COMMISSION REGULATION (EEC) No 2537/89

of 8 August 1989

laying down detailed rules for the application of the special measures for soya beans

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 4191/85 of 23 May 1985 laying down special measures in respect of soya beans (1), as last amended by Regulation (EEC) No 2217/88 (2), and in particular Article 2 (8) and the third paragraph of Article 3 thereof,

Having regard to Council Regulation (EEC) No 2194/85 of 25 July 1985 adopting general rules concerning special measures for soya beans (3), as last amended by Regulation (EEC) No 1231/89 (4), and in particular Article 9 thereof,

Whereas Article 2 (1) (a) of Regulation (EEC) No 2194/85 specifies that the first purchaser is to keep stock records; whereas, in order to enable beans harvested in the Community to be distinguished from imported beans, it should be specified that separate stock records are to be kept for the two categories of beans and that they are to be stored in different premises;

Whereas, as the second paragraph of Article 2 of Regulation (EEC) No 2194/85 provides for the approval by the competent agency of the first purchaser other than the processor, it is necessary to determine the conditions for approval;

Whereas standardized terms to be incorporated in the contracts concluded between producers and first purchasers, and also the terms to be incorporated into the delivery declarations, should be laid down; whereas, with a view to observing the minimum price in contracts, provision should be made for the selling price to be expressed by unit of weight of product of standard quality, such that the contract should mention any increases and reductions in the selling price;

Whereas Article 4a of Regulation (EEC) No 2194/85 provides for the introduction of a Community aid certificate; whereas the entry into force of these rules requires the adoption of common provisions on the drawing-up and use of these certificates, on the introduction of Community forms and on the setting-up of methods of administrative cooperation between Member States; whereas these provisions are to a great extent common to the rules in the oil seeds sector and whereas it is sufficient, where such provisions are of a strictly administrative nature and do not concern the operators, to refer to the applicable provisions of Commission Regulation (EEC) No 2681/83 of 21 September 1983, laying down detailed rules for the application of the subsidy system for oil seeds (5), as last amended by Regulation (EEC) No 1966/89 (6);

Whereas, having regard to practice in the seed trade, a certain tolerance should be allowed in respect of the quantity identified in comparison with that specified in the certificate;

Whereas, where the aid is fixed in advance, the term of validity of the certificate must be determined with due regard to the need to adapt the conditions for buying in seeds harvested in the Community to those on the world market;

Whereas Article 4b of Regulation (EEC) No 2194/85 makes the issue of a certificate subject, where the aid is fixed in advance, to the lodging of a security which, except in cases of *force majeure*, is forfeited if the beans are not properly identified during the term of validity of the certificate; whereas, to that end, the security system should be defined by fixing the calculation method and the conditions for the release of the security;

Whereas Member States must set up a control system ensuring that only the products entitled to aid receive it, and whereas this system should enable checks to be made upon the observance of the minimum price referred to in Article 2 (3) of Regulation (EEC) No 1491/85;

Whereas, to ensure uniform application of the aid system, the procedures for paying the aid should be defined; whereas it is also necessary to determine the conditions for advance payment of the aid and the circumstances under which it shall be forfeited;

Whereas a criterion should be established relating to the minimum frequency of fixing the aid; whereas it appears sufficient for the aid to be fixed at least twice each month;

Whereas Article 1 of Regulation (EEC) No 2194/85 specifies the criteria for determining the world market price for soya beans;

Whereas, in view of the price fluctuations that normally occur on the world market, the world market price for soya beans should be determined at least twice a month;

(1) OJ No L 151, 10. 6. 1985, p. 15.
(2) OJ No L 197, 26. 7. 1988, p. 11.
(3) OJ No L 204, 2. 8. 1985, p. 1.
(4) OJ No L 128, 11. 5. 1989, p. 24.
(5) OJ No L 266, 28. 9. 1983, p. 1.
(6) OJ No L 187, 1. 7. 1989, p. 130.

Whereas provision should be made for adjusting the offers and quotations used in order to compensate for any differences in quality and conditions and place of delivery compared with the product for which the world price must be fixed;

Whereas the operation for the maximum guaranteed quantities provided for in Article 3a of Regulation (EEC) No 1491/85 must be clarified;

Whereas, to facilitate verification of the checks on entitlement to aid in respect of Community produced soya beans, it is necessary to monitor, at least statistically, the destination of soya beans imported from third countries;

Whereas, notwithstanding the measures applying to the rest of the Community, Article 7 of Regulation (EEC) No 2194/85 provides that in the case of the French overseas departments, the aid should be granted to soya bean producers in respect of a level of production established be applying a representative yield to the areas on which soya beans have been sown and harvested; whereas, therefore, certain detailed rules should be laid down for implementing these new arrangements;

Whereas, to facilitate proper management of the aid arrangements in the departments in question, it is necessary that France should communicate to the Commission certain data concerning the aid;

Whereas this Regulation extends the system of identification and advance fixing applicable to the system of aid for oilseeds to include the special measures for soya beans; whereas this results in a strengthening of the control procedures; whereas, in addition, experience has shown the need for such strengthening; whereas, therefore, the detailed rules for the application of the system of aid should be redrafted in a new text and Commission Regulation (EEC) No 2329/85 of 12 August 1985 laying down detailed rules for the application of the special measures for soya beans [1], as last amended by Regulation (EEC) No 3118/88 [2], should be repealed;

Whereas, however, the need to strengthen the control conditions and the approval of the first buyer who is not a processor is related to the scale of production in the various Member States and of the subsequent difficulties which may arise in the application of certain provisions of these arrangements; whereas the use of the derogation arrangements provided for in Article 2 (2) of Regulation (EEC) No 2194/85 by certain Member States may be such as to aggravate difficulties; whereas on the other hand excessively restrictive conditions should not be laid down in those Member States where production does not exceed a certain threshold and where the arrangements as they currently operate do not present particular difficulties; whereas, in the light of experience gained, this threshold should be fixed at 400 000 tonnes;

Whereas experience also indicates additional difficulties of controls where soya beans are incorporated directly in foodstuffs and feed and whereas the possibility of storing beans outside the production plant should consequently be limited solely to cases where beans are crushed for the production of oil;

Whereas, in view of the imminent beginning of the 1989/90 marketing year, the introduction on that date of certain provisions of the new system would be technically impossible; whereas provisions should therefore be made for such transition measures as are strictly necessary for the abovementioned marketing year;

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

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down the detailed rules for the application of the system of aid for soya beans instituted by Regulation (EEC) No 1491/85.

Article 2

1. For the purposes of this Regulation, 'undertaking' means:

(a) an oil mill, including:

— any building or other place within the precincts of the establishment where production takes place,

— any warehousing unit outside such precincts located in the customs territory of the Member State where the production establishment is located in which the stored products can be properly controlled and which has been approved in advance by the authority responsible for that control;

(b) an establishment manufacturing feedingstuffs or foodstuffs intended for use by the final consumer without further processing;

(c) any establishment managed by a first purchaser who is not a processor, which is approved within the meaning of Article 2 (2) of Regulation (EEC) No 2194/85, including storage installations in which the stored products can be properly controlled and which has been approved in advance by the authority responsible for that control.

2. Within the meaning of Article 3 of Regulation (EEC) No 2194/85, 'processing for other uses in human food or animal feeding' shall be understood to mean the crushing or cooking required for use of the product, direct or as a mixture.

[1] OJ No L 218, 15. 8. 1985, p. 16.
[2] OJ No L 278, 11. 10. 1988, p. 24.

The processing procedure must be such that the soya beans lose their identity in such a way that the competent authority may ensure that the beans so processed may not be the subject of a new aid application.

3. For the purposes of this Regulation :

(a) first purchaser who is a processor' means :

any natural or legal person directly responsible for the activities of an oil mill, an establishment for the production of animal feedingstuffs or an establishment manufacturing foodstuffs for human consumption ;

(b) approved first purchaser who is not a processor' means :

until 31 December 1992, in those Member States where production is less than 400 000 tonnes, any natural or legal person whose principal activity is trading in beans and cereals, and who does not fulfil the conditions likely to entitle him to receive aid under Article 2 (1) of Regulation (EEC) No 2194/85. In the other Member States this first purchaser must in addition exercise no processing activity, even partially, upon the beans in which he trades.

CHAPTER 1

General conditions

Article 3

1. The control referred to in Article 6 (1) of Regulation (EEC) No 2194/85 must, in particular, make it possible to check that the quantity of beans which entered the undertaking corresponds to the quantity of identified beans, and also, depending on the particular circumstances invoved, to :

(a) the quantity of oil and oilcake obtained by processing such beans ;

(b) the quantity of beans used in animal feed or foodstuffs ;

(c) the quantity of seeds leaving the undertaking in an unaltered state, in cases where the undertaking in question corresponds to the definition referred to in the first subparagraph of Article 2 (1) (c).

2. For the purposes of this control, every undertaking shall keep separate stock records for soya beans harvested in the Community and for imported beans. These shall contain at least the following information :

— the quantities in weight of beans received as such and in the case of beans harvested in the Community, moisture content and impurity content,

— the movements between the various stores of the undertaking,

— the quantities of beans processed and the type and quantity of the products obtained where the first purchaser is also the processor ; at the request of the competent agency the percentage of soya beans used in the processed mixture obtained must be specified,

— the quantity of beans or of the processed products leaving the undertaking and their destinations,

— a regular inventory of stocks, carried out at least on a quarterly basis,

— references to the contracts, delivery declarations and invoices or equivalent documents for both products bought and products sold and, in the case where the first purchaser is not the processor, references to the relevant documents relating to the delivery to the processor.

3. The undertaking shall also make its financial accounts available to the authority responsible for control.

4. In addition, every first purchaser shall :

— allow officials of the authority responsible for control to have access to his premises,

— comply with the obligations arising from this Regulation,

— facilitate inspection operations,

— keep all the documents relating to the transactions concerned, together with his financial accounts and copies of contracts and delivery declarations, available for inspection by the agency designated by the Member State,

— not store imported soya beans in an approved establishment within the meaning of Article 2 (1) (c), if he is eligible under the provisions applicable to approved first purchasers who are not processors.

Article 4

1. Until 31 December 1992, in order to be approved within the meaning of Article 2 (2) of Regulation (EEC) No 2194/85, each approved first purchaser who is not a processor shall, in addition to his obligations resulting from Article 3 :

(a) provide adequate assurance, from the financial point of view, that he is able to discharge his obligations arising under this system ;

(b) have at least the storage capacity required to receive the quantities to be delivered under the contracts concluded, calculated according to the formula defined in Annex III. The undertaking must be suitably equipped for weighing and analysing the beans to determine the quality as compared with the standard quality ;

(c) keep the stock and the other information referred to in Article 3 and in this paragraph from the date of his application for approval for a period of at least three years ;

(d) either, in Member States where soya production does not exceed 400 000 tonnes, fulfil the relevant conditions required under national rules for storing and marketing oil seeds or soya beans, or, in the other Member States, undertake in addition to conclude with producers located in the same Member State contracts relating globally to a minimum area of 95 000 hectares.

2. The competent agency shall allocate an identification code to each approved first purchaser fulfilling the conditions of paragraph 1.

This code must appear on all the documents concerning him referred to in this Regulation.

3. The competent agency may grant provisional approval to the first purchaser concerned upon submission of an application for approval.

Provisionally approved first purchasers shall be assigned an identification code. If it is found that any of the conditions laid down in paragraph 1 are not satisfied, and in particular if this creates difficulties for the competent agency of the Member State in establishing the right to aid, provisional approval shall be withdrawn. Withdrawal shall be retroactive until the date of the provisional approval and any aid paid since that date shall be recovered.

4. Provisional approval shall become final as soon as the Member State concerned is satisfied that the approval conditions laid down in paragraph 1 are fulfilled.

Without prejudice to the withdrawal of approval referred to in Article 5 and decided on by the competent agency, the approval shall lapse where a Member State decides to revoke application on its territory of the exceptional arrangements laid down in Article 2 (3) of the abovementioned Regulation.

Article 5

1. If an undertaking with the meaning of Article 2 (1) (c) or an approved first purchaser who is not a processor commits a serious failure to comply with the provisions laid down in Articles 3 and 4, approval of the latter shall be withdrawn for a period of one to five marketing years, without prejudice to any other measures applicable in such a case.

2. If any operations carried out in approved premises within the meaning of the second indent of Article 2 (1) (a) or in an approval establishment within the meaning of Article 2 (1) (c) does not comply with this Regulation, withdrawal of approval for the premises or establishments in question shall ensue, without prejudice to any other measures applicable in such a case.

Article 6

1. Contracts as referred to in Article 2 (1) (b) of Regulation (EEC) No 2194/85 shall be concluded in writing. They shall be lodged before a date to be fixed by each Member State but at least one month before the date on which the harvesting of the soya beans covered by the contract is due to begin. The contracts shall be lodged with the competent agency of the Member State in which the beans are to be harvested.

2. Contracts shall provide at least the following information :

(a) the names, forenames, addresses and signatures of the contracting parties ;

(b) the date of signature ;

(c) an undertaking on the part of the first purchaser to pay the producer at least the minimum price, and, where applicable, the price premium or discount to be paid to the producer on top of the minimum price, pursuant to an agreement reached collectively between the producers and the first purchasers or between the contracting parties.

In order to allow the producer to calculate the price to be paid for the quantities delivered, the method of calculation referred to in Annex I and a reference to the agreed bonuses or discounts shall be provided. This may refer to a collective agreement between the first purchasers and the producers or between the parties pursuant to Article 7 (3) ;

(d) an undertaking on the part of the producer to deliver, and on the part of the first purchaser to take delivery of, all the beans of sound and fair merchantable quality to be harvested by the producer on all the areas which he sows with beans ;

(e) the actual area sown with soya beans, in hectares and ares ;

(f) the particulars necessary for the identification of the areas in question, including :

appropriate cadastral references for each plot sown or references recognized as equivalent by the agency responsible for control ;

(g) the yields obtained by the producer at the previous harvest ;

(h) an identification number, to be indicated on the delivery declarations referred to in Article 8.

Supplementary information may be provided upon request by the competent agency, in particular in relation to the raising of animals by the producer.

3. After the contract has been signed, the areas indicated in accordance with paragraph 2 (e) and (f) may not be used by the producer for any other purpose than for cultivating soya beans, except in cases of *force majeure* or any other similar grounds recognized as valid by the competent agency.

As a consequence, any change in the use to be made of areas indicated which may take place after the contract has been signed but before it has been lodged with the competent agency must be the subject of an amendment to the contract correcting such areas and specifying the reason for the change.

In addition any change in the use to be made of all or part of the areas indicated occurring in the three months preceding the date laid down for the beginning of harvesting of soya beans covered by the contract must be notified by the producer to the competent agency, to the agency responsible for control and to the first purchaser each time that such a change involves more than 10 % of the area indicated and more than one hectare of area. Such notification must be made in writing within eight working days from the date on which the change took place.

4. In cases of contracts concluded between first purchasers and cooperatives acting on behalf of a number of producers, all the information concerning the producer referred to in paragraph 2 must be given for each producer concerned by the contract.

5. Failure to comply with the provisions of paragraph 2 (e) and (f) or paragraphs 3 and 4 invalidates the contract for the purposes of this Regulation and beans harvested under that contract may no longer be eligible for aid, unless it can be proven, to the satisfaction of the Member State, that there has been no serious negligence or serious fault. In addition, failure to comply with the provisions of paragraph 3 may result in the producer being excluded from qualifying for aid under this Regulation during the next marketing year where it is shown that serious negligence or serious fault has occurred.

However, the provisions of the preceding subparagraph only apply where inspection of the areas shows a difference of more than 10 % between areas declared and the areas actually sown with soya beans and which may be harvested.

Article 7

1. The price payable to the producer shall not be lower than the minimum price referred to in Article 2 (2) of Regulation (EEC) No 1491/85.

2. The price referred to in paragraph 1 shall be for goods in bulk of sound and fair merchantable quality with moisture and impurity levels corresponding to those of the standard quality, ex production region.

The price shall be converted into national currencies using the agricultural conversion rate obtaining on the date of the beginning of the marketing year in question.

3. The selling price shall be increased or reduced for each percentage point of impurity or moisture content below or above the standard quality.

In the case of a first purchaser who has taken delivery of goods which are not of sound and fair merchantable quality and who carried out operations enabling them to attain that condition, the price payable for the delivered products must correspond to the price referred to in paragraph 1, for products of the quality referred to in the first subparagraph, less the costs arising from those operations including costs resulting from any loss in weight that may be involved.

4. The weight to be taken into account for the comparison between the price payable referred to in paragraph 1 and the minimum price shall be the weight of sound, genuine and merchantable goods delivered to the first purchaser, adjusted in conformity with the method given in Annex I.

Article 8

1. For each delivery of soya beans received from producers, all first purchasers, whether they are processors of soya beans or first purchasers who are not approved processors, shall lodge a delivery declaration as referred to in Article 2 (1) (b) of Regulation (EEC) No 2194/85 with the competent agency.

2. However, where, for a given marketing year, a producer makes several deliveries to the same first buyer, the latter may lodge, for all or part of those deliveries, an overall declaration, broken down by delivery.

3. In all cases, for inspection purposes, an overall final declaration must also be presented at the moment of identification of the last delivery.

4. Delivery declarations shall include at least:

— the surnames, forenames and addresses of the producer and of the first purchaser and, where applicable, the identification code of the latter,

— the signatures of the producer or his representative, and of the first purchaser,

— the contract number referred to in Article 6 (2) (1),

— the marketing year in which the product delivered was harvested,

— the date of delivery, and the weight of product of sound and fair merchantable quality as received, delivered by the producer to the first purchaser,

— the moisture content and impurity content of the products delivered,

— the quantity compared with the standard quality eligible for aid.

In the case of an overall declaration other than the one referred to in paragraph 3, the above information, with the exception of that referred to in the first three indents, must be specified for each delivery. The declaration referred to in paragraph 3 must include all the above information without exception.

5. Delivery declarations relating to quantities in respect of which identification has been applied for must be lodged at least three days before the processing or, where the first purchaser is not an approved processor, at least three days before the beans in question leave the undertaking. Failure to comply with this provision shall entail loss of entitlement to the aid.

Article 9

Declarations of sale or delivery by an approved first purchaser who is not a processor to a processor, referred to in Article 2 (2) of Regulation (EEC) No 2194/85, shall be drawn up in writing and shall contain the following information:

(a) the names, forenames, addresses and signatures of the two parties concerned;

(b) the date of signature;

(c) the quantity sold or delivered, with reference to the ID part of the certificates relating to the quantities in question;

(d) the date of sale or delivery;

(e) the quantity actually delivered, with details of the moisture and impurity content established on entry into the processing establishment;

(f) an undertaking by the processor to process the beans within the Community, specifying the type of processing envisaged;

(g) an undertaking by the processor to permit the inspection operations referred to in Article 26, under the terms of Article 3.

CHAPTER 2

Identification and advance fixing of the aid

Article 10

The two-part certificate referred to in Article 4a of Regulation (EEC) No 2194/85 shall consist of one part, designated AP, certifying the advance fixing of the aid, and one part, designated ID, certifying identification of the beans.

The certificate shall be made out in at least two copies, the first of which shall be issued to the applicant and the second kept by the competent agency.

Article 11

1. Application may be made to the competent agency referred to in Article 6 of this Regulation for the ID part of the certificate for a single lot or for several lots. In no case may an application be made for the ID part of the certificate in respect of a lot for which an ID part has already been issued.

'Lot' shall be understood to mean a quantity of seeds covered by a delivery declaraltion, numbered by the interested party when it enters the undertaking and analysed pursuant to Article 30.

2. The application for the ID part of the certificate shall be considered only if the seeds entered the undertaking at the latest on the day on which it was submitted.

The application must be accompanied by delivery declarations corresponding to the quantities for which identification is applied for.

Article 12

1. Applications for the AP and ID parts of the certificate shall be sent to or lodged with the competent agency referred to in Article 6 of this Regulation on a printed form made out in accordance with Article 18 of Regulation (EEC) No 2681/83, or otherwise they shall not be considered.

However, they may be sent to the competent agency by telegram, telex or telefax.

In this case, they shall be rejected unless they comprise all the information which would have had to be shown on the form if the latter had been used. The telegram, telex or telefax shall be followed within eight working days by an application in accordance with the provisions of the first subparagraph.

An application containing conditions not provided for in Community regulations shall be rejected.

2. An application for the AP part of the certificate shall be rejected if the security referred to in Article 4b of Regulation (EEC) No 2194/85 is not lodged with or guaranteed to the competent agency not later than 4 p.m. on the day on which the application is lodged, or, where the guarantee is given by telegram, if it has been recorded at the transmitting telegraph office after 4 p.m., or, if it has been recorded not later than 4 p.m., it reaches the competent agency after 5.30 p.m.

Article 13

1. If an application is made for the ID part of a type of ban in respect of which aid has been fixed in advance, the application shall be rejected unless it is accompanied by copy No 1 of the AP part of the certificate.

2. If the application was sent to the competent agency by telegram, telex or telefax, copy No 1 of the AP part of the certificate must reach the competent agency at the latest during the second working day following that on which the application is submitted.

Article 14

1. 'The day on which the application for the certificate is lodged' means:

(a) if the application is lodged directly with the competent agency, the day on which the application is lodged, provided that lodging is effected by 4 p.m. at the latest;

(b) if the application is sent by letter, telex or telefax to the competent agency, the day on which it is received by the latter, provided that it is received by 4 p.m. at the latest;

(c) if the application is sent by telegram to the competent agency, the day on which it is received by the latter, provided that the telegram is recorded at the transmitting telegraph office not later than 4 p.m. and reaches the competent agency not later than 5.30 p.m.

However, in the case of applications for the ID part of the certificate, where failure to comply with the deadlines laid down above does not alter the rate of the aid applicable,

— the 4 p.m. deadline shall be extended until 12 p.m.,

— the provision concerning the 5.30 p.m. deadline referred to under (c) of the first subparagraph shall no longer be applicable.

2. Applications for certificates which arrive either on a day which is a non-working day for the competent agency, or on a day which is a working day for the latter but after the times specified above, shall be regarded as having been lodged on the following working day.

3. Applications for certificates which are sent by telegram in accordance with paragraph 1 (c) and arrive after 5.30 p.m. shall be rejected if the applicant does not specify, unequivocally and in a manner which precludes dispute, his intention to request, should the application arrive late, the rate of the aid valid on the first working day following that on which it is received. Such specification is given by using the words 'without reservation'.

Applications sent by telegram recorded at the transmitting telegraph office after 4 p.m. shall be regarded as having been lodged on the following working day, even if they arrive on another day, the rules laid down above relating to the day of application by telegram shall apply.

4. The deadlines specified in this Regulation shall be Belgian time.

Article 15

Where the application for a certificate and the guarantee of the security for the AP part of the certificate are sent by telegram and the telegram, through recorded not later than 4 p.m. has not reached the competent agency before 5.30 p.m. for reasons of *force majeure*, that agency may decide that the telegram be regarded as having arrived within the prescribed time limit.

If an agency recognizes a case of *force majeure*, the Member State under whose jurisdiction it comes shall immediately advise the Commission, which shall inform the other Member States thereof.

Article 16

The certificate shall be regarded as issued:

— with regard to the AP part, on the afternoon of the first working day following that on which the application is lodged,

— with regard to the ID Part, on the day on which the application is lodged.

Article 17

Rights and obligations deriving from the certificates shall not be transferable.

Article 18

1. The AP part of the certificate shall be valid as from the date referred to in Article 16 until the end of the fifth month following that during which the application was lodged.

2. However, the AP part of the certificate is issued in respect of a given marketing year. It may be issued in respect of the current marketing year or the following marketing year at the request of the applicant, to be made at the time of application. In this case, the operator shall be obliged to identify the beans in respect of which the rate of aid applied for is attributed on the said AP part during the marketing year chosen, except in case of *force majeure*.

Article 19

1. The rate of aid per 100 kilograms of beans, expressed in ecus, entered on the AP part of the certificate shall be that valid on the day on which the application for the certificate is lodged. This is indicated with the proviso that the guide price may be changed between the day on which the certificate is applied for and the day on which the beans are identified.

2. The rate of aid per 100 kilograms of beans, expressed in ecus, or in national currency entered on the ID part of the certificate shall be that valid on the day on which the certificate is accepted.

Article 20

1. The issue of the AP part of the certificate makes it obligatory to apply for identification of the beans specified therein during the period of validity of the certificate.

In addition, the application for identification must be made in accordance with the obligation laid down in Article 18 (2).

2. The quantities referred to in paragraph 1 shall refer to a product with moisture and impurity contents corresponding to the standard quality.

3. The ID certificates granted for an AP certificate must, during its period of validity, cover between 93 % and 107 % of the quantity shown in the AP part of the certificate.

If the quantities identified under this certificate exceed the quantity shown in the AP part of the certificate by more than 7 %, that excess quantity shall qualify for the rate of aid valid on the day of its identification.

If the quantities identified under the certificate are less than 93 % of the quantity shown on the certificate, the security shall be forfeit in proportion to the missing quantities. Otherwise, the security shall be released as soon as the identified quantities reach 93 % of the quantity shown.

Article 21

1. Where the application for identification is submitted by a processor under the conditions laid down in the first paragraph of Article 2 of Regulation (EEC) No 2194/85, the issue of the ID Part of the certificate shall, except in cases of *force majeure*, oblige the recipient to process the identified quantity within a period of 150 days from the date of issue.

The obligation shall be considered to be fulfilled where the processed quantity is not more than 2 % less than the quantity identified.

The quantities processed shall be considered as following exactly the order of the quantities identified, except in cases where it is possible to follow all of the lots of beans entering an undertaking during the whole of a given marketing year until their processing. Quantities processed before identification shall no longer be eligible for aid. If the quantity processed is less than 98 % of the quantity identified, the aid to be paid during a given period of control shall be reduced by the difference between the quantity identified and the quantity processed, multiplied by the highest rate of aid applicable during that period.

2. Where the application for identification is submitted by an approved first purchaser who is not a processor, in accordance with the second paragraph of Article 2 of Regulation (EEC) No 2194/85, the issue of the ID part of the certificate shall, except in cases of *force majeure*, oblige the recipient to deliver and to submit to the competent agency a sale or delivery declaration as referred to in Article 9 of this Regulation within a period of 150 days from the date of issue of the said ID certificate. This declaration must relate to the ID certificates covering the beans leaving the undertaking. The quantity actually delivered may not be more than 4 % less than the quantities shown in the ID parts of the certificates to which the sale or delivery declaration relates. Any beans sold or delivered before identification shall no longer be eligible for aid.

If the quantity actually delivered is less than 96 % of the quantity identified, entitlement to the aid shall be lost in respect of the missing quantity, and a penalty shall be applied to the remaining aid.

However, the penalty shall not be applied where it is shown to the satisfaction of the Member State that the missing quantity corresponds to beans sold or delivered before identification, in respect of which entitlement to the aid has already been lost, and which have therefore not been the subject of attempted fraud.

If the quantity actually delivered is more than 100 % of the identified quantity, aid shall be paid in respect of the identified quantity. If the quantity actually delivered is between 96 % and 100 % of the identified quantity, aid shall be paid in respect of the identified quantity.

3. The quantity actually processed and the quantity actually delivered shall be adjusted in accordance with the method set out in Annex I.

Article 22

1. Articles 16 to 20 of Regulation (EEC) No 2681/83 shall apply, *mutatis mutandis*, to applications for certificates and certificates issued under this Regulation.

2. Without prejudice to Article 20 of Regulation (EEC) No 2681/83 where an agency issuing certificates has recourse to one of the provisions referred to in paragraph 1 it shall advise the Commission immediately, in writing, of the exact circumstances. The Commission shall inform the other Member States forthwith.

Article 23

1. The amount of the security referred to in Article 4a of Regulation (EEC) No 2194/85 shall be fixed by the Commission, which shall inform the Member State of the conditions laid down in Article 37 (2).

2. The security, which is intended to guarantee completion of the operations on which entitlement to the aid is conditional, shall take one of the forms provided for in Article 8 of Commission Regulation (EEC) No 2220/85 [1].

Article 24

1. The release of the security referred to in Article 23 shall be subject to proof that the obligations referred to in Article 20 have been fulfilled. That proof shall be given by producing copy No 1 of the AP part of the certificate in accordance with Article 13 (1), Release of the security shall take place immediately following production of the proof referred to above.

2. Subject to the provisions of Article 25, if the obligations referred to in Article 20 are not fulfilled the security shall be forfeited in respect of a quantity equal to the difference between :

(a) 93 % of the net quantity shown on the certificate,

(b) the quantity identified at the undertaking, determined in accordance with the method defined in Annex I.

However, if the quantity identified amounts to less than 7 % of the net quantity shown in the certificate, the whole security shall be forfeited. Furthermore, if the total amount of the security which should be forfeited is less than ECU 5 in respect of a certificate, the Member State may release the full security.

3. At the request of the titular holder of the AP part of the certificate, the Member States may release the security in parts in proportion to the quantities of products in respect of which the proof referred to in paragraph 1 has been given.

Article 25

1. If it is not possible to fulfil the obligations laid down in Article 20 during the term of validity of the certificate for reasons of *force majeure*, the competent agency of the Member State issuing the certificate shall decide, at the request of the titular holder, either that these obligations shall be cancelled, the security being released, or that the term of validity of the certificate shall be extended for the period of time considered necessary in the circumstances. The extension may be given after the term of validity of the document has expired. The decision to cancel or extend shall be limited to the quantity of the product in respect of which the abovementioned obligations could not be fulfilled owing to reasons of *force majeure*. Any extension of the certificate shall be the subject of an endorsement thereon by the issuing agency. The certificate shall be adapted accordingly.

2. If the competent agency recognizes a case of *force majeure*, the Member State under whose jurisdiction it comes shall immediately advise the Commission, which shall inform the other Member States thereof.

3. The titular holder of the certificate shall furnish proof of the circumstance considered to constitute a case of *force majeure*.

4. If the term of validity of the certificate is extended the rate of aid fixed in advance to be granted shall be that determined in respect of the last month of the term of validity of the certificate.

[1] OJ No L 205, 3. 8. 1985, p. 5.

CHAPTER 3

Control measures

Article 26

1. The agency responsible for control shall verify with regard to the contract:

(a) that the conditions laid down in Article 6 are fulfilled and, by means of random checks, that the areas indicated have actually been sown with soya beans; where such checks suggest that the area differs from that declared, the Member State shall, without prejudice to any penalties which it may apply, correct the contract forthwith;

(b) that the price to be paid to the producer, account being taken of the provisions of Article 7, is at least equal to the minimum price referred to in Article 2 (2) of Regulation (EEC) No 1491/85. The conversion rate to be applied for the purpose of checking that the minimum price has been observed in the case of a product harvested during a given marketing year shall be the representative rate in force at the beginning of the marketing year in question.

The agency responsible for control shall carry out spot checks as follows:

— in Member States where production exceeds 400 000 tonnes, all contracts concluded by a first purchaser with a legal person, other than an agricultural cooperative, and all contracts covering areas of more than 200 hectares must be verified,

— in the other Member States, all contracts covering areas of more than 100 hectares must be verified,

— in all other Member States, 5 % of the remaining area, selected at random, must also be the subject of spot checks,

— verification must relate to compliance with the conditions referred to in Article 6.

2. As regards the final, overall delivery declaration referred to in Article 8 (3), the agency responsible for control shall verify that the particulars specified in Article 8 are complete, and, by means of random checks, that the quantities indicated in the delivery declaration could have been produced in the area indicated in the contract according to the established yields for that production zone. Where the Member State concluded that the quantity indicated in the delivery declaration could not have been produced in the area indicated in the contract, it shall undertake the necessary procedure to ensure that sums paid unduly are recovered: in particular, all the securities lodged by the first purchaser in question, up to the amount of aid paid in respect of that contract, shall be forfeited to the competent agency.

The abovementioned parties shall be responsible for furnishing proof that the quantity shown in the final overall delivery declaration could have been produced in the area specified in the contract.

3. As regards the declaration of sale or delivery referred to in Article 9, the agency responsible for control shall verify that the particulars specified in Article 9 are complete, particularly as regards the undertaking and signature of the processor and, by means of random checks, that the products covered by the said declaration are actually processed.

4. The agency responsible for control shall carry out spot checks at the premises of the first purchasers, to ensure that the conditions laid down in Article 3 are fulfilled and in particular that the stocks held in store tally with the stock and financial accounts.

These spot checks must be carried out without prior notification, at least once a year.

The party concerned shall be responsible for furnishing proof that the necessary conditions have been met.

However, in those Member States where soya bean production is less than 400 000 tonnes, the spot checks carried out pursuant to Article 27 or Article 28 may be sufficient in the case of approved first purchasers who are not processors and who have concluded less than 200 contracts with soya producers.

5. Where an irregularity is discovered in the course of a check the following provisions shall apply:

— failure to comply with the provisions of Article 6 shall ledad to the application of the provisions of Article 6 (5) to the producer. In addition, if it is established that the first purchaser knew of the negligence or serious fault of the producer, his approval shall be withdrawn or he shall be otherwise excluded from benefiting from the provisions of this Regulation for the duration of the following marketing year,

— failure to comply by the first purchaser with the provisions relating to the minimum price shall result in the obligation to pay the producer, for the quantities in question, an amount equal to twice the difference between the minimum price and the price actually paid by way of damages,

— each time for a given quantity of beans for which entitlement to aid is not recognized, the securities lodged pursuant to Article 23 or 32 shall be forfeited according to the provisions of these articles.

Article 27

In the case of first purchasers who are processors, the agency responsible for control shall verify on the spot, before the final aid is paid, that the quantity of Community-produced beans processed in the undertaking has been previously identified and is equivalent to the quantity that entered the undertaking, taking into account the stock levels at the beginning and end of the period of control. The quantity processed may be determined from the quantites of oil and oilcake obtained, or from the products obtained from other processing procedures as referred to in Article 2 (2).

Article 28

In the case of approved first purchasers who are not processors, the agency responsible for control shall verify on the spot, before the final aid is paid, that the quantity of beans actually delivered to a processor and covered by a declaration of sale or delivery as referred to in Article 9 corresponds to the quantities that entered the undertaking and were identified before leaving, taking into account the stock levels referred to in Article 8 (1) and (2), the sale or delivery declarations referred to in Article 9 and any other pertinent documents or material aspects.

Article 29

In the case referred to in Article 27, beans which have left the undertaking unprocessed shall no longer be eligible for the aid, except in cases of *force majeure*.

Article 30

1. To enable the exact amount of the aid to be calculated, to meet the conditions laid down in the sixth indent of Article 8 (4) and Article 9 (e), and to facilitate the control operations, the weight of the soya beans harvested in the Community shall be determined, and samples shall be taken, in particular when they are delivered to the first purchaser. In order to fulfil the provisions of Article 3 (2) and to allow controls to be effected, the weight of imported soya beans shall also be determined and samples shall be taken when they enter the undertaking in which they are to be processed.

2. The weight of the beans as referred to in the previous paragraph shall be expressed in kilograms and adjusted using the method set out in Annex I.

3. The taking of samples, the reduction of contract samples to samples for analysis and the determination of impurities and moisture, and any determination of oil content shall be carried out according to the common methods defined in Annexes I to VII to Commission Regulation (EEC) No 1470/68 (1).

4. However, until 31 December 1992, where the operations provided for in paragraph 3 cannot be carried out under the conditions laid down in that paragraph on delivery, those operations may be carried out at that stage according to national methods producing equivalent results.

Member States shall forward to the Commission for approval a short technical description of the abovementioned methods within a period of four months following the publication of this Regulation.

5. When samples are taken on entry into the processing undertaking, standard samples must be set aside for a period of at least two months for placing at the disposal of the agency responsible for control, or a body designated by it. That body shall carry out random tests on a proportion of the samples taken in this way. Furthermore samples may be tested to determine the quality of products after the first processing of the beans in question, to verify that the tests are consistent with those carried out on the samples taken when the beans arrived for processing.

Where, on completion of the tests, the results reveal serious negligence or serious fault, the quantities in question shall not be eligible for aid and approval, and the first purchaser responsible for delivery of the beans shall lose his authorization, or be otherwise excluded from entitlement under this Regulation, where the first purchaser is a processor, for the following marketing year.

CHAPTER 4

Calculation and payment of the aid

Article 31

Without prejudice to the provisions of Article 7, the aid shall be granted only for beans of sound and fair merchantable quality.

Article 32

1. Final payment of the aid by the competent agency shall take place on presentation of the ID part of the certificate and the final overall declaration referred to in Article 8 (3), and :

— where the aid is paid to a processor, after certification by the agency responsible for control that the seed identified in the said certificate has been processed within the period mentioned in Article 21 (1),

— where the aid is paid to an approved first purchaser who is not a processor, after receipt of the declaration of sale or delivery referred to in Article 9,

— in all cases, after proof has been furnished that the condition relating to payment of the minimum price has been fulfilled.

2. The competent agency shall advance the aid once the beans have been identified, provided that a security equal to the amount of the aid in respect of which the advance is to be paid is lodged by the recipient prior to payment of the advance. However, where the first purchaser is not a processor, payment of the advance may, at the request of the competent agency, be made conditional on presentation of the sale or delivery contract.

3. The security, intended to ensure that the processing or incorporation operations on which entitlement to the aid is based are carried out, shall take one of the forms laid down in Article 8 of Commission Regulation (EEC) No 2220/85.

(1) OJ No L 239, 28. 9. 1968, p. 2.

4. The security shall be released once the competent agency of the Member State recognizes, in accordance with Article 27 and 28, the applicant's entitlement to aid in respect of the quantities specified in the application, after a spot check has been carried out at the end of the marketing year. Where entitlement to aid is not recognized in respect of all or some of the quantities specified in the application, the security shall be forfeited in proportion to the quantities in respect of which the conditions for entitlement to the aid have not been fulfilled, with the addition of a penalty applied to the remaining aid.

Article 33

1. The amount of aid to be granted per 100 kilograms of product shall be that indicated on the ID part of the certificate.

However, the amount of aid to be granted if advance fixing takes place shall be equal to the amount applicable on the day on which the application of the AP part of the certificate is lodged and shall be increased or reduced :

— depending on whether the guide price valid during the month in which application is made for the ID part is higher or lower than that valid on the day on which application for the AP part is lodged, by the difference between these two guide prices,

— by the corrective amount referred to in Article 4c of Regulation (EEC) No 2194/85.

2. The definitive amount of aid shall be calculated on the basis of the weight of the beans ascertained at the time the delivery declaration is made out, adjusted in accordance with the method laid down in Annex I, according to the result of the analyses referred to in Article 30.

Article 34

Conversion of the aid into national currency shall be carried out using the agricultural conversion rate obtaining on the date of the beginning of the marketing year in question.

Article 35

Without prejudice to Article 32 (2) and (4), the aid shall be paid within 120 days of the submission of the evidence referred to in Article 32 (1), and completion of the checks referred to in Articles 27 and 28 in particular, which are intended to establish entitlement to the aid.

CHAPTER 5

Intra-Community trade

Article 36

1. Where the approved first purchaser who is not a processor sells or delivers beans to a processor established in another Member State, proof of sale or delivery to a processor shall be considered to be furnished when the T5 control copy, issued and used in accordance with Commission Regulation (EEC) No 2823/87 [1], with all the necessary endorsements, has been presented to the agency responsible for payment of the aid.

The following boxes of the T5 control copy must be completed :

(a) box 103 ;

(b) box 104 is to be endorsed accordingly and the following statement entered :

'Goods to be put at the disposal of a processor — Article 36 (1) of Regulation (EEC) No 2537/89.'.

2. The endorsement showing the date of delivery to the processor shall be entered in the section headed 'control as to use and/or destination' on the back of the control copy. In addition, the net weight of the beans as recorded on delivery and the moisture and impurity contents must be stated under 'remarks'.

3. Authorities checking the destination of products traded within the Community shall, for the purposes of final payment of the aid, send a copy or photocopy of the T5 control copy to the agency responsible for granting the aid.

4. The final aid shall be paid, and the security referred to in Article 32 (2) shall be released, upon receipt of the T5 control copy referred to in paragraph 3.

CHAPTER 6

Article 37

1. The rate of the aid shall be fixed as often as the market situation requires, in time to be applied at least twice a month, once from the first day of each month.

2. The Commission shall notify the Member States of the rate of aid per 100 kilograms, expressed in ecus, as soon as it is fixed, and in any case before the date from which the rate of aid is to be applied. This shall apply to the rate of aid :

— applicable during the current month,

— applicable for the five subsequent months in application of Article 4c of Regulation (EEC) No 2194/85, subject to the provisions of Article 4d of that Regulation.

Article 38

The corrective amount referred to in Article 4c of Regulation (EEC) No 2194/85 shall be equal to the difference between :

(a) the world market price of soya beans determined in accordance with Articles 39 and 40 of this Regulation, and

(b) the forward price for those beans, determined by applying the same criteria.

If, for one of the months following that in which the request for advance fixing is lodged, no offer and no price can be used for determining the forward price referred to under (b), the corrective amount shall be such as to determine a rate of aid equal to zero.

[1] OJ No L 270, 23. 9. 1987, p. 1.

Article 39

The world market price for soya beans shall be determined twice a month.

This price shall be fixed per 100 kilograms and shall be calculated on the basis of the most favourable offers and quotations for delivery within 30 days.

Article 40

1. When the offers and quotations recorded relate to :

(a) a quality other than the standard quality for which the guide price was fixed, they shall be adjusted by reference to the coefficient of equivalence given in Annex II ;

(b) products delivered cif at a frontier crossing point other than Rotterdam, they shall be adjusted by reference to the difference in freight and insurance costs as against products delivered cif Rotterdam ;

(c) products delivered cif Rotterdam, they shall be adjusted to take account of unloading and forwarding costs.

2. For the purpose of paragraph 1, only the lowest available costs in respect of loading, freight and insurance shall be taken into account.

Article 41

1. Before the end of the second month of each marketing year and in accordance with the procedure laid down in Article 38 of Council Regulation (EEC) No 136/66/EEC (1), the Commission shall fix for soya beans on the basis of the figures provided by the Member States or obtained otherwise :

— the estimated production referred to in the first subparagraph of Article 3a (3) of Regulation (EEC) No 1491/85 in respect of the current marketing year,

— the actual production referred to in the second subparagraph of Article 3a (3) of Regulation (EEC) No 1491/85 in respect of the preceding marketing year,

and in accordance with paragraph 2 :

— the adjustment applying, where appropriate, to the amount of aid for the marketing year in question.

2. The adjustment of the amount of the aid for the marketing year in question, referred to in Article 3a (3) of Regulation (EEC) No 1491/85, shall be based on the algebraic sum :

— of the reduction relating to the marketing year in question, calculated on the basis of the estimated production, in accordance with Article 3a (3) of the abovementioned Regulation and Article 1a of Regulation (EEC) No 2194/85

and

— the carry-over of the reduction from the previous marketing year, positive or negative, resulting from the difference between the reduction which would have been calculated for that year if actual production had been taken into account instead of estimated production, and the reduction calculated on the basis of the estimated production.

3. The amounts of the aid fixed provisionally for a given marketing year shall be adjusted accordingly by the Commission before the adjustment for that year is published in the *Official Journal of the European Communities.*

4. The Member States shall forward to the Commission, before 15 October, figures relating to :

— areas under and production of soya beans harvested during the preceding marketing year,

— areas under and production of soya beans to be harvested during the current marketing year.

Article 42

1. Producer Member States shall inform the Commission of the names and addresses of the agencies appointed for the purpose of implementing the special measures for soya beans.

2. Producer Member States shall notify to the Commission :

(a) by 30 September of each year at the latest, the number of contracts lodged and the total area of cultivation covered by them ;

(b) before the end of each month, the quantities covered by aid applications in the preceding month. This information shall include the total number of AP and ID certificates to which the aid applications refer ;

(c) by 30 November at the latest following each marketing year, the quantities for which aid has been granted.

3. The Commission shall forward regularly to the Member States a summary of the information supplied in accordance with the preceding paragraphs.

4. France shall notify the Commission by 31 December and 31 May at the latest of each marketing year of the total area covered by soya-producers' declarations in the French overseas departments.

Article 43

The Member States shall assist each other in the application of the provisions of this Regulation.

Article 44

Each Member State shall forward to the Commission, within a period of five months from the end of the marketing year in question, a quantitative record showing the total volume of beans imported from third countries, the quantity of those beans utilized in the Member State and the quantities re-exported without further processing, specifying the country of destination.

(1) OJ No 172, 30. 9. 1966, p. 3025/66.

CHAPTER 7

Special and final provisions

Article 45

1. The rate of aid to be granted for soya beans harvested in the French overseas departments shall be :

— during the first six months of a given year, that applicable with effect from 16 March of that year,

— during the second six months of a given year, that applicable with effect from 16 August of that year.

2. All producers of soya beans in the French overseas departments shall lodge with the competent authorities, for each harvest and by dates to be set by France, declarations of the areas sown with soya and the crop harvested.

3. France shall notify the Commission of soya bean yields recorded in the various overseas departments, differentiated according to method of cultivation used, before 15 May and 15 October each year.

Article 46

1. Regulation (EEC) No 2329/85 is hereby repealed.

2. However, the following transitional provisions shall be applicable for the 1989/90 marketing year :

— contracts already lodged under the arrangements provided for in Article 7 of Regulation (EEC) No 2329/85 at 15 August 1989 shall remain valid,

— approvals granted by Member States to first purchasers who are not processors, in accordance with Article 5 of Regulation (EEC) No 2329/85 shall remain valid. However, where the approved first purchasers do not fulfil the new conditions for approval laid down in this Regulation and in particular Article 4 thereof, they shall be placed under special surveillance by the competent agency and by the agency responsible for control in the Member State concerned,

— the Member States shall notify the measures adopted for the application of the new control provisions instituted by Article 26 (1) and (4) and by Article 30 (5) within a period of three months from the entry into force of this Regulation. The obligation to carry out the said controls systematically is only applicable for the various operations laid down insofar as the measures are compatible with the necessary technical and administrative time limits.

Article 47

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

It shall apply from 1 September 1989.

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

Done at Brussels, 8 August 1989.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX I

Method of calculating the weight of soya beans

$$\frac{100 - (i + h)}{100 - (i_1 + h_1)} \times q = X$$

i = impurity of beans the weight of which is to be determinded

h = moisture content of beans the weight of which is to be determined

i_1 = impurities
h_1 = moisture content
} of the quality for which the aid is fixed

q = quantity of the products as received, expressed in kilograms, the adjusted weight of which is to be determined

X = weight of the products expressed in kilograms.

NB: Only the first two decimal places shall be taken into consideration for the moisture and impurities content.

ANNEX II

Coefficients of equivalence for soya beans

	Amount to be deducted from the price	Amount to be added to the price
Soya beans coming from the USA	0,472	—
Soya beans coming from other third countries	0,753	—

ANNEX III

$$S = \frac{3{,}0 \cdot x}{3}$$

S = storage capacity expressed in tonnes.

x = total number of hectares covered by contracts.
