been expected to grow at a much faster pace.

(c) Prices

- (59) Complainant Community producers reduced their prices to levels which, in general, did not allow a reasonable profit to be made and, in some cases, did not cover the cost of production. It was found that these price reductions amounted to more than 30 % since 1989, in an attempt by the Community industry to achieve reasonable levels of capacity utilization and market share. In addition, it was found that this decline in prices, which became much more acute in the second half of the investigation period, exceeded the reduction in the cost of production achieved by all the complainant Community producers.

(d) Profitability

- (60) The development in prices and cost of production, and the under-utilization of capacity, resulted in losses being incurred from 1989 by the majority of the Community producers concerned. Furthermore, in some cases, return on sales was clearly insufficient to recover the high investments already made, and to afford those necessary to ensure a presence in this fast-paced, high-technology industry. Since 1989, losses on turnover in the Community incurred by the Community industry amounted, on average, to more than 3 % on an annual basis.

(e) Investments

- (61) The Community producers concerned which, in some cases, were efficient manufacturers of generations of diskettes prior to 3,5" microdisks, financed high investments in the period from 1987 to 1989 in order to develop the production of the product concerned.

Since 1989, practically all the complainant Community producers have been forced to reduce seriously their investments pending the re-establishment of a fair competitive situation in the Community market.

(v) Conclusions on injury

- (62) In assessing the situation of the Community industry, account has to be taken of the fact that it is still at an early stage of development and is, therefore, dependent on continued sales growth and further capital investment. This investment is also a requirement of such a fast-paced industry where microdisks with increasing storage capacity are likely to enter the market in the near future. Thus, an essential condition for the Community industry to keep pace with the investment flow required is the achievement of adequate levels of production, sales and prices yielding an appropriate profitability.

Although economic indicators such as production and sales increased, as could normally be expected for new entrants in a growing market, these are still far from allowing this industry to achieve reasonable levels of capacity utilization and market share and to benefit from economies of scale. Moreover, the acute price erosion and the consequent precarious financial situation of the complainant Community producers prevent them from keeping pace with the investment requirements in

this industry. This downgrading of investments has occurred at a crucial stage in the development of the Community industry, when it was about to become firmly established. This situation has impeded its growth, adversely affecting its viability.

In these circumstances, it is concluded that the Community industry is suffering material injury, specially demonstrated by the difference between the present situation, characterized by sales suppression, price depression and resulting lack of profitability, and a situation in which, in the absence of dumping, reasonable levels of capacity utilization, market share and profits could have been achieved.

G. CAUSATION OF INJURY

- (63) The Commission examined whether the material injury suffered by the Community industry had been caused by the dumped imports and whether other factors might have caused or contributed to that injury.

(i) Effect of dumped imports

- (64) In its examination, the Commission found that the increasing volume and high market share of the dumped imports from the three countries concerned by the proceeding coincided in time with the precarious financial situation of the Community industry. Due to dumping, the imported product was sold at very low prices on the Community market. The transparency and price elasticity of this market stem from the fact that competition occurs, to a great extent, at the level of a highly professionalized category of customer, extremely sensitive to price changes. As a result, the Community industry was forced to reduce its prices in an attempt to achieve a reasonable capacity utilization and market share. This depression of prices led, in turn, to a general lack of profitability specifically demonstrated by the financial losses incurred since 1989.

(ii) Effects of other factors

- (65) The Commission examined whether factors other than the dumped imports might have caused, or contributed to, the injury suffered by the Community industry. The Commission, in particular, examined the evolution and impact of imports from third countries not covered by this proceeding, and the trend of the apparent consumption in the Community market.

- (66) Imports from third countries not included in the proceeding have been increasing since 1988 at a lower rate than Community consumption and, as a result, their estimated market share decreased from 44,7 % in 1988 to 37,9 % during the investigation period. Nearly 90 % of these imports originated in the USA, Hong Kong and the Republic of Korea.

The Commission has received a further complaint from Diskma alleging dumping and injury resulting therefrom with regard to imports of the product concerned originating in Hong Kong and the Republic of Korea, and has commenced an investigation ⁽¹⁾.

As regards imports from the USA, it has to be noted that their market share has remained relatively stable since 1989. As to the level of prices of these imports, no conclusions can be drawn from the information made available to the Commission during its investigation.

Some of the producers concerned in Japan and the People's Republic of China argued that the non-inclusion of imports from the USA and Hong Kong in the proceeding would distort the assessment of injury.

However, even if it was admitted that imports from third countries other than those covered by this proceeding had caused some injury to the Community industry, this would not alter the fact that the injury caused by the dumped imports concerned, taken in isolation, is material.

- (67) With regard to changes in consumption, the Commission found that apparent consumption of the product concerned in the Community increased during the investigation period by 150 % when compared to consumption in 1988. Injury suffered by the Community industry cannot, therefore, be attributed to a contraction in demand for the product concerned in the Community.

- (68) The Commission examined the impact on the assessment of injury of the production of the product concerned by affiliates of Japanese producers established in the Community. In this respect it was found that the market share held by this production increased from 9,5 % in 1988 to only 10,7 % in the investigation period. Indeed, to the extent that the prices of the product concerned

manufactured by these affiliates in the Community are similar to the prices for the imported product resold by them, this production in the Community might have had some adverse impact on the situation of the Community industry. However any negative impact has been limited, and cannot explain the material injury suffered by the Community industry.

- (69) Some producers in the three countries concerned submitted that the injury allegedly suffered by the Community industry was, to a certain extent, self-inflicted on various grounds and, as such, should not be attributed to the dumped imports.

- (70) It is first argued that imports of the product concerned made by some of the complainant Community producers caused injury to the importing producers themselves and to other complainant Community producers.

As already outlined in recital 43, only one complainant producer imported substantial quantities of the 3,5" microdisks found to be originating in the countries concerned. This producer did so in order to defend its competitive position in the Community and to maintain its market share and, therefore, did not inflict injury on itself. Furthermore, it was found that the prices at which the imported product was resold by this producer in the Community were not only the same as the prices of its own-produced like product, but also not very different from the prices charged by the other complainant Community producers.

- (71) Secondly, it is alleged that the complainant Community industry had misjudged market growth and had invested in production capacity at too late a stage in the product cycle. When this capacity came on-stream, it proved to be excessive, given actual market development and the well-established position of other suppliers on the Community market.

In this respect, it should be noted that the Community industry increased its production capacity by 23 % when comparing that existing in the investigation period with that in 1989, the first full year in which production by all the complainant producers became operational. In the same period, apparent consumption in the Community for the product concerned increased by 44 %. This does not show any misjudgement of market growth by the Community industry. Furthermore, the existence of well-established suppliers of the

⁽¹⁾ OJ No C 239, 18. 9. 1992, p. 4.

product concerned on the Community market should not prevent recently established efficient producers of 3,5" microdisks participating in the Community market under fair competitive conditions, as was the case with regard to previous formats of diskettes.

(72) A third argument is that the absence of marketing support in the commercialization of the product concerned by the Community industry has forced the latter to concentrate on the low-priced, unbranded segment of the market, thus explaining its alleged precarious financial situation. It was found, however, that sales of the product concerned by the Community industry were evenly distributed between the branded and unbranded segments of the Community market and, therefore, the concentration alleged was far from being confirmed. Furthermore, the pressure on prices exerted by the dumped imports concerned, and the resulting lack of profitability, obliged the Community industry not only to downgrade its investment in equipment, but also to limit marketing expenditure.

(73) Finally, producers in Japan questioned the technological experience and viability of the Community industry, since it is alleged to be still significantly behind well-established producers in Japan with regard to the sophistication of the manufacturing process and the quality of its products. In respect of these contentions, the investigation has shown that the Community industry is able to compete in terms of technology, processing ability and prices, provided the competition is fair and not distorted by dumping. Furthermore, it was found that the cost of production of the product concerned by the complainant Community producers with the highest capacity utilization were, during the investigation period, lower than that verified in Japan.

(74) In these circumstances, the Commission has concluded that, for the purposes of its provisional findings, notwithstanding the possible existence of other causes of some injury, the dumped imports originating in Japan, Taiwan and the People's Republic of China, because of their low prices, their strong presence in the Community market and the resulting lack of profitability of the Community industry, have, taken in isolation, caused material injury to this industry.

H. COMMUNITY INTEREST

(75) In assessing the Community interest, the Commission has to take account of two basic elements. The first is that to stop distortions of competition arising from unfair commercial practices, and thus re-establish open and fair competition on the Community market, is the very purpose of anti-dumping measures and is fundamentally in the general Community interest, as stated in Article 3 (f) of the Treaty. The second is that, in the particular circumstances of the present proceeding, failure to take provisional measures would aggravate the already precarious situation of the Community industry, especially noticeable from the lack of profitability and the resulting downgrading of investments, which adversely affect its viability. Should this industry be forced to cease production, the Community would be rendered almost entirely dependent on third countries in a sector of growing technological importance. Moreover, this could entail serious consequences for the Community manufacturers of components for 3,5" microdisks.

(76) In this context, the following arguments were put forward by some parties to the proceeding :

(i) an increase in the price of the imported 3,5" microdisks, as a result of the adoption of anti-dumping measures, would be detrimental to the interests of duplicators and consumers in the Community ;

(ii) the adoption of such measures would, by excluding the third-country suppliers concerned from the Community market, lead to a decrease in the diversity and quality of supply, and would result in demand exceeding supply, since Community-based manufacturers are not yet able to satisfy fully the expected demand.

(77) As to the interests of duplicators and consumers of the product concerned in the Community, their short-term price advantages have to be seen against the background of the longer-term effect of not restoring fair competition. Indeed, to refrain from taking action would seriously threaten the viability of the Community industry, the disappearance of which would, in fact, reduce supply and competition, to the detriment of duplicators and consumers.

- (78) The Commission also notes that there is no indication that the re-establishment of open and fair market conditions will prevent producers in third countries from competing in the Community market or, consequently, reduce quality and diversity of supply.

While it is true that production in the Community is, at present, insufficient to meet demand for the product concerned, anti-dumping measures would merely remove the distortion of competition arising from dumping and are not, therefore, an obstacle to satisfying the gap in demand with supplies from third countries at fair prices. Indeed, where the level of the anti-dumping measures is equal to the dumping margin, but lower than the amount required to remove fully the injury, it is only the unfair element of the exporters' price advantage which will be eliminated. In such a situation, the exporters can fully compete on the basis of their true comparative advantage. In the other instance, where the price increase necessary to remove the injury is lower than the dumping margin, the rise in the price of the imported product is limited to a level which reflects a fair competitive Community market situation permitting the Community industry to sell at economic prices. In neither instance, therefore, will exporters experience diminished access to the Community market.

- (79) After consideration of the general and specific interests involved, it is provisionally concluded that the adoption of measures in the present case will re-establish fair competition by eliminating the injurious effects of dumping practices, afford the Community industry the opportunity of maintaining and developing this essential technology, and thus offer certain safeguards to the component supply industry in the Community.
- (80) The Commission finds, therefore, that it is in the Community interest to adopt anti-dumping measures, in the form of provisional duties, in order to prevent further injury being caused by the dumped imports concerned during the proceeding.

I. DUTY

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

- (82) Since the injury consists principally of price undercutting, price depression and suppression of capacity utilization and market share and, as a consequence, lack of profitability or losses, the removal of such injury requires that the industry should be put in the position where prices can be increased to profitable levels without loss of sales volume. In order to achieve this, the prices of the imports concerned originating in Japan, Taiwan and the People's Republic of China should be increased accordingly.

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

To this end, the Commission has used the costs of production of the two complainant producers with the highest production volume and rate of capacity utilization, which is higher than the actual average rate of the Community industry. As to the amount of profit, account was taken of the fact that the Community industry, being at an early stage of development, could not expect to achieve profit levels in line with those realized by already well-established producers in the third countries concerned. In these circumstances, a profit margin of 10 % on turnover was considered to provide the minimum amount of profit required to ensure the viability of the Community industry.

The actual weighted average selling prices charged during the investigation period by the Community industry were increased for each product type, where appropriate, in order to achieve the overall minimum amount of profit required. The resultant prices thus established were compared with the prices of the dumped imports used to establish undercutting as outlined in recital 55.

The differences between these two prices expressed on a weighted average basis and as a percentage of the free-at-Community-frontier price, were above the dumping margins found for all the producers concerned in Taiwan and the People's Republic of China, and ranged from 5,2 % up to 40,9 % for producers in Japan.

- (83) Where the margins of dumping found, in respect of a particular exporting producer, were below the corresponding increases in export prices necessary

to remove the injury, as calculated above, the provisional duties imposed should be limited to the dumping margins established.

- (84) For the reasons given in recitals 13 and 14 above, a single duty should be established for all producers in the People's Republic of China, with the exception of one company for which an individual duty should be determined.
- (85) In establishing the level of provisional duty for producers in each of the countries concerned who neither replied to the Commission's questionnaire nor otherwise made themselves known, the Commission considers it appropriate, for the reasons concerning the dumping margins outlined in recital 37, to use the findings of the investigation as a basis and to apply the highest level of duty determined for a producer in the same country.

J. FINAL PROVISION

- (86) In the interest of sound administration, a period should be fixed within which the parties concerned may make their views known and request a

hearing. Furthermore, it should be stated that all findings made for the purpose of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty which the Commission may propose,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of 3,5" microdisks used to record and store encoded digital computer information falling within CN code ex 8523 20 90 (Taric code: 8523 20 90 * 10), and originating in Japan, Taiwan and the People's Republic of China.

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

Country	Products manufactured by	Rate of duty (%)	Taric additional code
Japan	Memorex Telex Japan Ltd	5,2	8705
	Hitachi-Maxell	23,4	8706
	TDK	27,8	8707
	Other companies	40,9	8708
Taiwan	CIS Technology	20,4	8709
	Other companies	33,5	8710
People's Republic of China	Hanny Magnetics	35,6	8711
	Other companies	41,5	8712

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

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

Article 2

Without prejudice to Article 7 (4) (b) of Regulation (EEC) No 2823/88, the parties concerned may make known

their views in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

Article 3

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*. Subject to Articles 11, 12 and 13 of Regulation (EEC) No 2823/88, Article 1 of this Regulation shall apply for a period of four months, unless the Council adopts definitive measures before the expiry of that period.

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

Done at Brussels, 15 April 1993.

For the Commission

Leon BRITTAN

Member of the Commission

COMMISSION REGULATION (EEC) No 921/93

of 20 April 1993

suspending the preferential customs duties and re-establishing the Common Customs Tariff duty on imports of uniflorous (standard) carnations originating in Israel

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 4088/87 of 21 December 1987 fixing conditions for the application of preferential customs duties on imports of certain flowers originating in Cyprus, Israel, Jordan and Morocco⁽¹⁾, as amended by Regulation (EEC) No 3551/88⁽²⁾, and in particular Article 5 (2) (b) thereof,

Whereas Regulation (EEC) No 4088/87 lays down the conditions for applying a preferential duty on large-flowered roses, small-flowered roses, uniflorous (bloom) carnations and multiflorous (spray) carnations within the limit of tariff quotas opened annually for imports into the Community of fresh cut flowers;

Whereas Council Regulation (EEC) No 3341/92⁽³⁾ opened and provides for the administration of Community tariff quotas for cut flowers and flower buds, fresh, originating in Cyprus, Jordan, Morocco and Israel;

Whereas Article 2 of Regulation (EEC) No 4088/87 provides, on the one hand, that for a given product of a given origin, the preferential customs duty is to be applicable only if the price of the imported product is at least equal to 85 % of the Community producer price; whereas, on the other hand, the preferential customs duty is, except in exceptional cases, suspended and the Common Customs Tariff duty introduced for a given product of a given origin:

(a) if, on two successive market days, the prices of the imported product are less than 85 % of the Community producer price in respect of at least 30 % of the quantities for which prices are available on representative import markets;

or

(b) if, over a period of five to seven successive market days, the prices of the imported product are alternatively above and below 85 % of the Community producer price in respect of at least 30 % of the quantities for which prices are available on the representative import markets and if, for three days

during that period, the prices of the import product have been below that level;

Whereas Commission Regulation (EEC) No 2960/92⁽⁴⁾ fixes the Community producer prices for carnations and roses for the application of the import arrangements;

Whereas Commission Regulation (EEC) No 700/88⁽⁵⁾, as amended by Regulation (EEC) No 3556/88⁽⁶⁾, lays down the detailed rules for the application of the arrangements;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92⁽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 3819/92⁽⁸⁾;

Whereas, on the basis of prices recorded pursuant to Regulations (EEC) No 4088/87 and (EEC) No 700/88, it must be concluded that the conditions laid down in Article 2 (2) of Regulation (EEC) No 4088/87 for suspension of the preferential customs duty are met for uniflorous (standard) carnations originating in Israel; whereas the Common Customs Tariff duty should be reintroduced,

HAS ADOPTED THIS REGULATION:

Article 1

For imports of uniflorous (standard) carnations (CN code ex 0603 10 53) originating in Israel, the preferential customs duty fixed by Council Regulation (EEC) No 3341/92 is hereby suspended and the Common Customs Tariff duty is hereby reintroduced.

Article 2

This Regulation shall enter into force on 21 April 1993.

⁽¹⁾ OJ No L 382, 31. 12. 1987, p. 22.

⁽²⁾ OJ No L 311, 17. 11. 1988, p. 1.

⁽³⁾ OJ No L 336, 20. 11. 1992, p. 8.

⁽⁴⁾ OJ No L 298, 14. 10. 1992, p. 9.

⁽⁵⁾ OJ No L 72, 18. 3. 1988, p. 16.

⁽⁶⁾ OJ No L 311, 17. 11. 1988, p. 8.

⁽⁷⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁸⁾ OJ No L 387, 31. 12. 1992, p. 17.

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

Done at Brussels, 20 April 1993.

For the Commission
René STEICHEN
Member of the Commission

COMMISSION REGULATION (EEC) No 922/93

of 20 April 1993

suspending the preferential customs duties and re-introducing the Common Customs Tariff duty on imports of multiflorous (spray) carnations originating in Israel

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 4088/87 of 21 December 1987 fixing conditions for the application of preferential customs duties on imports of certain flowers originating in Cyprus, Israel, Jordan and Morocco⁽¹⁾, as amended by Regulation (EEC) No 3551/88⁽²⁾, and in particular Article 5 (2) (b) thereof,

Whereas Regulation (EEC) No 4088/87 lays down the conditions for applying a preferential duty on large-flowered roses, small-flowered roses, uniflorous (bloom) carnations and multiflorous (spray) carnations within the limit of tariff quotas opened annually for imports into the Community of fresh cut flowers;

Whereas Council Regulation (EEC) No 3341/92⁽³⁾ opens and provides for the administration of Community tariff quotas for cut flowers and flower buds, fresh, originating in Cyprus, Jordan, Morocco and Israel respectively;

Whereas Article 2 of Regulation (EEC) No 4088/87 provides, on the one hand, that for a given product of a given origin, the preferential customs duty is to be applicable only if the price of the imported product is at least equal to 85 % of the Community producer price; whereas, on the other hand, the preferential customs duty is, except in exceptional cases, suspended and the Common Customs Tariff duty introduced for a given product of a given origin:

(a) if, on two successive market days, the prices of the imported product are less than 85 % of the Community producer price in respect of at least 30 % of the quantities for which prices are available on representative import markets;

or

(b) if, over a period of five to seven successive market days, the prices of the imported product are alternatively above and below 85 % of the Community producer price in respect of at least 30 % of the quantities for which prices are available on the representative import markets and if, for three days

during that period, the prices of the import product have been below that level;

Whereas Commission Regulation (EEC) No 2960/92⁽⁴⁾ fixes the Community producer prices for carnations and roses for the application of the import arrangements;

Whereas Commission Regulation (EEC) No 700/88⁽⁵⁾, as amended by Regulation (EEC) No 3556/88⁽⁶⁾, lays down the detailed rules for the application of the arrangements;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92⁽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 3819/92⁽⁸⁾;

Whereas, on the basis of prices recorded pursuant to Regulations (EEC) No 4088/87 and (EEC) No 700/88, it must be concluded that the conditions laid down in Article 2 (2) of Regulation (EEC) No 4088/87 for suspension of the preferential customs duty are met for multiflorous (spray) carnations originating in Israel; whereas the Common Customs Tariff duty should be reintroduced,

HAS ADOPTED THIS REGULATION:

Article 1

For imports of multiflorous (spray) carnations (CN code ex 0603 10 53) originating in Israel, the preferential customs duty fixed by Council Regulation (EEC) No 3341/92 is hereby suspended and the Common Customs Tariff duty is hereby reintroduced.

Article 2

This Regulation shall enter into force on 21 April 1993.

⁽¹⁾ OJ No L 382, 31. 12. 1987, p. 22.

⁽²⁾ OJ No L 311, 17. 11. 1988, p. 1.

⁽³⁾ OJ No L 336, 20. 11. 1992, p. 8.

⁽⁴⁾ OJ No L 298, 14. 10. 1992, p. 9.

⁽⁵⁾ OJ No L 72, 18. 3. 1988, p. 16.

⁽⁶⁾ OJ No L 311, 17. 11. 1988, p. 8.

⁽⁷⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁸⁾ OJ No L 387, 31. 12. 1992, p. 17.

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

Done at Brussels, 20 April 1993.

For the Commission
René STEICHEN
Member of the Commission

COMMISSION REGULATION (EEC) No 923/93
of 20 April 1993
fixing the import levies on white sugar and raw sugar

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic 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 (EEC) No 3814/92 ⁽²⁾, and in particular Article 16 (8) 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⁾, and in particular Article 5 thereof,

Whereas the import levies on white sugar and raw sugar were fixed by Commission Regulation (EEC) No 789/93 ⁽⁴⁾, as last amended by Regulation (EEC) No 916/93 ⁽⁵⁾;

Whereas it follows from applying the detailed rules contained in Commission Regulation (EEC) No 789/93 to the information known to the Commission that the levies

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

Whereas, in order to make it possible for the levy arrangements to function normally, the representative market rate established during the reference period from 19 April 1993, as regards floating currencies, should be used to calculate the levies,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies referred to in Article 16 (1) of Regulation (EEC) No 1785/81 shall be, in respect of white sugar and standard quality raw sugar, as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 21 April 1993.

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

Done at Brussels, 20 April 1993.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 387, 31. 12. 1992, p. 7.

⁽³⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 79, 1. 4. 1993, p. 66.

⁽⁵⁾ OJ No L 94, 20. 4. 1993, p. 27.

ANNEX

to the Commission Regulation of 20 April 1993 fixing the import levies on white sugar and raw sugar

(ECU/100 kg)

CN code	Levy (°)
1701 11 10	36,09 (°)
1701 11 90	36,09 (°)
1701 12 10	36,09 (°)
1701 12 90	36,09 (°)
1701 91 00	43,57
1701 99 10	43,57
1701 99 90	43,57 (°)

(°) The levy applicable is calculated in accordance with the provisions of Article 2 or 3 of Commission Regulation (EEC) No 837/68.

(°) In accordance with Article 16 (2) of Regulation (EEC) No 1785/81 this amount is also applicable to sugar obtained from white and raw sugar containing added substances other than flavouring or colouring matter.

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

COMMISSION REGULATION (EEC) No 924/93

of 20 April 1993

altering the basic amount of the import levies on syrups and certain other products in the sugar sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic 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 (EEC) No 3814/92 ⁽²⁾, and in particular Article 16 (8) 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⁾, and in particular Article 5 thereof,

Whereas the import levies on syrups and certain other sugar products were fixed by Commission Regulation (EEC) No 768/93 ⁽⁴⁾, as amended by Regulation (EEC) No 887/93 ⁽⁵⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 768/93 to the information known to the Commission that the basic amount of

the levy on syrups and certain other sugar products at present in force should be altered;

Whereas, in order to make it possible for the levy arrangements to function normally, the representative market rate established during the reference period from 19 April 1993, as regards floating currencies, should be used to calculate the levies,

HAS ADOPTED THIS REGULATION:

Article 1

The basic amounts of the import levy on the products listed in Article 1 (1) (d) of Regulation (EEC) No 1785/81, as fixed in the Annex to amended Regulation (EEC) No 768/93 are hereby altered to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 21 April 1993.

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

Done at Brussels, 20 April 1993.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 387, 31. 12. 1992, p. 7.

⁽³⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 79, 1. 4. 1993, p. 14.

⁽⁵⁾ OJ No L 92, 16. 4. 1993, p. 42.

ANNEX

to the Commission Regulation of 20 April 1993 altering the basic amount of the import levies on syrups and certain other products in the sugar sector

(ECU)

CN code	Basic amount per percentage point of sucrose content and per 100 kg net of the product in question ⁽¹⁾	Amount of levy per 100 kg of dry matter ⁽¹⁾
1702 20 10	0,4357	—
1702 20 90	0,4357	—
1702 30 10	—	52,57
1702 40 10	—	52,57
1702 60 10	—	52,57
1702 60 90	0,4357	—
1702 90 30	—	52,57
1702 90 60	0,4357	—
1702 90 71	0,4357	—
1702 90 90	0,4357	—
2106 90 30	—	52,57
2106 90 59	0,4357	—

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

COMMISSION REGULATION (EEC) No 925/93
of 20 April 1993
fixing the agricultural conversion rates

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic 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⁾, and in particular Article 3 (1) thereof,

Whereas the agricultural conversion rates were fixed by Commission Regulation (EEC) No 853/93⁽²⁾;

Whereas Article 4 (3) of Regulation (EEC) No 3813/92 stipulates that if, over a reference period, the absolute value of the difference in the gaps between the currencies of any two Member States exceeds four points, any monetary gaps for the Member States concerned that exceed two points shall immediately be reduced to two points; whereas, in Article 1 (f) of Regulation (EEC) No 3813/92, the term 'monetary gap' is defined as the percentage of the agricultural conversion rate representing the difference between that rate and the representative market rate;

Whereas the representative market rates are determined on the basis of reference periods determined in accordance with Commission Regulation (EEC) No 3819/92 of 28 December 1992 on detailed rules for determining and applying the agricultural conversion rates⁽³⁾;

Whereas, as a consequence of the exchange rates recorded during the reference period 11 to 20 April 1993, it is necessary to fix a new agricultural conversion rate for the pound sterling and the Spanish peseta;

Whereas Article 11 (2) of Regulation (EEC) No 3819/92 provides that an agricultural conversion rate fixed in

advance shall 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 currency 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 11 (2) of Regulation (EEC) No 3819/92, 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,
- or
- Table B, where the latter rate is lower than the rate fixed in advance.

Article 3

Regulation (EEC) No 853/93 is hereby repealed.

Article 4

This Regulation shall enter into force on 21 April 1993.

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

Done at Brussels, 20 April 1993.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽²⁾ OJ No L 89, 9. 4. 1993, p. 1.

⁽³⁾ OJ No L 387, 31. 12. 1992, p. 17.

ANNEX I

Agricultural conversion rates

ECU 1 =	48,5563	Belgian and Luxembourg francs
	8,97989	Danish kroner
	2,35418	German marks
	314,412	Greek drachmas
	166,261	Spanish pesetas
	7,89563	French francs
	0,957268	Irish punt
	2 287,88	Italian lire
	2,65256	Dutch guldens
	214,525	Portuguese escudos
	0,970726	Pound sterling

ANNEX II

Agricultural conversion rates fixed in advance and adjusted

Table A			Table B		
ECU 1 =	46,6888	Belgian and Luxembourg francs	ECU 1 =	50,5795	Belgian and Luxembourg francs
	8,63451	Danish kroner		9,35405	Danish kroner
	2,26363	German marks		2,45227	German marks
	302,319	Greek drachmas		327,513	Greek drachmas
	159,866	Spanish pesetas		173,189	Spanish pesetas
	7,59195	French francs		8,22461	French francs
	0,920450	Irish punt		0,997154	Irish punt
	2 199,88	Italian lire		2 383,21	Italian lire
	2,55054	Dutch guldens		2,76308	Dutch guldens
	206,274	Portuguese escudos		223,464	Portuguese escudos
	0,933390	Pound sterling		1,01117	Pound sterling

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE 93/13/EEC

of 5 April 1993

on unfair terms in consumer contracts

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 A thereof,

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

In cooperation with the European Parliament ⁽²⁾,

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

Whereas it is necessary to adopt measures with the aim of progressively establishing the internal market before 31 December 1992; whereas the internal market comprises an area without internal frontiers in which goods, persons, services and capital move freely;

Whereas the laws of Member States relating to the terms of contract between the seller of goods or supplier of services, on the one hand, and the consumer of them, on the other hand, show many disparities, with the result that the national markets for the sale of goods and services to consumers differ from each other and that distortions of competition may arise amongst the sellers and suppliers, notably when they sell and supply in other Member States;

Whereas, in particular, the laws of Member States relating to unfair terms in consumer contracts show marked divergences;

Whereas it is the responsibility of the Member States to ensure that contracts concluded with consumers do not contain unfair terms;

Whereas, generally speaking, consumers do not know the rules of law which, in Member States other than their own, govern contracts for the sale of goods or services; whereas this lack of awareness may deter them from direct transactions for the purchase of goods or services in another Member State;

Whereas, in order to facilitate the establishment of the internal market and to safeguard the citizen in his role as consumer when acquiring goods and services under contracts which are governed by the laws of Member States other than his own, it is essential to remove unfair terms from those contracts;

Whereas sellers of goods and suppliers of services will thereby be helped in their task of selling goods and supplying services, both at home and throughout the internal market; whereas competition will thus be stimulated, so contributing to increased choice for Community citizens as consumers;

Whereas the two Community programmes for a consumer protection and information policy ⁽⁴⁾ underlined the importance of safeguarding consumers in the matter of unfair terms of contract; whereas this protection ought to be provided by laws and regulations which are either harmonized at Community level or adopted directly at that level;

⁽¹⁾ OJ No C 73, 24. 3. 1992, p. 7.

⁽²⁾ OJ No C 326, 16. 12. 1991, p. 108 and OJ No C 21, 25. 1. 1993.

⁽³⁾ OJ No C 159, 17. 6. 1991, p. 34.

⁽⁴⁾ OJ No C 92, 25. 4. 1975, p. 1 and OJ No C 133, 3. 6. 1981, p. 1.

Whereas in accordance with the principle laid down under the heading 'Protection of the economic interests of the consumers', as stated in those programmes: 'acquirers of goods and services should be protected against the abuse of power by the seller or supplier, in particular against one-sided standard contracts and the unfair exclusion of essential rights in contracts';

Whereas more effective protection of the consumer can be achieved by adopting uniform rules of law in the matter of unfair terms; whereas those rules should apply to all contracts concluded between sellers or suppliers and consumers; whereas as a result *inter alia* contracts relating to employment, contracts relating to succession rights, contracts relating to rights under family law and contracts relating to the incorporation and organization of companies or partnership agreements must be excluded from this Directive;

Whereas the consumer must receive equal protection under contracts concluded by word of mouth and written contracts regardless, in the latter case, of whether the terms of the contract are contained in one or more documents;

Whereas, however, as they now stand, national laws allow only partial harmonization to be envisaged; whereas, in particular, only contractual terms which have not been individually negotiated are covered by this Directive; whereas Member States should have the option, with due regard for the Treaty, to afford consumers a higher level of protection through national provisions that are more stringent than those of this Directive;

Whereas the statutory or regulatory provisions of the Member States which directly or indirectly determine the terms of consumer contracts are presumed not to contain unfair terms; whereas, therefore, it does not appear to be necessary to subject the terms which reflect mandatory statutory or regulatory provisions and the principles or provisions of international conventions to which the Member States or the Community are party; whereas in that respect the wording 'mandatory statutory or regulatory provisions' in Article 1 (2) also covers rules which, according to the law, shall apply between the contracting parties provided that no other arrangements have been established;

Whereas Member States must however ensure that unfair terms are not included, particularly because this Directive also applies to trades, business or professions of a public nature;

Whereas it is necessary to fix in a general way the criteria for assessing the unfair character of contract terms;

Whereas the assessment, according to the general criteria chosen, of the unfair character of terms, in particular in

sale or supply activities of a public nature providing collective services which take account of solidarity among users, must be supplemented by a means of making an overall evaluation of the different interests involved; whereas this constitutes the requirement of good faith; whereas, in making an assessment of good faith, particular regard shall be had to the strength of the bargaining positions of the parties, whether the consumer had an inducement to agree to the term and whether the goods or services were sold or supplied to the special order of the consumer; whereas the requirement of good faith may be satisfied by the seller or supplier where he deals fairly and equitably with the other party whose legitimate interests he has to take into account;

Whereas, for the purposes of this Directive, the annexed list of terms can be of indicative value only and, because of the cause of the minimal character of the Directive, the scope of these terms may be the subject of amplification or more restrictive editing by the Member States in their national laws;

Whereas the nature of goods or services should have an influence on assessing the unfairness of contractual terms;

Whereas, for the purposes of this Directive, assessment of unfair character shall not be made of terms which describe the main subject matter of the contract nor the quality/price ratio of the goods or services supplied; whereas the main subject matter of the contract and the price/quality ratio may nevertheless be taken into account in assessing the fairness of other terms; whereas it follows, *inter alia*, that in insurance contracts, the terms which clearly define or circumscribe the insured risk and the insurer's liability shall not be subject to such assessment since these restrictions are taken into account in calculating the premium paid by the consumer;

Whereas contracts should be drafted in plain, intelligible language, the consumer should actually be given an opportunity to examine all the terms and, if in doubt, the interpretation most favourable to the consumer should prevail;

Whereas Member States should ensure that unfair terms are not used in contracts concluded with consumers by a seller or supplier and that if, nevertheless, such terms are so used, they will not bind the consumer, and the contract will continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair provisions;

Whereas there is a risk that, in certain cases, the consumer may be deprived of protection under this Directive by designating the law of a non-Member country as the law applicable to the contract; whereas provisions should therefore be included in this Directive designed to avert this risk;

Whereas persons or organizations, if regarded under the law of a Member State as having a legitimate interest in the matter, must have facilities for initiating proceedings concerning terms of contract drawn up for general use in contracts concluded with consumers, and in particular unfair terms, either before a court or before an administrative authority competent to decide upon complaints or to initiate appropriate legal proceedings; whereas this possibility does not, however, entail prior verification of the general conditions obtaining in individual economic sectors;

Whereas the courts or administrative authorities of the Member States must have at their disposal adequate and effective means of preventing the continued application of unfair terms in consumer contracts,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. The purpose of this Directive is to approximate the laws, regulations and administrative provisions of the Member States relating to unfair terms in contracts concluded between a seller or supplier and a consumer.
2. The contractual terms which reflect mandatory statutory or regulatory provisions and the provisions or principles of international conventions to which the Member States or the Community are party, particularly in the transport area, shall not be subject to the provisions of this Directive.

Article 2

For the purposes of this Directive:

- (a) 'unfair terms' means the contractual terms defined in Article 3;
- (b) 'consumer' means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business or profession;
- (c) 'seller or supplier' means any natural or legal person who, in contracts covered by this Directive, is acting for purposes relating to his trade, business or profession, whether publicly owned or privately owned.

Article 3

1. A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.
2. A term shall always be regarded as not individually negotiated where it has been drafted in advance and the

consumer has therefore not been able to influence the substance of the term, particularly in the context of a pre-formulated standard contract.

The fact that certain aspects of a term or one specific term have been individually negotiated shall not exclude the application of this Article to the rest of a contract if an overall assessment of the contract indicates that it is nevertheless a pre-formulated standard contract.

Where any seller or supplier claims that a standard term has been individually negotiated, the burden of proof in this respect shall be incumbent on him.

3. The Annex shall contain an indicative and non-exhaustive list of the terms which may be regarded as unfair.

Article 4

1. Without prejudice to Article 7, the unfairness of a contractual term shall be assessed, taking into account the nature of the goods or services for which the contract was concluded and by referring, at the time of conclusion of the contract, to all the circumstances attending the conclusion of the contract and to all the other terms of the contract or of another contract on which it is dependent.

2. Assessment of the unfair nature of the terms shall relate neither to the definition of the main subject matter of the contract nor to the adequacy of the price and remuneration, on the one hand, as against the services or goods supplied in exchange, on the other, in so far as these terms are in plain intelligible language.

Article 5

In the case of contracts where all or certain terms offered to the consumer are in writing, these terms must always be drafted in plain, intelligible language. Where there is doubt about the meaning of a term, the interpretation most favourable to the consumer shall prevail. This rule on interpretation shall not apply in the context of the procedures laid down in Article 7 (2).

Article 6

1. Member States shall lay down that unfair terms used in a contract concluded with a consumer by a seller or supplier shall, as provided for under their national law, not be binding on the consumer and that the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms.

2. Member States shall take the necessary measures to ensure that the consumer does not lose the protection granted by this Directive by virtue of the choice of the law of a non-Member country as the law applicable to the contract if the latter has a close connection with the territory of the Member States.

Article 7

1. Member States shall ensure that, in the interests of consumers and of competitors, adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers.

2. The means referred to in paragraph 1 shall include provisions whereby persons or organizations, having a legitimate interest under national law in protecting consumers, may take action according to the national law concerned before the courts or before competent administrative bodies for a decision as to whether contractual terms drawn up for general use are unfair, so that they can apply appropriate and effective means to prevent the continued use of such terms.

3. With due regard for national laws, the legal remedies referred to in paragraph 2 may be directed separately or jointly against a number of sellers or suppliers from the same economic sector or their associations which use or recommend the use of the same general contractual terms or similar terms.

Article 8

Member States may adopt or retain the most stringent provisions compatible with the Treaty in the area covered by this Directive, to ensure a maximum degree of protection for the consumer.

Article 9

The Commission shall present a report to the European Parliament and to the Council concerning the application

of this Directive five years at the latest after the date in Article 10 (1).

Article 10

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 31 December 1994. They shall forthwith inform the Commission thereof.

These provisions shall be applicable to all contracts concluded after 31 December 1994.

2. 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.

3. Member States shall communicate the main provisions of national law which they adopt in the field covered by this Directive to the Commission.

Article 11

This Directive is addressed to the Member States.

Done at Luxembourg, 5 April 1993.

For the Council

The President

N. HELVEG PETERSEN

ANNEX

TERMS REFERRED TO IN ARTICLE 3 (3)

1. Terms which have the object or effect of:

- (a) excluding or limiting the legal liability of a seller or supplier in the event of the death of a consumer or personal injury to the latter resulting from an act or omission of that seller or supplier;
- (b) inappropriately excluding or limiting the legal rights of the consumer *vis-à-vis* the seller or supplier or another party in the event of total or partial non-performance or inadequate performance by the seller or supplier of any of the contractual obligations, including the option of offsetting a debt owed to the seller or supplier against any claim which the consumer may have against him;
- (c) making an agreement binding on the consumer whereas provision of services by the seller or supplier is subject to a condition whose realization depends on his own will alone;
- (d) permitting the seller or supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the seller or supplier where the latter is the party cancelling the contract;
- (e) requiring any consumer who fails to fulfil his obligation to pay a disproportionately high sum in compensation;
- (f) authorizing the seller or supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the seller or supplier to retain the sums paid for services not yet supplied by him where it is the seller or supplier himself who dissolves the contract;
- (g) enabling the seller or supplier to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so;
- (h) automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express this desire not to extend the contract is unreasonably early;
- (i) irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract;
- (j) enabling the seller or supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract;
- (k) enabling the seller or supplier to alter unilaterally without a valid reason any characteristics of the product or service to be provided;
- (l) providing for the price of goods to be determined at the time of delivery or allowing a seller of goods or supplier of services to increase their price without in both cases giving the consumer the corresponding right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded;
- (m) giving the seller or supplier the right to determine whether the goods or services supplied are in conformity with the contract, or giving him the exclusive right to interpret any term of the contract;
- (n) limiting the seller's or supplier's obligation to respect commitments undertaken by his agents or making his commitments subject to compliance with a particular formality;
- (o) obliging the consumer to fulfil all his obligations where the seller or supplier does not perform his;
- (p) giving the seller or supplier the possibility of transferring his rights and obligations under the contract, where this may serve to reduce the guarantees for the consumer, without the latter's agreement;
- (q) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions, unduly restricting the evidence available to him or imposing on him a burden of proof which, according to the applicable law, should lie with another party to the contract.

2. Scope of subparagraphs (g), (j) and (l)

- (a) Subparagraph (g) is without hindrance to terms by which a supplier of financial services reserves the right to terminate unilaterally a contract of indeterminate duration without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties thereof immediately.

(b) Subparagraph (j) is without hindrance to terms under which a supplier of financial services reserves the right to alter the rate of interest payable by the consumer or due to the latter, or the amount of other charges for financial services without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties thereof at the earliest opportunity and that the latter are free to dissolve the contract immediately.

Subparagraph (j) is also without hindrance to terms under which a seller or supplier reserves the right to alter unilaterally the conditions of a contract of indeterminate duration, provided that he is required to inform the consumer with reasonable notice and that the consumer is free to dissolve the contract.

(c) Subparagraphs (g), (j) and (l) do not apply to :

- transactions in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the seller or supplier does not control ;
- contracts for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency ;

(d) Subparagraph (l) is without hindrance to price-indexation clauses, where lawful, provided that the method by which prices vary is explicitly described.

COMMISSION

COMMISSION DECISION

of 26 March 1993

approving the Spanish programme of agricultural income aid for farmers in Extremadura (districts of Don Benito, Puebla de Alcocer, Castuera, Trujillo and Logrosán)

(93/221/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS DECISION :

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 768/89 of 21 March 1989 establishing a system of transitional aids to agricultural income ⁽¹⁾, and in particular Article 7 (3) thereof,

Having regard to Commission Regulation (EEC) No 3813/89 of 19 December 1989 laying down detailed rules for the application of the system of transitional aids to agricultural income ⁽²⁾, as amended by Regulation (EEC) No 1110/91 ⁽³⁾, and in particular Article 10 (3) thereof,

Whereas on 4 March 1993 the Spanish authorities notified the Commission of their intention to introduce a programme of agricultural income aid for farmers in Extremadura (districts of Don Benito, Puebla de Alcocer, Castuera, Trujillo and Logrosán);

Whereas the measures provided for in this Decision are in accordance with the provisions of Regulation (EEC) No 768/89 and the detailed rules for their application, and particularly with the aims of the second subparagraph of Article 1 (2) of the said Regulation;

Whereas the Management Committee for Agricultural Income Aids was consulted on 22 March 1993 on the measures provided for in this Decision;

Whereas the EAGGF Committee was consulted on 23 March 1993 on the maximum amounts that may be charged annually to the Community budget as a result of approving the programme,

Article 1

The programme of agricultural income aid for farmers in Extremadura (districts of Don Benito, Puebla de Alcocer, Castuera, Trujillo and Logrosán), notified to the Commission by the Spanish authorities on 4 March 1993, is hereby approved.

Article 2

The maximum amounts that may be charged annually to the Community budget as a result of this Decision shall be as follows:

	<i>(in ecus)</i>
1993	4 260 000
1994	3 621 000
1995	2 982 000
1996	2 343 000
1997	1 704 000

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 26 March 1993.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 84, 29. 3. 1989, p. 8.

⁽²⁾ OJ No L 371, 20. 12. 1989, p. 17.

⁽³⁾ OJ No L 110, 1. 5. 1991, p. 72.

COMMISSION DECISION

of 26 March 1993

approving the Spanish programme of agricultural income aid for farmers in Castile-La Mancha

(93/222/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 768/89 of 21 March 1989 establishing a system of transitional aids to agricultural income⁽¹⁾, and in particular Article 7 (3) thereof,

Having regard to Commission Regulation (EEC) No 3813/89 of 19 December 1989 laying down detailed rules for the application of the system of transitional aids to agricultural income⁽²⁾, as amended by Regulation (EEC) No 1110/91⁽³⁾, and in particular Article 10 (3) thereof,

Whereas on 17 February 1993 the Spanish authorities notified the Commission of their intention to introduce a programme of agricultural income aid for farmers in Castile-La Mancha; whereas additional information concerning this programme was received by the Commission from the Spanish authorities on 5 March 1993;

Whereas the measures provided for in this Decision are in accordance with the provisions of Regulation (EEC) No 768/89 and the detailed rules for their application, and particularly with the aims of the second subparagraph of Article 1 (2) of the said Regulation;

Whereas the Management Committee for Agricultural Income Aids was consulted on 22 March 1993 on the measures provided for in this Decision;

Whereas the EAGGF Committee was consulted on 23 March 1993 on the maximum amounts that may be

charged annually to the Community budget as a result of approving the programme,

HAS ADOPTED THIS DECISION:

Article 1

The programme of agricultural income aid for farmers in Castile-La Mancha, notified to the Commission by the Spanish authorities on 17 February 1993, is hereby approved.

Article 2

The maximum amounts that may be charged annually to the Community budget as a result of this Decision shall be as follows:

<i>(in ecus)</i>	
1993	1 328 000
1994	1 129 000
1995	929 000

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 26 March 1993.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 84, 29. 3. 1989, p. 8.

⁽²⁾ OJ No L 371, 20. 12. 1989, p. 17.

⁽³⁾ OJ No L 110, 1. 5. 1991, p. 72.

COMMISSION DECISION

of 26 March 1993

approving the Spanish programme of agricultural income Aid for farmers in Andalusia

(93/223/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 768/89 of 21 March 1989 establishing a system of transitional aids to agricultural income⁽¹⁾, and in particular Article 7 (3) thereof,

Having regard to Commission Regulation (EEC) No 3813/89 of 19 December 1989 laying down detailed rules for the application of the system of transitional aids to agricultural income⁽²⁾, as amended by Regulation (EEC) No 1110/91⁽³⁾, and in particular Article 10 (3) thereof,

Whereas on 9 March 1993 the Spanish authorities notified the Commission of their intention to introduce a programme of agricultural income Aid for farmers in Andalusia ;

Whereas the measures provided for in this Decision are in accordance with the provisions of Regulation (EEC) No 768/89 and the detailed rules for their application, and particularly with the aims of the second subparagraph of Article 1 (2) of the said Regulation ;

Whereas the Management Committee for Agricultural Income Aids was consulted on 22 March 1993 on the measures provided for in this Decision ;

Whereas the EAGGF Committee was consulted on 23 March 1993 on the maximum amounts that may be charged annually to the Community budget as a result of approving the programme,

HAS ADOPTED THIS DECISION :

Article 1

The programme of agricultural income aid for farmers in Andalusia, notified to the Commission by the Spanish authorities on 9 March 1993, is hereby approved.

Article 2

The maximum amounts that may be charged annually to the Community budget as a result of this Decision shall be as follows :

(in ecus)

1993	6 023 000
1994	5 119 000
1995	4 216 000
1996	3 312 000
1997	2 409 000

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 26 March 1993.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 84, 29. 3. 1989, p. 8.

⁽²⁾ OJ No L 371, 20. 12. 1989, p. 17.

⁽³⁾ OJ No L 110, 1. 5. 1991, p. 72.

COMMISSION DECISION

of 29 March 1993

on the establishment of an addendum to the Community support framework for Community structural assistance in the improvement of the conditions under which agricultural and forestry products are processed and marketed in Germany (excluding the five new Länder)

(Only the German text is authentic)

(93/224/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 866/90 of 29 March 1990 on improving the processing and marketing conditions for agricultural products⁽¹⁾, as last amended by Regulation (EEC) No 3577/90⁽²⁾, and in particular Article 7 (2) thereof,

Whereas the Commission has approved by Decision 92/78/EEC⁽³⁾ the Community support framework for Community structural assistance on the improvement of the conditions under which agricultural and forestry products are processed and marketed in Germany (excluding the five new Länder);

Whereas the German Government submitted to the Commission on 6 March and 8 April 1992 two sectoral plans on the modernization of the conditions under which agricultural products are processed and marketed referred to in Article 2 of Regulation (EEC) No 866/90;

Whereas the plans submitted by the Member State include descriptions of the main priorities selected and indications of the use to be made of assistance under the European Agricultural Guidance and Guarantee Fund (EAGGF), Guidance Section, in implementing the plans;

Whereas the Monitoring Committee for Regulations (EEC) No 866/90 and (EEC) No 867/90 adopted the amendments to the financing plan of the Community support framework on 15 July and 28 October 1992;

Whereas the Committee's decisions and the adjustments to the carried-over and additional budget appropriations require a revision of the financial framework set as the Community's budgetary assistance;

Whereas this addendum to the Community support framework has been established in agreement with the Member State concerned through the partnership defined in Article 4 of Regulation (EEC) No 2052/88 of 24 June 1988 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments⁽⁴⁾;

Whereas all measures which constitute the addendum are in conformity with Commission Decision 90/342/EEC of 7 June 1990 on the selection criteria to be adopted for investments for improving the processing and marketing conditions for agricultural and forestry products⁽⁵⁾;

Whereas the Commission is prepared to examine the possibility of the other Community lending instruments contributing to the financing of this addendum in accordance with the specific provisions governing them;

Whereas, in accordance with Article 10 (2) of Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments⁽⁶⁾, this Decision is to be sent as a declaration of intent to the Member State;

Whereas in accordance with Article 20 (1) and (2) of Regulation (EEC) No 4253/88 budgetary commitments relating to the contribution from the Structural Funds to the financing of the operations covered by the Community support framework will be made on the basis of subsequent Commission decisions approving the operations concerned;

Whereas the measures provided for in this Decision are in accordance with the opinion of the Committee for Agricultural Structures and Rural Development,

HAS ADOPTED THIS DECISION :

Article 1

The addendum to the Community support framework for Community structural assistance on the improvement of the conditions under which agricultural and forestry products are processed and marketed in Germany (excluding the five new Länder) covering the period from 1 January 1991 to 31 December 1993 is hereby established.

⁽¹⁾ OJ No L 91, 6. 4. 1990, p. 1.

⁽²⁾ OJ No L 353, 17. 12. 1990, p. 23.

⁽³⁾ OJ No L 31, 7. 2. 1992, p. 38.

⁽⁴⁾ OJ No L 185, 15. 7. 1988, p. 9.

⁽⁵⁾ OJ No L 163, 29. 6. 1990, p. 71.

⁽⁶⁾ OJ No L 374, 31. 12. 1988, p. 1.

The Commission declares that it intends to contribute to the implementation of this Community support framework in accordance with the detailed provisions thereof and in compliance with the rules and guidelines of the Structural Funds and the other existing financial instruments.

Article 2

The addendum to the Community support framework contains the following essential information :

(a) a statement of the main priorities for joint action in the following sectors :

1. forestry,
2. meat,
3. milk and milk products,
4. cereals,
5. wine and alcohols,
6. fruit and vegetables (including fruit juice),
7. flowers and plants,
8. seed,
9. potatoes ;

(b) an indicative financing plan specifying, at constant 1993 prices, the total cost of the priorities adopted for joint action by the Community and the Member State concerned, ECU 460 717 555 for the whole period, and financial arrangements envisaged for budgetary assistance from the Community, broken down as follows :

<i>(ecus)</i>	
1. forestry	633 128
2. meat	14 782 702
3. milk and milk products	10 079 462
4. cereals	2 314 677
5. wine and alcohols	1 319 761
6. fruit and vegetables (including fruit juice)	18 159 355
7. flowers and plants	3 185 833
8. seed	606 093
9. potatoes	10 695 567
Total	61 776 578

The resultant national financing requirement, approximately ECU 65 466 035 for the public sector and ECU 333 475 141 for the private sector, may be partially covered by Community loans from the European Investment Bank and the other loan instruments.

Article 3

This declaration of intent is addressed to the Federal Republic of Germany.

Done at Brussels, 29 March 1993.

For the Commission

René STEICHEN

Member of the Commission

COMMISSION DECISION

of 29 March 1993

amending the Seventh Council Decision 85/356/EEC on the equivalence of seed produced in third countries

(93/225/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Seventh Council Decision 85/356/EEC of 27 June 1985 on the equivalence of seed produced in third countries⁽¹⁾, as last amended by Commission Decision 92/519/EEC⁽²⁾, and in particular Article 4 thereof,

Whereas in Decision 85/356/EEC the Council determined that seed of certain species produced in Turkey was equivalent to corresponding seed produced in the Community;

Whereas an examination of the rules of Turkey and of the manner in which they are applied has shown that, in respect of maize and sunflower, the conditions governing seed harvested and controlled there afford the same assurances as regards the seeds' characteristics identity, examination, marking and control as do the conditions applicable to such seed harvested and controlled within the Community;

Whereas the existing equivalence for Turkey should therefore be extended accordingly;

Whereas the measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Seed and Propagating Material for Agriculture, Horticulture and Forestry,

HAS ADOPTED THIS DECISION:

Article 1

In columns 3, 4 and 5 of the section of the table in Part 1 (2) of the Annex to Decision 85/356/EEC relating to Turkey the following indents are added after the indent '*Beta vulgaris*':

3	4	5
— 66/402 <i>Zea mays</i>	— certified seed/ semences certifiées	CZ/1
— 69/208 <i>Helianthus annuus</i>	— certified seed/ semences certifiées	CZ/1'

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 29 March 1993.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 195, 26. 7. 1985, p. 20.

⁽²⁾ OJ No L 325, 11. 11. 1992, p. 24.