

Official Journal

of the European Communities

ISSN 0378-6978

L 322

Volume 40

25 November 1997

English edition

Legislation

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Price: ECU 19,50

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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2320/97

of 17 November 1997

imposing definitive anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Hungary, Poland, Russia, the Czech Republic, Romania and the Slovak Republic, repealing Regulation (EEC) No 1189/93 and terminating the proceeding in respect of such imports originating in the Republic of Croatia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁽¹⁾, and in particular Article 9 (4) thereof,

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

Whereas:

commenced an investigation pursuant to Article 11 (3) of Regulation (EC) No 384/96 (hereinafter referred to as 'the basic Regulation').

(3) This interim review investigation was initiated in parallel with an investigation opened on the same date⁽¹⁾ in respect of such imports originating in Russia, the Czech Republic, Romania and the Slovak Republic following a complaint lodged by the Defence Committee of the Seamless Steel Tube Industry of the European Union.

(4) By Regulation (EC) No 981/97⁽⁶⁾ (hereinafter referred to as the 'provisional Regulation'), the Commission imposed a provisional anti-dumping duty on imports into the Community of the product in question originating in Russia, the Czech Republic, Romania and the Slovak Republic.

(5) Following the imposition of the provisional anti-dumping measures, certain interested parties submitted comments in writing.

Those parties who so requested were granted an opportunity to be heard by the Commission.

The Commission continued to seek and verify all information deemed necessary for its definitive findings.

(6) On 22 May 1997, the Association Councils established under the Agreements between the European Communities and their Member States, of the one part, and the Czech Republic, Romania and the Slovak Republic, respectively, of the other part, were informed by letter of the Commission's intention to impose provisional measures.

A. PROCEDURE

(1) By Regulation (EEC) No 1189/93⁽²⁾, the Council imposed definitive anti-dumping duties on imports of certain seamless pipes and tubes, of iron or non-alloy steel, originating in Hungary, Poland and the Republic of Croatia. The rate of the duty was 21,7 % for Hungary, 10,8 % for Poland and 17,4 % for the Republic of Croatia. In addition, the Commission accepted undertakings⁽³⁾ offered by the Hungarian, Polish and Croatian exporters.

(2) On 31 August 1996, the Commission announced, by a notice published in the Official Journal of the European Communities⁽⁴⁾, the initiation of an interim review of Regulation (EEC) No 1189/93 in respect of imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Hungary, Poland and the Republic of Croatia and

⁽¹⁾ OJ L 56, 6. 3. 1996, p. 1. Regulation as amended by Regulation (EC) No 2331/96 (OJ L 317, 6. 12. 1996, p. 1.)

⁽²⁾ OJ L 120, 15. 5. 1993, p. 34.

⁽³⁾ OJ L 120, 15. 5. 1993, p. 42.

⁽⁴⁾ OJ C 253, 31. 8. 1996, p. 25.

⁽⁵⁾ OJ C 253, 31. 8. 1996, p. 26.

⁽⁶⁾ OJ L 141, 31. 5. 1997, p. 36.

The Czech, Romanian and Slovak authorities all objected that the Commission had acted in breach of the Europe Agreement (and in particular Article 34 (2) thereof) by failing to hold consultations before the proceeding was initiated, immediately after the initiation, or prior to the imposition of provisional duties.

It should be recalled that, when a complaint is received, the Commission has to investigate the allegations contained therein. If the Commission is satisfied that the complainant has provided sufficient evidence to warrant an investigation, it is obliged, under the provisions of its own anti-dumping legislation, to open a proceeding. Regarding the Community's legal obligations under the Europe Agreements, it is considered that these have been met in full. The Agreements state that the Association Councils have to be informed of any dumping case as soon as the authorities of the importing country have initiated an investigation. This requirement was met by the Commission.

Furthermore, the Europe Agreements state that if no satisfactory solution is reached within 30 days of the matter being referred to an Association Council, the importing party may adopt the appropriate measures. Since no solution was found within the required time, the Commission was entitled to take measures, as appropriate; this it did on 31 May 1997. The actual decision to impose provisional duties was not taken until 21 May, only shortly before the statutory deadline expired. Nonetheless, the Commission immediately informed the Association Council and provided it with the data on the basis of which the decision had been made. Consultations, first with the country authorities and then with the exporters/producers themselves were started within a matter of days and were pursued throughout the investigation with a view to reaching a mutually acceptable solution. Therefore, the Community has fully complied with the requirements of the Europe Agreements, and in particular with Article 34 (2) and 34 (3) (b) thereof.

- (7) In the interim review investigation, the Commission officially advised the Hungarian, Polish and Croatian producers/exporters, and the importers known to be concerned, the representatives of the exporting countries and the complainant, and gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing. The interested parties who so requested were granted an opportunity to be heard by the Commission. They also made written submissions, making known their views on the findings.

- (8) The Commission sent questionnaires to all parties known to be concerned and received replies from the complaining Community producers, from five companies in the Czech Republic, from seven in Romania, from one in the Slovak Republic, from six in Russia, from one in Hungary, from six in Poland and from one in the Republic of Croatia. The Commission also received replies from four unrelated importers in the Community, from a Community importer related to one Czech company and from two importers related to the Slovak producer, one of which was located in the Community and the other in Switzerland.

Verification visits, with regard to both investigations, were carried out at the following companies:

Community producers

- Voest Alpine, Kindberg, Austria,
- Vallourec Industries, Boulogne-Billancourt, France,
- Benteler AG, Paderborn, Germany,
- Mannesmannröhren-Werke AG, Mülheim an der Ruhr, Germany,
- Dalmine S.p.A., Dalmine, Italy,
- Productos Tubulares S.A., Valle de Trápaga, Spain,
- Tubos Reunidos S.A., Amurrio, Spain,
- Ovako Steel AB Tube Division, Hofors, Sweden,
- ESW Röhrenwerke GmbH, Eschweiler, Germany,
- Rohrwerk Neue Maxhütte GmbH, Sulzbach-Rosenberg, Germany.

Importers not related to exporters

- Jannone ARM S.p.A., Naples, Italy,
- Geminvest S.R.L., Limbiate, Italy,
- Starval, Marly La Ville, France,
- Voest Alpine Stahlhandel AG, Linz, Austria.

Exporters and importers/trading companies subject to the new investigation

Importer related to two Czech producers:

- Topham Eisen und Stahlhandelges.m.b.H., Vienna, Austria.

Importers related to the Slovak producer:

- Pipex International AG, Nidau, Switzerland,
- Pipex Italia S.p.A., Milan, Italy (a subsidiary of the above).

Exporters in the Czech Republic

- Vítkovice a.s. and Vítkovice Export a.s., Ostrava,
- Nová Hut a.s., Ostrava,
- Válcovny trub Dioss and Dioss Trading, Chomutov a.s.,
- Ferromet Long Products Ltd, Prague (trading company related to Nová Hut),
- Incos s.r.o., Prague (unrelated trading company).

Exporters in Romania

- Artrom SA,
- Silcotub SA,
- Petrotub SA,
- Republica SA,
- Intertube Ltd., Bucharest (trader related to SC Republica SA),
- SC Metalexportimport SA, Bucharest (unrelated exporter/trader),
- Sota Company, Bucharest (unrelated exporter/trader).

Exporters in the Slovak Republic

- Železiarne Podbrezová a.s., Podbrezová.

Exporters subject to the review investigation*Exporter in Hungary*

- Csepel Tubes Co. Ltd, Budapest.

Exporters in Poland

- Huta Andrzej SA, Zawadzkie,
- Huta Batory SA, Chorzów,
- Stalexport SA (related trader), Katowice.

Exporter in the Republic of Croatia

- Zeljezara Sisak, Sisak Steel Pipe Works, Sisak.

In the course of the investigation, the Croatian exporter informed the Commission that the company had changed its name to Zeljezara Sisak — Sisak Tubemills Ltd. The Commission concluded that the change in name in no way affected the findings established in the investigation.

- (9) For both investigations, dumping was examined for the period from 1 September 1995 to 31 August 1996, 'the investigation period'. The examination of injury, and of the likelihood of continuation or recurrence of injury, covered the period

from January 1992 to the end of the investigation period.

- (10) All parties concerned were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive measures or the amendment of existing definitive measures. They were also granted a period within which to make representations and/or to offer undertakings subsequent to these disclosures.

B. PRODUCT UNDER INVESTIGATION**1. Product concerned**

- (11) The product subject to both investigations is:
- (a) seamless pipes, of iron or non-alloy steel, of a kind used for oil or gas pipelines, of an external diameter not exceeding 406,4 mm;
 - (b) seamless tubes of circular cross-section, of iron or non-alloy steel, cold-drawn or cold-rolled, other than precision tubes; and
 - (c) other tubes of circular cross-section, of iron or non-alloy steel, other than threaded or threadable, of an external diameter not exceeding 406,4 mm

currently classifiable under CN codes 7304 10 10, 7304 10 30, 7304 31 99, 7304 39 91 and 7304 39 93.

In line with the position adopted by the Council in Regulation (EEC) No 1189/93, and as confirmed in recital (10) of the provisional Regulation, all seamless pipes and tubes falling within the abovementioned CN codes are considered as one product (hereinafter referred to as the 'product concerned') for the purpose of both the new investigation and the review investigation.

2. Like product

- (12) All seamless pipes and tubes subject to both investigations were found to be alike in their essential physical and technical characteristics and in their end uses, irrespective of whether they are manufactured in the Community or in the countries subject to the investigations.

Some exporters argued that their products should not be considered as like products with those of the Community producers or those of other exporting producers on the grounds that there were quality and technical differences, as well as differences in the distribution channels, use and perception by the market.

It was found, however, that the product concerned is distributed through similar channels. Basic application and overall use are similar. There is a high degree of interchangeability, and consequently of competition, between all imported products subject to both investigations and those manufactured by the Community producers. It was also established that the basic technical and physical characteristics of all these imported products, despite minor differences, were identical to, or closely resembled, those of the products manufactured by Community producers.

In conclusion, the products originating in the various countries covered by the investigation and those produced and sold in the Community are considered like products within the meaning of Article 1 (4) of the basic Regulation.

C. DUMPING

ANTI-DUMPING INVESTIGATION

1. Czech Republic

(a) *Cooperation*

- (13) The company ruled to be non-cooperating subsequently wrote to the Commission to object to this treatment, claiming that the provisions of Article 18 of the basic Regulation were not applicable to it. It stressed that there had been no intention to mislead and argued that the company had acted to the best of its ability; this meant that even though the domestic and export sales listings, credit note listings, customer turnover figures and cost of production information were admitted to be far from ideal, the Commission was duty bound not to disregard them. It also criticised the Commission for not taking sufficiently into account the privatization difficulties experienced by the company and the special problems of the Czech Republic in its transition to market economy status. Finally, it argued that, since the company had changed ownership in April 1997 (having ceased production the previous month), it would be unfair to impose sanctions on the new owner.

The reasons which led the Commission to consider one of the Czech companies as not cooperating with the investigation are set out in recital 14 of the provisional Regulation. It is worth recalling here that the listings submitted to the Commission in the company's reply to the questionnaire were found on verification to contain several hundred domestic and export transactions which had never taken place. This was not only highly misleading

but meant that the Commission was unable to establish, with any degree of certainty, either a reliable normal value or a reliable export price. Whatever the reasons for this (and at this point the Commission would point out that the explanation originally provided by the company was totally unsatisfactory and completely different from the one it submitted later in writing), it cannot be said to be in accordance with generally accepted accounting principles. In the circumstances, the Commission had no choice other than to reject the reply and to apply Article 18 of the basic Regulation, not least because to have acted otherwise would have been to discriminate against other, fully cooperating, companies in the investigation.

As regards the matter of the change of ownership, since this took place after the end of the investigation period, it is not a factor which can be considered relevant to this proceeding (see Article 6 (1) of the basic Regulation).

(b) *Normal value*

- (14) One of the Czech producers questioned the methodology employed by the Commission to determine normal value for one product group (see recital (16) of the provisional Regulation); in particular, it claimed that there was nothing in the basic Regulation which justified the Commission calculating normal value on the basis of the average of profitable sales only, instead of on the basis of the average of all sales in the group. The same producer objected to the Commission's use, in constructing normal value for certain groups, of a profit margin achieved on profitable domestic sales in other product groups.

This request could not be accepted, since it runs counter to both the basic Regulation and the Community institutions' consistent practice. With regard to the first point, where the volume of domestic sales below unit cost represents more than 20 % of sales, normal value is based on the profitable sales only, in accordance with the third subparagraph of Article 2 (4) of the basic Regulation. With regard to the second point, the Commission acted in accordance with Article 2 (6) of the basic Regulation by applying the profit margin on sales 'in the ordinary course of trade, of the like product, by the exporter or producer under investigation'.

One producer also objected to the substitution of its own selling, general and administrative (hereinafter referred to as SG&A) expenses by those of its related company (see recital (16) of the provisional Regulation) on the grounds that such expenses should be based on 'actual data' relating to the producer under investigation, in accordance

with Article 2 (6) of the basic Regulation. The Commission considered that the relevant accounting documents submitted by the producer insufficiently supported the figures submitted in its reply to the questionnaire. After being notified of the Commission's intentions, the company provided further explanations and tables but, since these constituted additional information which was not verifiable, the information could not be taken into account.

Both cooperating producers queried the removal from the transaction listings of sales made to each other on the grounds that they were not related and that, even if they were, the Commission had failed to show that the prices were affected by the relationship.

This could not be accepted. Since both companies have a common shareholder (see recital (22) of the provisional Regulation and recital (17) below), they are related. Furthermore, Article 2 (1) of the basic Regulation clearly states that 'prices between parties which appear to be associated (...) may not be considered to be in the ordinary course of trade (...) unless it is determined that they are unaffected by the relationship'. Since it was not established that this was the case, the disputed transactions were not reinstated.

No further comments were received in respect of normal value and the Council therefore confirms the findings as set out in the provisional Regulation.

(c) *Export price*

- (15) No comments were received concerning the determination of the export price. Nonetheless, a small adjustment to the profit margin deduction was made in respect of the related Austrian importer (see recital (18) of the provisional Regulation) after reviewing the profit margins achieved by unrelated importers during the course of the investigation.

(d) *Comparison*

- (16) No comments were received under this heading and the Commission's findings are therefore confirmed.

(e) *Dumping margin*

- (17) The cooperating companies objected to the Commission's decision to establish the dumping margin on the basis of a comparison of weighted average normal values with individual export prices (rather than weighted average export prices), arguing that the Commission had failed to provide

sufficient justification for its approach at recital (21) of the provisional Regulation.

In that Regulation, the Commission stated that its approach was justified by the need to reflect the full degree of dumping being practised and because there was a pattern of export prices which differed significantly between Member States and between time periods. The Commission has reviewed its calculations and concluded that the variations in export prices between countries did not display a sufficiently clear pattern. However, the Commission stands by its finding that there was a pattern of export prices between time periods which led to a significant increase in dumping (constituting a clear pattern) after the expiry of quantitative restrictions on 31 December 1995, and the approach adopted in the provisional Regulation is therefore confirmed.

The Commission's decision to treat both cooperating producers as being related, and the consequent establishment of a single dumping margin for them, was strongly objected to on the grounds that both companies were managed independently of each other and had different cost and pricing structures. It was further argued that the majority shareholder (the National Property Fund) acted merely as a trustee and had no influence over the commercial management of the companies.

The Commission takes the view that in a market economy country it is up to the majority shareholder to decide in which legal form it organizes its business interests in the exporting country. Its control, or potential control, over such interests is normally the same if they are part of one legal entity or if they are organized in different legal entities. More specifically, to establish different dumping margins for related companies entails the risk that exports may be channelled through the company with the lowest dumping margin. For this reason it was concluded that different producers in the exporting country must nevertheless be treated as one single entity for the purposes of this proceeding, where control of all those companies lies in the hands of the same shareholder.

- (18) On the basis of the Commission's provisional findings, described in recitals (14)-(23) of the provisional Regulation, and taking into account the adjustment described at recital (15) above, the definitive dumping margins expressed as a percentage of the CIF free Community frontier value of imports established for the two cooperating companies are:

— Nová Hut a.s.	5,1 %,
— Vítkovice a.s.	5,1 %.

The calculation of the residual dumping margin was revised. Instead of taking the highest normal values found for the two Czech producers, weighted average normal values have been used in the final determination. On this basis, the residual dumping margin expressed as a percentage of the CIF free Community frontier value of imports established for the two cooperating companies is now 28,6 %.

2. Romania

(a) *Normal value*

- (19) One company claimed that cost provisions included in the SG&A costs of the company should be removed in view of the fact that unused provisions were cancelled at the end of the year. Where provisions were indeed cancelled and no other cost had then replaced such provisions, and insofar as it could be clearly seen from information contained in the response to the questionnaire or provided during the on-spot verification that provisions did not represent a real cost, the calculation of SG&A costs was adjusted.

One company made a claim that cost of production should be adjusted to reflect the absence of selling costs, principally for packing, incurred for sales made on the domestic market. It was argued that with regard to such selling costs, included in the calculation of normal value by the Commission, the company had in fact been reimbursed by its customers. The Commission accepted this and an appropriate revision has therefore been made to the cost of production calculation for this company.

One company claimed that when the Commission establishes normal value, it should use all sales including those not made in the ordinary course of trade, i.e. sales made at a loss. The Commission, in view of Article 2 (4) of the basic Regulation, considered that sales made at a loss have to be excluded from the establishment of normal value where such sales constitute more than 20 % of all domestic sales. The claim by this company could therefore not be accepted, given the terms of the basic Regulation and the institutions' consistent practice in the establishment of normal value.

Two companies argued that in order to respect the Europe Agreement, the Commission should in establishing normal values always choose the method most favourable to the companies, citing Article 34 (2) of the Agreement. This argument was rejected, on the grounds that Article 34 (2) of the Agreement refers only to the choice of measures to

be imposed by the Commission once dumping, injury, causality and Community interest have been established, and not to the actual calculation methodologies used in the determination.

One company claimed only at a very late stage in the proceeding (at the hearing for comments on provisional disclosure) that sales from stock should be excluded from the calculation of normal value as not possessing quality certificates and therefore not constituting the like product, and that all sales made using compensation as means of payment should likewise be excluded as not being in the ordinary course of trade. These claims were not made in an opportune manner, having been made neither in the response to the questionnaire, nor on-the-spot, nor at any subsequent stage of the proceeding when the company was invited to make comments. In no document submitted by the company was the Commission able to differentiate between sales made from stock or otherwise, or between sales made with or without quality certificates. In addition, during the course of the investigation, it was found that sales made using compensation were indeed made in the ordinary course of trade. Consequently, both claims were rejected.

No further comments were received. Taking into account the changes referred to above, the findings with regard to normal value as disclosed in the provisional Regulation are confirmed.

(b) *Export price*

- (20) No changes were made to the methodology used to calculate export prices. The findings with regard to export prices as disclosed in the provisional Regulation are therefore confirmed.

(c) *Comparison*

- (21) For the provisional findings, the Commission rejected a request by two Romanian companies for an adjustment to the normal value for credit terms. The two companies reiterated their request. However, it was established during the investigation that, in the vast majority of cases in Romania, no actual cash changed hands in the settlement of transactions. In fact, payment was usually effected by 'compensation', consisting either of barter trade or the exchange of trade bills. Article 2 (10) (g) of the basic Regulation specifies that an adjustment shall be made for credit, provided that it is a factor taken into account in the determination of the prices charged. The investigation showed that such costs were not a factor taken into account in the determination of prices charged. In fact, where

compensation was the means of payment, no money changed hands and there was therefore no impact on the financial situation of the companies. In addition, the investigation showed that for all means of payment, dates of settlement were normally not respected. The claims for a credit adjustment were therefore rejected again.

One company claimed that for export sales made to certain customers in the Community, no commission had been paid and that no adjustment to the export prices charged to those customers should be made. The Commission revised its calculations accordingly.

One company claimed an adjustment to normal value for differences in level of trade. As such a claim was not made at any point in the investigation prior to the company's comments on the provisional findings of the Commission, it could not be considered valid. It was, furthermore, not substantiated by any evidence and was in contradiction with information the company had reported in its reply to the questionnaire and provided during the on-the-spot verification.

No further comments were received with respect to comparison. The provisional findings are therefore confirmed.

(d) *Dumping margin*

- (22) One company claimed that the calculation of the dumping margin should not be made on the basis of a comparison of weighted average normal values with the adjusted export price of each corresponding group on a transaction-by-transaction basis, but on a weighted average to weighted average basis.

This claim was rejected after the methodology used for all Romanian companies was reconsidered and it was found that:

- for one company, there was no difference in dumping margin between both methods as all export transactions were made at dumped prices;
- for three companies, a pattern of export prices which differed significantly by destination or time period was found.

In view of the above, and in accordance with Article 2 (11) of the basic Regulation, the method comparing the weighted average normal value by time period to individual adjusted export prices on a transaction-by-transaction basis was retained for the purposes of the definitive determination.

All cooperating Romanian producers/exporters contested the fact that the Commission had — on the grounds of a common majority shareholding — imposed a single dumping margin, and they accordingly claimed individual treatment. For the reasons set out in recital (17), this request could not be accepted.

Two companies argued that the Commission should have disclosed to them all elements of the dumping calculations for all companies, since these had been used to establish the global dumping margin; by failing to do so, the Commission would have infringed their rights of defence. The Commission has, in accordance with Article 20 (1) of the basic Regulation, explained in detail to each company the essential facts and considerations on which it calculated that company's individual dumping margin and furthermore explained the methodology used to establish the single dumping margin. As all companies have the same majority shareholder, they can easily exchange all information via that common shareholder and thus fully exercise their rights of defence.

No further comments were received. The findings as disclosed in the provisional Regulation are therefore confirmed.

- (23) The weighted average dumping margins definitively established for the four cooperating producers expressed as a percentage of the CIF free Community frontier value of imports are:

— SC Artrom SA:	9,8 %
— SC Petrotub SA:	9,8 %
— SC Republica SA Trade Company:	9,8 %
— SC Silcotub SA:	9,8 %.

The residual dumping margin expressed as a percentage of the CIF free Community frontier value of imports remains unchanged at 38,2 %.

3. **Slovak Republic**

(a) *Normal value*

- (24) The Slovak producer questioned the methodology employed by the Commission to determine normal value for two product groups (see recital (31) of the provisional Regulation); in particular, it claimed that the Commission was wrong to have calculated normal value on the basis of the average of profitable sales only, and that it should have taken the average of all sales in the groups instead. The reason it gave was that the groups were profitable overall and therefore all costs were recovered over the investigation period on a weighted average

basis. In addition, it was argued, citing Article 34 (2) of the Europe Agreement, that the Commission should have used its discretion to adopt a method which 'least disturb[s] the functioning of [that] Agreement'.

Both these arguments were rejected for the same reasons given at recital (19) above.

No further comments with respect to normal value were received and the Commission's findings as disclosed in the provisional Regulation are therefore confirmed.

(b) *Export price*

- (25) The company objected to the Commission's construction of the export price (see recital (32) of the provisional Regulation), and in particular to its decision to deduct a 4 % profit margin from the prices charged by its Italian subsidiary. It argued that this margin was excessive and that the Commission should have used the Italian company's own figures. It also claimed that the Commission had misinterpreted the SG&A figures submitted by the company, and that the effect of this had been to increase its SG&A rate and consequently the dumping margin. It also suggested that a more correct approach would have been to consolidate both companies' SG&A expenses and apply a single rate.

The Commission based the margin of 4 % on the average of the profit margins achieved by the four unrelated importers listed at recital (6) (c) of the provisional Regulation. However, it has reviewed the figures and concluded that, for the purposes of the definitive determination, an adjusted figure of 3,8 % should be applied. Although it was objected that two of the four importers were in fact related to Community producers, the Commission satisfied itself that the profit margins found for these companies reflected the profit on their sales to independent customers in the Community. With regard to the SG&A rate, the Commission reviewed the figures and concluded not only that the expenses had indeed been overstated, but also that it would have been more appropriate to consolidate the Swiss and Italian trading companies' figures, given that they had a similar relationship with the Slovak exporter and operated mostly out of the same premises. A global SG&A rate has accordingly been applied.

(c) *Comparison*

- (26) The company had claimed a 'distribution channel allowance' which the Commission, it said, had

failed to take account of in its provisional determination. It argued that such an allowance was justified in order to reflect the fact that the company sold directly to stockists on its domestic market whereas it sold through its related Italian and Swiss companies on the Community market; it also argued that the allowance was necessary to ensure a fair comparison with the constructed export sales price.

This claim is covered under the discounts and quantities allowance already granted to the company. Article 2 (10) of the basic Regulation explicitly states that 'any duplication when making adjustments shall be avoided, in particular in relation to discounts, rebates, quantities and level of trade'. Since the normal value has already been adjusted downwards to reflect the fact that sales in the Community were mainly to large customers, there is no justification for granting a further allowance.

No further comments were received, and the Commission's findings are therefore confirmed.

(d) *Dumping margin*

- (27) The company objected to the Commission's decision to establish the dumping margin on the basis of a comparison of weighted average adjusted normal values with adjusted individual export prices (rather than weighted average export prices), arguing that the Commission had failed to provide sufficient justification for its approach at recital (34) of the provisional Regulation.

Whilst the Commission stands by its reasoning set out in the said recital (34), the modifications it has since made to the figures used to calculate the dumping margin have resulted in the difference between the two methods no longer being of such a magnitude as to justify its original approach. It has therefore decided, for the purposes of the definitive determination, to revert to the method of comparing the weighted average normal value with the weighted average export price. The provisional findings have been amended accordingly.

- (28) On the basis of the Commission's previous findings, described in recitals (31)-(35) of the provisional Regulation, and taking into account the changes referred to above, the dumping margin expressed as a percentage of the CIF free Community frontier value of imports established for the cooperating producer is:

— Železiarne Podbrezová a.s.: 7,5 %.

The residual dumping margin is set at the same level.

4. Russia

(a) *Cooperation*

- (29) Five of the six Russian companies wrote to the Commission to object to its decision to treat them as non-cooperating. The reasons for the Commission's decision are set out in recital (36) of the provisional Regulation. The companies argued that, despite any deficiencies the replies may have contained, they themselves had been willing to cooperate with the investigation and had been ready to supply any additional information the Commission might have required. Certain companies requested individual treatment, or offered to subscribe to an individual undertaking, or asked for their comparative advantages to be taken into consideration.

The Commission, however, remains of the view that, by failing to provide information which was accurate, complete, and in the form requested, the Russian companies have forfeited their right to be considered as cooperating parties in the investigation. Although it is not disputed that some replies were more detailed than others, they were all deficient in one, overriding respect: they did not allow the Commission to arrive at an accurate determination either of normal value or of the export price because of the way in which individual products and transactions had been grouped together. Some companies submitted further information subsequent to the Commission informing them of its decision to apply Article 18 of the basic Regulation, and some continued to submit new or revamped information even after the publication of the provisional Regulation. The fact remains, though, that the information in the Commission's possession at the time of the deadline for submitting replies was deemed insufficient in respect of all six companies. It would be discriminatory to other interested parties cooperating with the investigation if information were taken into account which was submitted days, weeks and sometimes months after the deadline for submitting it has passed.

The Commission's findings are therefore confirmed.

(b) *Dumping margin*

- (30) The Commission recalculated the Russian dumping margin using the same normal values as were used in revising the Czech residual margin (see recital (18)). On this basis a dumping margin

expressed as a percentage of the CIF free Community frontier value of imports of 26,8 % was established.

REVIEW INVESTIGATION

1. General

- (31) The producers/exporters in Poland and Hungary failed to provide detailed information on individual products as requested by the Commission in the product description table included in all questionnaires sent, but presented it split into product groups, covering a range of products, classified together by reference to certain criteria, e.g. wall thicknesses. In some cases, therefore, the groups contained products classified under different CN codes. For this reason, and because of the impossibility of collecting more detailed information on-the-spot, the Commission could only base its calculations on product groups, rather than on individual products.

2. Hungary

(a) *Normal value*

- (32) During the investigation period, the sole Hungarian producer/exporter sold four product groups in the European Community. Groups 1, 2 and 3 fell entirely under CN code 7304 39 91, whereas group 4 included a mix of models partly falling under CN code 7304 39 91, and partly under CN code 7304 39 93. The technical information provided and verified was not detailed enough to enable the Commission to split product group 4 into the two CN codes. Taking into account that Eurostat statistics showed considerable imported quantities falling under CN code 7304 39 93 for the investigation period, and that only one Hungarian producer/exporter had sold the product concerned to the Community during the same period, the Commission considered product group 4 as falling entirely under CN code 7304 39 93.

It was found on the spot that the detailed export figures provided by the company were unreliable as one Community customer, accounting for 7 % of the reported sales to the Community of the product concerned, had been omitted and the computer file of export transactions was also found to be incorrect in other respects, a deficiency the company could not correct. The 5 % global representativity test was then performed by comparing the quantities sold domestically with Eurostat import statis-

tics from Hungary, which the Commission selected as an independent source of information, in accordance with Article 18 (5) of the basic Regulation. On this basis it was determined that in all cases the domestic sales could be considered representative for the establishment of normal value, both globally and at product group level, in accordance with Article 2 (2) of the basic Regulation.

For each of the four groups mentioned above, it was then determined whether domestic sales could be considered to have been made in the ordinary course of trade. For groups 2 and 3, profitable sales constituted less than 10 % of the domestic sales of these product groups. Therefore, for these groups, normal value had to be constructed in accordance with Article 2 (3) of the basic Regulation. This was done on the basis of the cost of manufacture plus an amount for SG&A costs and profit. For this purpose, the producer/exporter's actual data pertaining to production and sales in the ordinary course of trade were taken into account. As far as product groups 1 and 4 were concerned, between 10 % and 80 % of domestic sales were profitable. Accordingly, for these two groups, normal values were established on the basis of profitable sales only, in accordance with Article 2 (4) of the basic Regulation. As the four product groups defined by the company corresponded to CN codes 7304 39 91 and 7304 39 93, the Commission decided to determine one normal value per CN code. Since the export transaction listing was found to be unreliable and could not be used as a basis to weight the first three product groups, it was impossible to determine the weighted average of the normal values found for the three groups. Therefore, the arithmetical average of the normal values calculated for the three corresponding product groups was taken into account in order to establish normal value for CN code 7304 39 91. As explained above, the Commission considered CN code 7304 39 93 as corresponding to product group 4. Accordingly, the normal value for CN code 7304 39 93 was that determined for product group 4.

(b) *Export price*

- (33) As explained in the preceding recital, in the course of the verification visit at the premises of the sole Hungarian exporter concerned, it became apparent that the data submitted in the questionnaire reply concerning exports showed significant divergences from the company's internal records.

Further to the verification visit, the company was informed in writing that, due to the substantial anomalies found on the spot and the impossibility of properly establishing the real export figures, it

was impossible to use the information submitted for the determination of the export price to the Community and that findings concerning the export price would have to be based on the facts available in accordance with Article 18 of the basic Regulation. The company was, at the same time, given an opportunity to submit comments. At that point, a completely new file was submitted, which was allegedly the correct version of the export transaction listing. This file was rejected by the Commission, as the new information could not be verified.

In order to establish Hungarian export prices, the Commission selected as an independent source of information the official import statistics published by Eurostat, in accordance with Article 18 (5) of the basic Regulation. However, only the quantities reported therein for the two CN codes which were exported by this producer to the European Community were taken into account.

(c) *Comparison*

- (34) For the purpose of a fair comparison between the normal value and the export price at ex-works level, due allowance in the form of adjustments was made for differences which were claimed and demonstrated to affect price comparability. The adjustments were made, in accordance with Article 2 (10) of the basic Regulation, in respect of transport, insurance, handling and ancillary costs and credit costs.

As far as requests for adjustments for

- Import charges and indirect taxes,
- Discounts, rebates and quantities,
- Level of trade,
- Currency conversion

are concerned, the following should be noted:

Import charges and indirect taxes

The company claimed an allowance of 8 % for extra customs duties paid on raw materials imported, in accordance with Article 2 (10) (b) of the basic Regulation. However, in the course of the on-the-spot verification, the Commission officials found that no duties were refunded for the exported products. Therefore, the claim was considered to be unfounded.

Discounts, rebates and quantities

The company requested an adjustment of 4 % for differences in volumes bought by domestic and Community customers in accordance with Article 2

(10) (c) of the basic Regulation, claiming that lower prices were paid for larger orders. Since no evidence was produced in support of this claim, it was rejected.

Level of trade

The company claimed an allowance of 12 % for differences in distribution channels between the Community and the domestic markets in accordance with Article 2 (10) (d) of the basic Regulation. It was alleged that all Community customers were independent traders, whereas 49 % of domestic customers were end-users. This figure, reported in the table describing the distribution channels in the domestic sales section of the questionnaire, was not consistent with the data contained in the domestic customer list, where all domestic customers were listed as 'independent traders', a situation equivalent to that prevailing on the Community market. The exporter claimed that this inconsistency was due to a 'language error'. Whether or not this was indeed a 'language error' is irrelevant since, in addition to this inconsistency in the company's reply, the Commission officials also found that the domestic prices applied by the company were subject to the same pricing policy/price list, regardless of the type of customer. This claim could, therefore, not be taken into account.

Currency conversion

As far as the conversion of export price is concerned, the exporter argued that monthly exchange rates should have been used, rather than a yearly rate. However, it should be recalled that the determination of export price was based on Eurostat data since the transaction-by-transaction listing submitted by the exporter could not be used. Since Eurostat data do not focus on the date of sale, but on the date of the importer's customs declaration, the use of monthly data would not have more appropriately reflected the terms of sale. The claim made by the exporter could not, therefore, be accepted.

(d) *Dumping margin*

- (35) The comparison, on a CN code basis, of weighted average normal values and weighted average export prices, revealed the existence of dumping, the dumping margin corresponding to the amount by which the normal value exceeded the export price.

Expressed as a percentage of the CIF free at Community frontier value of imports, the dumping margin for the sole Hungarian producer/exporter is:

— Csepel Tubes Co. Ltd: 36,5 %.

Since the sole known producer accounted for almost all Hungarian exports of the product concerned to the Community, the residual dumping margin was set at the same level.

3. Poland

(a) *Cooperation*

- (36) Replies to the Commission's questionnaire were received from six companies, three of which (submitted by two producer/exporters and one related trading company) were judged to be insufficient. It was therefore concluded that these three companies had failed to provide, within the time limits set, the information deemed necessary to the investigation and the companies were informed of the Commission's intention to apply Article 18 (1) of the basic Regulation and to base its findings on the facts available.

The three other companies, whose replies were considered sufficient (two producers/exporters and one trading company related to a producer/exporter), were subsequently verified on the spot. Of the two producers/exporters, one refused, however, to provide the Commission officials with copies of basic documents such as the domestic sales, customer and price listings, original domestic sales invoices, and the list of export customers corresponding to the codes in their export sales listing. The verification also showed that the company had failed to report in its reply its sales to the Community during the investigation period effected via a related company. In view of these deficiencies and the impossibility of verifying essential parts of the information provided by the company, the Commission was unable to use the information submitted for the determination of the normal value and the export price to the Community. Accordingly, the company was subsequently informed that, as a result of its non-cooperation, the Commission would base its findings on the facts available in accordance with Article 18 of the basic Regulation.

(b) *Normal value*

Cooperating parties

- (37) As mentioned in recital (36), only one Polish producer/exporter and one Polish trading company could be considered as cooperating parties in the present review investigation. As no individual dumping calculation is meaningful in the case of a trading company, one normal value for the single cooperating producer/exporter was established.

During the investigation period, the single cooperating producer/exporter sold six product groups on both the domestic market and in the Community. The global representativity test showed that, during the same period, the total quantity of the product concerned sold domestically was more than twice as great as the quantity exported to the Community. The 5 % test was then performed on a product group basis, from which it resulted that all six product groups were sold in sufficient quantities on the domestic market, and could thus be considered representative for the determination of normal value, in accordance with Article 2 (2) of the basic Regulation.

The profitability test showed that of six product groups, the domestic prices paid in the ordinary course of trade could be used as a basis for normal value for five of them, in accordance with Article 2 (4) of the basic Regulation. The remaining product group had insufficient profitable sales and normal value was constructed on the basis of the cost of manufacture plus an amount for SG&A costs and profit, in accordance with Article 2 (3) of the basic Regulation. For this purpose, the producer/exporter's actual data pertaining to production and sales of the like product on the domestic market and in the ordinary course of trade, were taken into account.

Non-cooperating parties

For the four non-cooperating parties, in accordance with Article 18 (6) of the basic Regulation, normal value was determined on the basis of the cooperating producer's product group which corresponded to the highest normal value, since any other choice would have rewarded non-cooperation. However, this was mitigated by the fact that all products sold by the cooperating producer on its domestic market belong to the larger diameter product groups covered by this investigation, which are relatively cheaper than the smaller diameter product groups, exported exclusively by the non-cooperating parties.

(c) *Export price*

Cooperating parties

- (38) During the investigation period, the cooperating producer sold the product concerned in the Community both directly and via a related Polish intermediary. The export price was determined by taking into account the direct transactions as well

as the transactions concluded via one of the related trading companies. For transactions effected via the trading company, the export price was established by reference to the prices actually paid or payable to it. As the related trader's functions can be considered similar to those of a trader acting on a commission basis, a commission was estimated on the basis of the trading company's mark-up verified at its premises. This mark-up was deducted from the prices charged by the related company to independent customers in the Community.

Non-cooperating parties

In accordance with Article 18 (5) of the basic Regulation, the Commission selected as an independent source of information the Eurostat import statistics for the CN codes concerned for the three non-cooperating producer/exporters. The export price was then established on this basis, after deducting from the total imports the quantity and value of goods sold by the cooperating producer in the Community both directly and via the cooperating related trading company.

(d) *Comparison*

- (39) For the purpose of a fair comparison between the normal value and the export price at an ex-works level, due allowance in the form of adjustments was made for differences which were claimed and demonstrated to affect price comparability. The adjustments were made, in accordance with Article 2 (10) of the basic Regulation, in respect of physical characteristics, transport, insurance, handling and ancillary costs, commissions and credit costs.

(e) *Dumping margin*

- (40) The dumping margin for the cooperating producer was established, on a product group basis, by comparing the weighted average normal value with the weighted average export price, in accordance with Article 2 (11) of the basic Regulation. Expressed as a percentage of the total CIF Community frontier value of imports, the dumping margin for the sole cooperating producer is:

— Huta Batory SA: 7,1 %.

For non-cooperating parties a residual dumping margin was calculated by comparing the normal value as established in the last paragraph of recital (37) with the export price as determined in the last paragraph of recital (38). The residual margin, expressed as a percentage of the CIF Community frontier value of imports is 33,2 %.

4. Republic of Croatia

- (41) In view of the findings on injury with regard to the Republic of Croatia (see recitals (51) and (69)), it was not considered necessary to pursue the investigation into dumping.

D. COMMUNITY INDUSTRY

- (42) The same Community producers cooperated in the two investigations (see recital (8)). These companies represented more than 90 % of the total Community production of the product subject to the investigation, and constituted, therefore, a major proportion of the total production of the product concerned in the Community.
- (43) A number of exporters alleged that their products were purchased and imported by certain complainant Community producers. They claimed that these producers should be excluded from the determination of the Community industry for the purpose of the injury assessment pursuant to Article 4 (1) (a) of the basic Regulation.

No substantiating evidence to support this assertion was provided. In addition, the investigation carried out by the Commission has shown that none of the Community producers imported the products concerned and that certain importers, related to such Community producers, imported small quantities of the products concerned during the investigation period. These imports were resold in the Community market exclusively by these related importers, which were found to have acted independently and even to have operated in competition with the sale departments of their related producers. In any event, the examination of the facts revealed that the volume of these imports accounted for less than 3 % of the total sales volume of these products on the Community market for each of the Community producers.

It is, therefore, considered that such a low level of imports could not have led to any injury to the Community producers and consequently there are no grounds for excluding these producers.

Consequently the producers mentioned in recital (8) will be referred to hereinafter as the 'Community industry' within the meaning of Article 4 (1) of the basic Regulation.

E. INJURY

1. Preliminary remark

- (44) It should be mentioned that the anti-dumping measures presently in force in respect of Hungary, Poland and the Republic of Croatia are under-

takings, combining quantitative ceilings and certain pricing commitments, with residual *ad valorem* duties.

Further, it should be noted that imports of all seamless pipes and tubes (including therefore the product concerned), originating in the Czech Republic and the Slovak Republic were, between 1993 and 1995, subject to a tariff quota system, i.e. duty free within the limits of a quantitative ceiling; as soon as the ceiling was reached, a duty of 30 % was levied. This system lapsed at the end of 1995.

- (45) It should also be recalled that the present Regulation combines the result of two investigations, one of which has led to the publication of a provisional Regulation. All findings regarding injury, causation and Community interest should be read in conjunction with the findings described in the provisional Regulation.

2. Consumption

- (46) In recital (48) of the provisional Regulation, it was stated that Community consumption in tonnes per month amounted to 89 900 tonnes in 1992, 69 700 in 1993, 84 070 in 1994, 92 730 in 1995 and 92 130 during the investigation period. These findings were not contested and are confirmed.

3. Dumped imports

(a) Cumulation

- (47) In the provisional Regulation, the Commission concluded that the dumped imports from Russia, the Czech Republic, Romania and the Slovak Republic should be assessed cumulatively for the purpose of injury analysis, on the grounds that the products concerned were imported from each exporting country in substantial quantities, held a significant market share and competed with each other and with those manufactured by the Community industry.
- (48) Some exporters claimed that due to differences in volume and rates of growth of imports, as well as in conditions of competition, the impact of these exports to the Community should be examined on an individual basis.
- (49) In this respect, the Commission recalls that the criteria set out in Article 3 (4) of the basic Regulation were found to be met in order to cumulate the imports from all four countries concerned, namely:

- the margin of dumping established and relating to each country was more than *de minimis* (i.e. between 5,1 % and 38,2 %);
- the volume of imports from each country was not negligible; none of the exporting countries held a *de minimis* market share, namely below 1 %, since their market shares ranged from 3 % to 8,3 %;

- with regard to the conditions of competition both between imported products and products sold by the Community industry, the imported products were found to be interchangeable, to be following similar price trends, to have similar channels of distribution and similar low-price policy resulting in a high level of price undercutting (i.e. between 17,5 % and 43,2 %), to be simultaneously present in the same geographical areas and to compete therefore with each other and with those manufactured by the Community industry.

The fact that imports of the product concerned originating in the Czech Republic and the Slovak Republic were subject to a tariff-quota system applying until 31 December 1995 does not alter the conclusion that these imports fulfil the criteria laid down in Article 3 (4) of the basic Regulation. It should be noted, in any case, that, after the expiry of this system, the market shares of the imports concerned increased from 6,7 % in 1995 to 9,6 % during the first eight months of 1996 for Czech imports and from 2,1 % to 3,4 % over the same period for Slovak imports.

For all the above reasons, it is concluded that the conclusions reached in recital (49) of the provisional Regulation should be maintained.

- (50) Taking into account the two simultaneous investigations, it was also examined whether effects of imports from Hungary, Poland and Croatia should be assessed cumulatively with those of the new investigation.
- (51) With regard to imports from Croatia, it was established that its share held in the Community market declined from 1,8 % in 1992 to 0,7 % in the investigation period. Given the low and sharply decreasing level of these imports, a situation contrary to the one found for the other imports, it was not considered appropriate that these imports should be analysed cumulatively. In the light of the fact that imports from Croatia are subject to anti-dumping measures, this conclusion is reached also taking into account the findings in recital (70) below on the absence of likelihood of recurrence of injury.
- (52) With respect to imports from Hungary and Poland, it was found that, as with the imports of the new investigation, quantities imported and dumping margins were significant.

It has been claimed that imports originating in Hungary are negligible and should therefore be disregarded for cumulation purposes in accordance with Article 3 (4) of the basic Regulation. However,

the investigation did not show that these imports were actually negligible.

In addition, for both investigations, the conditions of competition found between the imported products and between the imported products and the Community products were similar, in particular, because all the products were considered as like products and were sold at prices substantially undercutting those of the Community industry (i.e. from 17 % to 21,3 % for Poland, 25,4 % for Hungary). The fact that these imports were subject to quantitative undertakings during the period considered has no bearing on the conclusion that they can be cumulated with the other imports under investigation for injury examination purposes. Indeed, even if there were limitations to the quantities exported to the Community and a certain increase in their price level as compared with the prices of the exporters in the countries subject to the new investigation, imports originating in Hungary and Poland have, nevertheless, continued to be made at dumped prices undercutting quite significantly those of Community producers.

- (53) The above considerations on cumulation led, therefore, to the conclusion that a cumulative assessment of the effect of the dumped imports from the countries subject to both investigations, with the exception of Croatia, was warranted (hereinafter the 'exporting countries').

(b) Cumulated volume and market share of dumped imports

- (54) The provisional findings according to which, on a cumulated basis, imports decreased from 201 920 tonnes in 1992 to 96 080 tonnes in 1993, and then increased to 195 220 tonnes in 1994, 230 810 tonnes in 1995 and 268 670 tonnes in the investigation period were not contested and are therefore confirmed.

The same applies to the corresponding market shares amounting to 18,7 % in 1992, 11,5 % in 1993, 19,4 % in 1994, 20,7 % in 1995 and 24,3 % in the investigation period.

(c) Prices of dumped imports

- (55) For the determination of price undercutting regarding the exporting countries, the data analysed referred to the investigation period. For this purpose, comparison was made between weighted average selling prices of the exporting countries concerned and weighted average sales prices of Community producers for the seamless steel tubes concerned. Price comparison was made on the basis of sales to the first independent customer in the Community. In order to ensure comparability, the prices of Community producers and those of the imported products were, where appropriate,

adjusted in terms of transparent cost to ex-works or CIF Community frontier level. In addition, the import prices were adjusted by an importer's margin, including customs clearance, handling charges, commission, financing cost and profit based on information available.

The results of the comparison showed margins of undercutting for all countries and exporters concerned. The weighted average price undercutting margins expressed as a percentage of Community producers' prices were as follows:

— Czech Republic:	from 21,2 % to 43,2 %
— Hungary:	25,7 %
— Poland:	from 17 % to 21,3 %
— Romania:	25,8 %
— Russia:	41,5 %
— Slovak Republic:	17,5 %.

4. Situation of the Community industry

- (56) For ease of reference, the results already presented in the provisional Regulation on the situation of the Community industry are once again shown below and confirmed for the purpose of the definitive determination since they were not disputed by the parties.

(a) Capacity, production and utilization rate

- (57) Between 1992 and the investigation period, eleven production plants and facilities ceased production, representing a reduction of about one fourth of the total production capacity of seamless steel tubes existing in the Community at the beginning of the period.

Production of the Community industry fell from 1 136 640 tonnes in 1992 to 996 036 tonnes in 1995 and to 938 184 tonnes during the investigation period. In line with the substantial reduction of capacity, the corresponding rates of capacity utilization rose from 63,5 % to 75,9 %, and fell back to 71,3 % over the same period.

(b) Sales volume and market share

- (58) Sales of Community producers declined from 781 770 tonnes in 1992 to 775 721 tonnes in 1995 and to 722 042 tonnes during the investigation period.

The market share held by the Community industry decreased from 75,2 % in 1992 to 72,1 % in 1995, and dropped by a further 4,8 % to 67,3 % during the investigation period.

(c) Sales prices

- (59) On average, unit prices of the product concerned sold by the Community producers on the Community market, expressed in ecu per tonne, were 576 in 1992, 578 in 1995 and 593 during the investigation period, corresponding to an overall increase of 3 %.

(d) Profitability

- (60) The Community industry incurred financial losses on its sales of the like product during the period under consideration. Between 1992 and 1994, these losses averaged 8 %. There followed an improvement in return on sales in 1995 (-2,1 %), and in the investigation period without reaching breakeven. Profitability percentage levels were as follows:

1992	1993	1994	1995	Investigation period
- 7,0	- 12,2	- 7,9	- 2,2	- 0,7

This reduction in losses was to a considerable extent possible because of the anti-dumping measures in force in this sector. In the absence of these measures, there would have been even less, if any, reduction in financial losses. Furthermore, the slight recovery took place during a period when substantial restructuring efforts were made, leading, *inter alia*, to the abovementioned closure of plants. These developments were, however, not sufficient to generate the level of earnings that would be required by the Community industry to cover its increasing production costs and the high investment in restructuring, make a reasonable profit, recover from previous years' losses and ensure its long term viability.

(e) Employment

- (61) Employment in the Community industry declined continuously by around 35 % between 1992 and the end of the investigation period, amounting in absolute terms to a loss of about 2 800 jobs.

5. Final conclusion on injury

- (62) The examination of the economic performance of the Community industry during the period under consideration showed that, between 1992 and August 1996, there was a decline in production, sales volume and market share as well as a reduction in employment, despite considerable restructuring efforts intended to reduce costs of production.

These restructuring efforts and the measures in place enabled the Community industry to increase capacity utilization and improve its financial results, which, however, remained negative during

the investigation period (-0,7 %), i.e. under the break-even point, and were insufficient to enable the Community industry to ensure its long term viability.

It is therefore concluded that during the period under consideration, the Community industry has suffered material injury within the meaning of Article 3 of the basic Regulation, in the form of decreased sales and loss of market share, reduced employment and financial losses.

F. CAUSATION

1. Effect of dumped imports

(a) *Cumulated effect of imports from the Czech Republic, Hungary, Poland, Romania, Russia and the Slovak Republic*

- (63) While consumption in the Community remained relatively stable, imports from the Czech Republic, Hungary, Poland, Romania, Russia and the Slovak Republic increased their total market share by around 5,6 percentage points, from 18,7 % in 1992 to 24,3 % in the investigation period. By contrast, the Community industry lost market share by about 7,9 percentage points from 75,2 % to 67,3 % over the same period. Bearing in mind that significant price undercutting was found for each exporting country, and considering that the increase of market share held by the dumped imports concerned coincided with the deterioration in the Community industry's situation, it is concluded that, taken together, imports from the six countries concerned had a negative impact on the situation of the Community industry.

(b) *Effects of imports originating in Croatia*

Considered in isolation, the imports originating in Croatia cannot be considered as having significantly caused material injury to the Community industry due to their declining volume and market share.

2. Effect of other factors

(a) *Other imports*

- (64) Certain exporters claimed that imports from other countries, for example Argentina, had been made in quantities and at prices that were injurious to the Community industry. The examination revealed that imports from other third countries, not covered by the two investigations, increased their market share from 4,3 % in 1992 to 6,5 % in 1995 and to 7,7 % during the investigation period. Although they were increasing in volume, the prices of these imports were found, on the basis of

the statistical data available, to be distinctly higher than those of the dumped imports, and there was no indication that imports from third countries not subject to the two investigations had been dumped. It is, therefore, concluded that the other imports in question had little, if any, impact on the situation of the Community industry.

(b) *General economic situation*

- (65) As stated in the provisional Regulation, Community consumption declined in 1993 due to the world economic recession, which affected in particular the users of the product concerned (car industry, construction, etc.). In that year, the volume of imports, and the corresponding market share held by the exporting countries concerned, also reached a low level, and the Community industry experienced its poorest results in terms of sales on the Community market, prices and profitability.

On this basis, it is evident that the deterioration of the market in 1993 had a negative effect on the situation of the Community industry.

However, save in the exceptional situation of 1993, consumption remained generally stable during the other years of the period considered (1992, and 1994 to the investigation period). This stability, however, was mainly to the benefit of the dumped imports from the countries concerned whose market share increased while the Community industry's market share declined continuously. The general economic situation cannot, therefore, be considered as a factor continuously responsible for the precarious situation still faced by the Community industry. Indeed, given the considerable efforts of rationalization and restructuring made by Community producers, and the trade defence measures in force during this period, the Community industry should clearly have recovered to a greater extent and obtained more satisfactory results in 1995 and 1996.

(c) *Restructuring of the Community industry*

- (66) It was alleged by certain exporters that the unsatisfactory performances of the Community industry in the period examined was due not to the effect of dumped imports but to the restructuring carried out by the industry at that time.

Without doubt, the restructuring process undergone by the Community industry in the face of excess capacities would have been responsible for some of the decrease in production, sales and employment. However, given the volume and market share of the dumped imports from the countries concerned and the margin of undercutting established, it is clear that the dumped imports in isolation played a significant role in the material injury suffered by the Community industry.

3. Conclusion

- (67) Although the world economic recession of 1993, as well as the restructuring of the Community industry, may have had some negative impact on the performance of the Community industry during the period considered, it must be concluded, on the basis of the above considerations, that the cumulative effect of the dumped imports from the Czech Republic, Hungary, Poland, Romania, Russia and the Slovak Republic, considered in isolation, has, through substantial price undercutting and significant quantities of dumped imports, caused material injury to the Community industry, and that the existing anti-dumping measures under review have not fully achieved their intended effect. Imports originating in Croatia, considered separately, cannot be considered to have caused material injury to the Community industry.

It is worthwhile noting that the injury caused by the dumping suffered by the Community industry could only become worse if the measures which apply to certain cumulated imports were to be repealed. Indeed, in Hungary and Poland high volumes of capacity are available for export to the Community, taking into account that internal consumption or exports to third countries could not absorb any additional output. Furthermore, it should be noted that capacity in Poland increased subsequent to the investigation period by around 15 %.

G. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF INJURY — CROATIA

- (68) The investigation with regard to Hungary, Poland and the Republic of Croatia was an interim review which was initiated in parallel with the new investigation in order to examine globally the situation with regard to all imports of seamless pipes and tubes into the Community. Actual injury, caused by dumped imports which were assessed cumulatively for the purpose of examining their effect, was established. There was therefore no need to further examine whether there is a likelihood of continuation or recurrence of material injury if the existing anti-dumping measures concerning imports originating in Hungary and Poland were removed or altered.

However, in the case of imports of Croatian origin, which were not cumulated with other imports under investigation, such an examination must be made.

- (69) Following the imposition of anti-dumping measures, imports from Croatia fell sharply from

19 201 tonnes in 1992 to 8 077 tonnes during the investigation period, representing a decline in market share from 1,8 % to 0,7 % as stated in recital 51.

During the period under consideration, exports of the Croatian producer to the Community remained far below the level of the quantitative undertaking accepted in 1993. Because of the war-like situation in Croatia in the last few years, production facilities of seamless tubes were partially damaged and the work force was considerably reduced. As a result, only one quarter, approximately 35 000 tonnes per year of the theoretical production capacity was operational. The output of the product concerned dropped from around 34 000 in 1992 to 10 515 tonnes during the investigation period, thus reducing capacity utilisation from 97 % to 37 %. Domestic sales declined from 8 000 tonnes to 2 100 tonnes over the same period, while exports to non-Community countries were negligible.

No sizeable increase of export volumes to the Community is expected, and any price undercutting should have a limited effect on price depression or prevention of price increases for Community producers. Moreover, growing reconstruction activities in former Yugoslavia should increase domestic sales and concentrate Croatian exports on the markets in this area.

Should the measures in force for Croatia be repealed, there appears to be no clearly foreseeable threat of increasing import volumes from Croatia. There is consequently no likelihood of recurrence of material injury.

Conclusion

- (70) With regard to Croatia, it is considered that recurrence of injury, should the existing anti-dumping measures be repealed, is unlikely and that, in the circumstances as established, these measures are therefore no longer necessary.

H. COMMUNITY INTEREST

1. Introduction

- (71) Considering that both the new anti-dumping investigation and the interim review referred to the same market, i.e. the Community market of the seamless pipes and tubes in question, the examination of the Community interest issue was made jointly for both investigations. The purpose of this analysis was to determine the possible impact of measures and the consequences of not taking measures for all parties involved in both proceedings.

- (72) It should be recalled in this respect that recitals (68) *et seq.* of the provisional Regulation contained an appreciation of all the various interests, including those of the Community industry, of the importers/traders and of the downstream user industries. On the basis of the information available at the time of the provisional Regulation, the Commission concluded that there was no compelling reason not to remedy the trade distorting effects of injurious dumping.

- (73) After publication of the provisional Regulation, none of the parties concerned made comments on the Commission's provisional conclusions on the Community interest issue.

However, although no user industry had cooperated in the course of the provisional examination, the Commission pursued its investigation in order to complete its analysis on the possible effect of measures on those industries. It approached in this respect the complainant, importers and a federation of different processing industries using, *inter alia*, the product concerned. On the basis of these sources, seven industrial users were identified and *ad hoc* questionnaires were sent to each of them. Meaningful comments or replies were received from only four user companies.

On the basis of the additional information obtained from these replies, and taking into account the absence of comment on the findings contained in the provisional Regulation, the following conclusion can be reached.

2. Impact on the Community industry

(a) *Likely effect of the imposition of anti-dumping measures*

- (74) Following the adoption of anti-dumping measures, the prices of the imported product can be expected to rise. This would be reflected in a fall in the volumes imported and a reduction in market supply, allowing the Community industry to increase output and sales.

The Community industry's prices would probably increase to some extent, but certainly not by anything like the level of the duty, given the over-capacity described above and the transparency of the market.

The increase of the Community industry's production volume would result in a higher utilization

rate of capacity and thus a reduction of unit costs of the product concerned which, as a result, would enable the Community industry to achieve a more satisfactory financial situation.

(b) *Likely effect of non-imposition of measures*

- (75) Although the situation of the Community industry has improved somewhat during the period under consideration, it remains unsatisfactory. In these circumstances, if anti-dumping measures are not adopted or maintained, the situation could be expected to deteriorate again in terms of depressed production levels and capacity utilization rates, loss of market share, financial losses and reduction in employment. This would further threaten its capacity to produce the whole range of products at competitive costs.

As noted in recital (73) of the provisional Regulation, the sector in question is dependent on a reasonable capacity utilization rate. This can be achieved only by a satisfactory level of production of standardized commercial, or oil, tubes which are in direct competition with the dumped products. A decrease in the production of these standard pipes would jeopardise the production of higher quality product categories and, therefore, the viability of the whole seamless tube sector.

3. Impact of measures on importers/traders

- (76) In recital (74) of the provisional Regulation, the Commission concluded that, because Community importers are known in general to handle all steel products and only a small percentage of their turnover consists of the seamless tubes in question, the measures can be expected to have no more than a minimal effect on their overall situation, given the wide diversity of the products they trade.

Having received no further comments in this respect, it is reasonable to conclude that anti-dumping measures will indeed have only a minimal effect, if any, on the situation of importers/traders of the product concerned.

4. Impact on downstream industrial users

- (77) As stated in recital (71) of the provisional Regulation, there are several downstream user industries of the product concerned, i.e. the machinery industry, transport of fluids (oil, gas, water, etc.), the chemical and petro-chemical industries, power stations (including nuclear), the automobile and construction industries.

From the analysis of the comments or replies received as mentioned above (recital (73)), it is concluded that the impact on the costs of downstream user industries of any price increases resulting from adoption or continuation of anti-dumping measures would be insignificant.

Furthermore, it should be noted that at least 85 % of the dumped imports from the countries subject to both the new anti-dumping investigation and the interim review are sold to large traders, who appear to have been taking advantage of the dumped prices to improve profit margins. Insofar as traders adjust margins to take account of some or all of the effects of the measures, they could not be reflected at all in their sales prices.

In the light of the above, it is concluded that any price effect resulting from anti-dumping measures will be negligible with respect to downstream industrial users.

5. Conclusion

- (78) On the basis of the above elements, it is concluded that there is no compelling reason not to remedy the trade-distorting effects of injurious dumping and that the respective adoption and continuation of protective measures are in the interest of the Community.

I. DEFINITIVE DUTY

1. Countries under the new investigation

- (79) It should be recalled from recital (78) *et seq.* of the provisional Regulation that, in order to prevent further injury being caused by the dumped imports concerned before the end of the proceeding, the Commission decided to adopt anti-dumping measures, in the form of provisional duties.

(a) Injury margins

- (80) For the purpose of determining what level of duty would be adequate to remove the injury to the Community industry caused by dumping, it was considered that a price level based on the Community producers' cost of production plus a reasonable profit margin should be calculated. A profit margin of 5 % was regarded as an appropriate minimum, taking into account the need for long term investment and the return which the

Community industry could reasonably expect in the absence of injurious dumping.

The injury elimination level was calculated by comparing the weighted average CIF import prices, duly adjusted for an independent importer's margin, to the non-injurious price of the Community producers, established as above at the same level of trade. The amounts resulting from this calculation were expressed as a percentage of the weighted average, free-at-Community-frontiers, value of the imported goods. The injury margins calculated on that basis are set out below.

— Czech Republic:	from 37,4 % to 97,9 %
— Romania:	48,3 %
— Russia:	87,8 %
— Slovak Republic:	31 %.

Having received no further comments in this respect, the above determination of the injury elimination level is confirmed.

(b) Definitive duty

- (81) As the injury elimination margins found above are higher than the dumping margins that have been calculated, definitive anti-dumping duties should be set at the level of the latter, in accordance with Article 9 (4) of the basic Regulation. These duties, expressed as a percentage of free-at-Community frontier prices, amount to:

— Czech Republic:	
Vítkovice a.s.:	5,1 %
Nová Hut a.s.:	5,1 %
Other imports:	28,6 %

— Romania:	
SC Artrom SA:	9,8 %
SC Silcotub SA:	9,8 %
SC Petrotub SA:	9,8 %
SC Republica SA Trade Company:	9,8 %
Other imports:	38,2 %

— Slovak Republic:	
Železiarne Podbrezová a.s.:	7,5 %
Other imports:	7,5 %

— Russia:	
All imports:	26,8 %.

2. Countries under the review investigation

(a) Hungary and Poland

- (82) As a result of the findings concerning Hungary and Poland, confirming that, despite the existing measures, dumping has caused injury, and considering that it is in the Community's interest that anti-dumping measures with regard to these two countries be maintained, a determination of a revised duty has been made.

The injury margins required to remove the injury caused by imports of Hungarian and Polish origin and calculated on the basis of the same methodology as that used for the countries under the new investigation, as explained above in recital (80), are:

— for Hungary:

(Csepel Tubes Co. Ltd., sole Hungarian producer)	45,9 %
--	--------

— for Poland:

Huta Batory SA:	37,2 %
Others:	30,1 %.

In accordance with Article 9 (4) of the basic Regulation, the rates of duty should be based on the lower of either the injury elimination margin or the dumping margin established. The dumping margins with regard to the Polish producer Huta Batory and the sole Hungarian producer being below the injury margin found, the duty should be based on this lower level. For the other Polish producers, the duty is limited to the injury margin established.

- (83) On this basis, the existing anti-dumping duties which amount to 10,8 % for Poland and 21,7 % for Hungary should be replaced by the following duties:

— Hungary:

Csepel Tubes Co. Ltd.:	36,5 %
Others:	36,5 %

— Poland:

Huta Batory SA:	7,1 %
Others:	30,1 %.

(b) Republic of Croatia

- (84) Based on the conclusions reached in recital (51) and taking into account that there is no clearly foreseeable threat of increasing import volumes from the Republic of Croatia (see recital (69)) and that, under these circumstances, the recurrence of material injury is not imminent, no determination

of a definitive duty has been made in respect of the Republic of Croatia.

J. DEFINITIVE MEASURES

- (85) The conclusions reached above as to dumping, injury, causation and Community interest call for definitive measures, both for the countries under the new investigation and for those under the review investigation, with the exception of Croatia, for which the anti-dumping proceeding should be terminated. These measures should be in the form of *ad valorem* duties, the rates of which have been fixed individually for cooperating companies. Non-cooperating companies, on the other hand, should be subject to the residual duties.

- (86) However, as regards Hungary, Poland, the Czech Republic, Romania and the Slovak Republic, it has been found appropriate, taking into account the specific history of previous anti-dumping proceedings concerning this product, in which those countries were subject either to quantitative restrictions or tariff quotas, to accept price undertakings which have been offered up to a certain quantity threshold on a company by company basis. In other words, the elimination of the injury is achieved by two means: first, a price undertaking up to an annual volume threshold exempt from the duty, and then an *ad valorem* duty for the remainder.

To ensure that the quantity of imports exempted from the *ad valorem* duty does not exceed the quantity in respect of which the undertaking has been offered, the exemption should be conditional on the presentation to Member States' customs services of a valid production certificate clearly identifying the producer, the product concerned and the details listed in the Annex. In cases of doubt, the Commission should make a determination as to the certificate's validity, and take measures as appropriate.

- (87) As regards Russia, the Commission has examined an offer of a joint undertaking from three of the six companies which made themselves known during the investigation, and has considered the possibility of these Russian producers benefiting from a similar form of undertaking to that of the producers in the associated countries. However, this offer was not acceptable as it did not contain the necessary guarantees on the part of the Russian authorities to allow adequate monitoring, particularly with regard to the duty-free threshold. In these circumstances an *ad valorem* duty should be imposed at the level definitively established.

The Council notes, however, that the measure in respect of Russia could be modified, if ever there were a change in circumstances such that the conditions for the acceptance of an undertaking were met.

K. COLLECTION OF PROVISIONAL DUTY WITH REGARD TO COUNTRIES UNDER THE NEW INVESTIGATION

- (88) In view of the circumstances of the present investigation, i.e. the change in the form and nature of the definitive measures, as compared with the provisional *ad valorem* duties imposed on imports from the Czech Republic, Romania and the Slovak Republic, and with the existing undertakings in respect of imports from Hungary, Poland and the Republic of Croatia, the Council considers that it is not appropriate to collect the provisional duties.

The Council has therefore decided, in accordance with Article 10 (2) of the basic Regulation, that the amounts secured by way of the provisional duty imposed pursuant to Commission Regulation (EC) No 981/97 on imports of the product concerned originating in Russia, the Czech Republic, Romania and the Slovak Republic should be released.

L. FINAL PROVISION

- (89) The Commission consulted the Advisory Committee on the acceptance of these undertakings and, since some objections were raised, sent a report on these consultations to the Council. The Council not having decided against the acceptance of the undertakings, the undertakings offered were accepted in accordance with Article 8 (5) of the basic Regulation by Commission Decision 97/790/EC⁽¹⁾,

HAS ADOPTED THIS REGULATION:

Article 1

1. Definitive anti-dumping duties are hereby imposed on the following imports originating in Hungary, Poland, Russia, the Czech Republic, Romania and the Slovak Republic.

- (a) seamless pipes, of iron or non-alloy steel, of a kind used for oil and gas pipelines, of an external diameter not exceeding 406,4 mm (currently falling within CN codes 7304 10 10 and 7304 10 30);
- (b) seamless tubes of circular cross-section, of iron or non-alloy steel, cold-drawn or cold-rolled, other than precision tubes (currently falling within CN code 7304 31 99);
- (c) other tubes of circular cross-section, of iron or non-alloy steel, other than threaded or threadable, of an external diameter not exceeding 406,4 mm (currently falling within CN codes 7304 39 91 and 7304 39 93).

2. The rate of definitive anti-dumping duties applicable to the net free-at-Community-frontier prices before duty, shall be as follows:

Country	Manufacturer	Rate of duty (%)	Taric additional Code
Hungary	Csepel Tubes Co. Ltd (in liquidation)	36,5 %	8717
	Others	36,5 %	8900
Poland	Huta Batory SA	7,1 %	8476
	Huta Andrzej SA	30,1 %	8719
	Huta Czystochowa	30,1 %	8482
	Huta Jednosc SA	30,1 %	8493
	Others	30,1 %	8900
Russia	All companies	26,8 %	
Czech Republic	Vítkovice a.s.	5,1 %	8058
	Nová Hut a.s.	5,1 %	8463
	Válcovny trub Chomutov a.s.	28,6 %	8464
	Others	28,6 %	8900

⁽¹⁾ See page 63 of this Official Journal.

Country	Manufacturer	Rate of duty (%)	Taric additional Code
Romania	Artrom SA	9,8 %	8059
	Silcotub SA	9,8 %	8467
	Petrotub SA	9,8 %	8468
	Republica SA	9,8 %	8469
	Others	38,2 %	8900
Slovak Republic	Železiarne Podbrezová a.s.	7,5 %	8060
	Others	7,5 %	8900

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

Article 2

1. Imports shall be exempt from the anti-dumping duties imposed by Article 1 (1) provided that they are produced and sold for export to the Community by the companies listed in paragraph 4 which have offered undertakings accepted by the Commission and provided that the conditions of paragraphs 2, 3 and 4 are met.

2. When the declaration for release for free circulation is presented, exemption from the duty shall be conditional upon presentation to the competent Member States' customs services of a valid, original production certificate issued by one of the companies listed in paragraph 4. The production certificate shall conform with the requirements for such certificates set out in the undertaking accepted by the Commission, the essential elements of which are listed in the Annex.

3. The production certificate referred to in paragraph 2 must be presented within three months of its date of issue. The quantities presented to the Member States' customs services for import into the Community free of the anti-dumping duty shall not exceed those stipulated on the certificate. When quantities stipulated on the certificate are exceeded, the excess shall be subject to the duty, and be declared under the relevant Taric additional code of Article 1 (2).

4. Imports accompanied by a production certificate shall be declared under the following Taric additional codes:

Country	Product manufacturer	Taric additional Code
Hungary	Csepel Tubes Co. Ltd (in liquidation)	8521
Poland	Huta Batory SA	8517
	Huta Andrzej SA	8518
	Huta Czystałowa	8519
	Huta Jedność SA	8520
Czech Republic	Válcovny trub Chomutov a.s.	8507
Romania	Artrom SA	8508
	Silcotub SA	8509
	Petrotub SA	8514
	Republica SA	8515
Slovak Republic	Železiarne Podbrezová a.s.	8516

Article 3

Member States' reports to the Commission pursuant to Article 14 (6) of Regulation (EC) No 384/96, shall indicate for each release for free circulation, the year and month of import, the CN, Taric and Taric additional codes, the type of measure, the country of origin, the quantity, the value, the anti-dumping duty, the Member State of import and, where appropriate, the serial number of the production certificate.

Article 4

Regulation (EEC) No 1189/93 is hereby repealed.

Article 5

The anti-dumping proceeding against imports of the product concerned originating in Croatia is hereby terminated.

Article 6

The amounts secured by way of provisional anti-dumping duties imposed pursuant to Regulation (EC) No 981/97 on imports of the product concerned originating in Russia, the Czech Republic, Romania and the Slovak Republic shall be released.

Article 7

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

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

Done at Brussels, 17 November 1997.

For the Council

The President

J.-C. JUNCKER

ANNEX

Main elements of the production certificate⁽¹⁾ referred to in Article 2 (2)

- (a) The number of the certificate.
- (b) Identification showing whether the certificate is an original.
- (c) The date of expiry of the certificate.
- (d) The following text:

'Production certificate issued by (the Company) pursuant to Article 2 (2) of Council Regulation (EC) No 2320/97 for the export to the European Community within Taric additional Code xxxx of certain seamless steel pipes and tubes.'
- (e) The name and full address of the Company, and possible identification number such as national registration number for incorporated companies.
- (f) The name and full address of the customer of the Company in the Community importing the goods *or* the name and full address of the unrelated trader outside the Community exporting the goods.
- (g) The number of the Company invoice to which the production certificate relates.
- (h) The exact description of the goods, including:
 - a product description sufficient to identify the products, which will be identical to the product description on the invoice,
 - CN code,
 - quantity (in metric tonnes).
- (i) The name of the official of the Company responsible for the issue of the certificate and the following signed declaration:

'I, the undersigned, certify that the sale for export to the European Community of the goods covered by this certificate is being made within the scope and under the terms of the undertaking by (the Company), and within the permitted volume for anti-dumping duty-free imports into the Community set out in the undertaking accepted by the Commission pursuant to Decision 97/790/EC. I declare that the information provided in this certificate is complete and correct.'
- (j) Space for use by the competent authorities of the Community.

⁽¹⁾ Under the undertaking offered and accepted by the Commission, each box on the certificate will be in four languages, the language of the country of the producer, English, French and German.

COUNCIL REGULATION (EC) No 2321/97**of 18 November 1997****amending Regulation (EEC) No 805/68 on the common organization of the market in beef and veal**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

Whereas Article 4i of Regulation (EEC) No 805/68⁽²⁾, creates a premium for the early marketing of calves; whereas in order to take account of the higher costs resulting from the unusual presentation of veal products coming from carcasses at or under 120 kilograms, the Commission differentiated the amount of the premium on a transitional basis;

Whereas it seems appropriate to allow the Commission to decide on a possible extension for such a differentiation until the end of the application of the early marketing premium,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 4i (5) the text of the fourth indent of Regulation (EEC) No 805/68 shall be replaced by the following:

‘— shall set the early marketing premium at a level or, where appropriate, levels enabling a sufficient number of calves to be slaughtered in line with the market requirements.’

Article 2

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

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

Done at Brussels, 18 November 1997.

*For the Council**The President*

F. BODEN

⁽¹⁾ Opinion delivered on 18 November 1997 (not yet published in the Official Journal).

⁽²⁾ OJ L 148, 28. 6. 1968, p. 24. Regulation as last amended by Regulation (EC) No 2222/96 (OJ L 296, 18. 11. 1996, p. 50).

**COMMISSION REGULATION (EC) No 2322/97
of 24 November 1997**

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

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

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables⁽¹⁾, as last amended by Regulation (EC) No 2375/96⁽²⁾, and in particular Article 4 (1) thereof,

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

Whereas Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third

countries, in respect of the products and periods stipulated in the Annex thereto;

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 25 November 1997.

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

Done at Brussels, 24 November 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ L 325, 14. 12. 1996, p. 5.

⁽³⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 24 November 1997 establishing the standard import values for determining the entry price of certain fruit and vegetables

(ECU/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 45	204	46,8
	999	46,8
0707 00 40	052	62,1
	999	62,1
0709 90 79	052	104,8
	999	104,8
0805 20 31	204	55,9
	999	55,9
0805 20 33, 0805 20 35, 0805 20 37, 0805 20 39	052	53,4
	400	50,5
	464	123,7
	999	75,9
0805 30 40	052	78,8
	528	49,9
	999	64,4
0808 10 92, 0808 10 94, 0808 10 98	052	48,2
	060	39,3
	064	41,0
	400	87,4
	404	80,5
	999	59,3
0808 20 67	052	99,8
	064	79,5
	400	99,0
	999	92,8

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 68/96 (OJ L 14, 19. 1. 1996, p. 6). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 2323/97
of 24 November 1997
on the issuing of A1 export licences for fruit and vegetables

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

Having regard to Commission Regulation (EC) No 2190/96 of 14 November 1996 on detailed rules for implementing Council Regulation (EEC) No 1035/72 as regards export refunds on fruit and vegetables⁽¹⁾, as last amended by Regulation (EC) No 610/97⁽²⁾, and in particular Article 2 (3) thereof,

Whereas Commission Regulation (EC) No 2186/97⁽³⁾ sets the quantities for which A1 export licences, other than those requested in the context of food aid, may be issued;

Whereas Article 2 of Regulation (EC) No 2190/96 sets the conditions under which special measures may be taken by the Commission with a view to avoiding an overrun of the quantities for which A1 licences may be issued;

Whereas the Commission has received information which indicates that those quantities, reduced or increased by the quantities referred to in Article 2 (3) of Regulation (EC) No 2190/96, would be exceeded if A1 licences were issued without restriction for shelled hazelnuts in response to applications submitted since 19 November

1997; whereas, therefore, a percentage should be fixed for the issuing of licences for quantities applied for on 19 November 1997 and applications for A1 licences submitted later in that application period should be rejected,

HAS ADOPTED THIS REGULATION:

Article 1

A1 export licences for shelled hazelnuts for which applications were submitted on 19 November 1997 pursuant to Article 1 of Regulation (EC) No 2186/97 shall be issued for 51,5 % of the quantities applied for.

Applications for A1 export licences submitted after 19 November 1997 and before 13 January 1998 for that product shall be rejected.

Article 2

This Regulation shall enter into force on 25 November 1997.

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

Done at Brussels, 24 November 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 292, 15. 11. 1996, p. 12.

⁽²⁾ OJ L 93, 8. 4. 1997, p. 16.

⁽³⁾ OJ L 299, 4. 11. 1997, p. 10.

COMMISSION REGULATION (EC) No 2324/97
of 24 November 1997
on the supply of split peas as food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food security⁽¹⁾, and in particular Article 24 (1) (b) thereof,

Whereas the abovementioned Regulation lays down the list of countries and organizations eligible for food-aid operations and specifies the general criteria on the transport of food aid beyond the fob stage;

Whereas, following the taking of a number of decisions on the allocation of food aid, the Commission has allocated split peas to certain beneficiaries;

Whereas it is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community food aid⁽²⁾, as amended by Regulation (EEC) No 790/91⁽³⁾; whereas it is necessary to specify the time limits and conditions of supply and the procedure to be followed to determine the resultant costs;

Whereas, in order to ensure that the supplies are carried out, provision should be made for tenderers to be able to mobilize either green split peas or yellow split peas,

HAS ADOPTED THIS REGULATION:

Article 1

Split peas shall be mobilized in the Community, as Community food aid for supply to the recipients listed in the Annex, in accordance with Regulation (EEC) No 2200/87 and under the conditions set out in the Annex. Supplies shall be awarded by the tendering procedure.

Tenders shall cover either green split peas or yellow split peas. Tenders shall be rejected unless they specify the type of peas to which they relate.

The successful tenderer is deemed to have noted and accepted all the general and specific conditions applicable. Any other condition or reservation included in his tender is deemed unwritten.

Article 2

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

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

Done at Brussels, 24 November 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 166, 5. 7. 1996, p. 1.

⁽²⁾ OJ L 204, 25. 7. 1987, p. 1.

⁽³⁾ OJ L 81, 28. 3. 1991, p. 108.

ANNEX

LOT A

1. **Operation No** ⁽¹⁾: 67/97
2. **Programme**: 1997
3. **Recipient** ⁽²⁾: WFP (World Food Programme), via Cristoforo Colombo 426, I-00145 Roma tel.: (39-6) 65 13 29 88; fax: 65 13 28 44/3; telex: 626675 WFP I
4. **Representative of the recipient**: to be designated by the recipient
5. **Place or country of destination**: Liberia
6. **Product to be mobilized**: split peas
7. **Characteristics and quality of the goods** ⁽³⁾ ⁽⁷⁾ ⁽¹⁰⁾: —
8. **Total quantity (tonnes)**: 1 557
9. **Number of lots**: 1
10. **Packaging and marking** ⁽⁶⁾ ⁽⁸⁾: see OJ C 267, 13. 9. 1996, p. 1 (1.0 A (1)(c), (2)(c) and B(4))
see OJ C 114, 29. 4. 1991, p. 1 (II.A (3))
Language to be used for the marking: English
11. **Method of mobilization**: the Community market
12. **Stage of supply**: free at port of shipment
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: —
16. **Address of the warehouse and, if appropriate, port of landing**:
17. **Period for making the goods available at the port of shipment**: 5 to 25. 1. 1998
18. **Deadline for the supply**: —
19. **Procedure for determining the costs of supply**: invitation to tender
20. **Date of expiry of the period allowed for submission of tenders**: 9. 12. 1997 (12 noon (Brussels time))
21. **In the case of a second invitation to tender**:
 - (a) deadline for the submission of tenders: 22. 12. 1997 (12 noon (Brussels time))
 - (b) period for making the goods available at the port of shipment: 26. 1 to 15. 2. 1998
 - (c) deadline for the supply: —
22. **Amount of tendering security**: ECU 5 per tonne
23. **Amount of delivery security**: 10 % of the amount of the tender in ecus
24. **Address for submission of tenders and tendering securities** ⁽¹⁾: Bureau de l'aide alimentaire, à l'attention de Mr T. Vestergaard, Bâtiment Loi 130, bureau 7/46, Rue de la Loi/Wetstraat 200, B-1049 Brussels (telex: 25670 AGREC B; fax: (32 2) 296 70 03 / 296 70 04 (exclusively))
25. **Refund payable on application by the successful tenderer** ⁽⁴⁾: —

LOT B

1. **Operation No** ⁽¹⁾: 506/96
2. **Programme**: 1996
3. **Recipient** ⁽²⁾: Rwanda
4. **Representative of the recipient**: WFP, BP 1150 Kigali, Rwanda
Tel.: (250) 876 11/12/13/14, fax: 87621
5. **Place or country of destination** ⁽³⁾: Rwanda
6. **Product to be mobilized**: split peas
7. **Characteristics and quality of the goods** ⁽³⁾ ⁽⁷⁾ ⁽⁹⁾ ⁽¹⁰⁾: —
8. **Total quantity**: Quantity specified in the tender for a total amount of ECU 600 000 pursuant to Article 7 (3) (h) of Regulation (EEC) No 2200/87. The tender shall be expressed in kilograms of net product.
9. **Number of lots**: 1
10. **Packaging and marking** ⁽⁴⁾ ⁽⁸⁾ ⁽¹¹⁾: see OJ C 267, 13. 9. 1996, p. 1 (1.0 A (1)(c), (2)(c) and B(6))
see OJ C 114, 29. 4. 1991, p. 1 (IIA(3))
Language to be used for the marking: French
11. **Method of mobilization**: the Community market
12. **Stage of supply** ⁽¹⁾: free at destination
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: —
16. **Address of the warehouse and, if appropriate, port of landing**: Entrepôt WFP/PAM à Kigali: Oprovia — Kicukiro
17. **Period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage** ⁽¹²⁾: —
18. **Deadline for the supply**: 8. 3. 1998
19. **Procedure for determining the costs of supply**: invitation to tender
20. **Date of expiry of the period allowed for submission of tenders**: 9. 12. 1997 (12 noon (Brussels time))
21. **In the case of a second invitation to tender**:
 - (a) deadline for the submission of tenders: 22. 12. 1997 (12 noon (Brussels time))
 - (b) period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage ⁽¹²⁾: —
 - (c) deadline for the supply: 22. 3. 1998
22. **Amount of tendering security**: ECU 5 per tonne
23. **Amount of delivery security**: 10 % of the amount of the tender in ecus
24. **Address for submission of tenders and tendering securities** ⁽¹⁾: Bureau de l'aide alimentaire, à l'attention de Mr T. Vestergaard, Bâtiment Loi 130, bureau 7/46, Rue de la Loi/Wetstraat 200, B-1049 Brussels (telex: 25670 AGREC B; fax: (32 2) 296 70 03 / 296 70 04 (exclusively))
25. **Refund payable on application by the successful tenderer** ⁽⁴⁾: —

Notes:

- (¹) The operation number should be mentioned in all correspondence.
- (²) The successful tenderer shall contact the recipient as soon as possible to establish which consignment documents are required.
- (³) The successful tenderer shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.
- (⁴) Article 7 (3) (g) of Regulation (EEC) No 2200/87 shall not be applicable to tenders submitted.
- (⁵) Programme de Sécurité Alimentaire de l'Union Européenne au Rwanda, BP 515, Kigali; tel. (250) 756 92/770 21, fax 731 46.
- (⁶) Since the goods may be rebagged, the successful tenderer must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.
- (⁷) The successful tenderer shall supply to the beneficiary or its representative, on delivery, the following document:
 - phytosanitary certificate.
- (⁸) Notwithstanding OJ C 114, point IIA (3) (c) is replaced by the following: 'the words "European Community" and point IIA (3) (b) by the following: 'pois cassés'.
- (⁹) Tenders shall be rejected unless they specify the type of peas to which they relate.
- (¹⁰) Yellow or green peas (*Pisum sativum*) for human consumption of the most recent crop. The peas must not have been coloured artificially. The split peas must be steam-treated for at least two minutes or have been fumigated (¹¹) and meet the following requirements:
 - moisture: maximum 15 %,
 - foreign matters: maximum 0,1 %,
 - broken split peas: maximum 10 % (pea fragments passing through a sieve of circular mesh of 5 mm diameter),
 - percentage of discoloured seeds or of different colour: maximum 1,5 % (yellow peas), maximum 15 % (green peas),
 - cooking time: maximum 45 minutes (after soaking for 12 hours).
- (¹¹) Notwithstanding Article 7 (3) (f) of Regulation (EEC) No 2200/87, one single tender corresponding to the foreseen supply stage shall be presented. However, the tender shall indicate distinctly an amount expressed in ecus relating to the total transport costs beyond the supply stage free at port of shipment.
- (¹²) The provisions of Article 9 (4) of Regulation (EEC) 2200/87 shall not be applicable.

(¹¹) The successful tender shall supply to the beneficiary or its representative, on delivery a fumigation certificate.

COMMISSION REGULATION (EC) No 2325/97

of 24 November 1997

supplementing the Annex to Regulation (EC) No 1107/96 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Council Regulation (EEC) No 2081/92

(Text with EEA relevance)

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

Having regard to Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs⁽¹⁾, as last amended by Commission Regulation (EC) No 1068/97⁽²⁾, and in particular Article 17 (2) thereof,

Whereas, for certain names notified by the Member States pursuant to Article 17 of Regulation (EEC) No 2081/92, additional information was requested in order to ensure that they complied with Articles 2 and 4 of that Regulation; whereas that additional information shows that the names comply with the said Articles; whereas they should therefore be registered and added to the Annex to Commission Regulation (EC) No 1107/96⁽³⁾, as last amended by Regulation (EC) No 1065/97⁽⁴⁾;

Whereas, following the accession of three new Member States, the six-month period provided for in Article 17 of

Regulation (EEC) No 2081/92 is to begin on the date of their accession; whereas some of the names notified by those Member States comply with Articles 2 and 4 of that Regulation and should therefore be registered;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Regulatory Committee on Geographical Indications and Designations of Origin,

HAS ADOPTED THIS REGULATION:

Article 1

The names in the Annex to this Regulation are hereby added to the Annex to Regulation (EC) No 1107/96.

Article 2

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

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

Done at Brussels, 24 November 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 208, 24. 7. 1992, p. 1.

⁽²⁾ OJ L 156, 13. 6. 1997, p. 10.

⁽³⁾ OJ L 148, 21. 6. 1996, p. 1.

⁽⁴⁾ OJ L 156, 13. 6. 1997, p. 5.

ANNEX

A. PRODUCTS INTENDED FOR HUMAN CONSUMPTION LISTED IN ANNEX II TO THE TREATY**Fresh meat (and offal)**

FRANCE

- '— Porc de la Sarthe (PGI)
- Porc de Normandie (PGI)
- Porc de Vendée (PGI)
- Porc du Limousin (PGI)'

Cheeses

GERMANY

- '— Odenwälder Frühstückskäse (PDO)'

AUSTRIA

- '— Tirolere Almkäse/Tiroler Alpkäse (PDO)'

SWEDEN

- '— Svecia (PGI)'

Oils and fats

GERMANY

- '— Lausitzer Leinöl (PGI)'

Olive oil

ITALY

- '— Garda (PDO)
- Dauno (PDO)
- Colline Teatine (PDO)
- Monti Iblei (PDO)
- Laghi Lombardi (PDO)
- Valli Trapanesi (PDO)
- Terra di Bari (PDO)
- Umbria (PDO)'

Fruit and vegetables

ITALY

- '— Clementine di Calabria (PGI)
- Nocciola di Giffoni (PGI)
- Scalogno di Romagna (PGI)
- Uva da tavola di Canicatti (PGI)'

Fresh fish, molluscs and crustaceans and products derived therefrom

GERMANY

- '— Schwarzwaldforelle (PGI)'

B. FOODSTUFFS LISTED IN ANNEX I TO REGULATION (EEC) No 2081/92**Beer****GERMANY**

- '— Kölsch (PGI)
- Rieser Weizenbier (PGI)'

Bread, pastry, cakes, confectionery, biscuits and other baker's wares**ITALY**

- '— Pane casareccio di Genzano (PGI)'

C. AGRICULTURAL PRODUCTS LISTED IN ANNEX II TO REGULATION (EEC) No 2081/92**FRANCE**

- '— Foin de Crau (PDO)'
-

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 17 November 1997

appointing an alternate member of the Committee of the Regions

(97/786/EC)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty establishing the European Community, and in particular Article 198a thereof,

Having regard to the Council Decisions of 26 January 1994 ⁽¹⁾ and 23 January 1995 ⁽²⁾ appointing members and alternate members of the Committee of the Regions,

Whereas a seat as an alternate member of the Committee of the Regions has become vacant following the resignation of Mr Carlos Yáñez-Barnuevo García, notified to the Council on 4 November 1997;

Having regard to the proposal from the Spanish Government,

Sole Article

Mrs Ana Gómez Gómez is hereby appointed an alternate member of the Committee of the Regions in place of Mr Carlos Yáñez-Barnuevo García for the remainder of the latter's term of office, which runs until 25 January 1998.

Done at Brussels, 17 November 1997.

For the Council

The President

J.-C. JUNKER

⁽¹⁾ OJ L 31, 4. 2. 1994, p. 29.

⁽²⁾ OJ L 25, 2. 2. 1995, p. 20.

COUNCIL DECISION

of 17 November 1997

providing exceptional financial assistance for Armenia and Georgia

(97/787/EC)

THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

Whereas the Commission has consulted the Monetary Committee before submitting its proposal;

Whereas Armenia and Georgia are undertaking fundamental political and economic reforms and are making substantial efforts to implement a market economy model;

Whereas trade, commercial and economic links will develop between the Community, Armenia and Georgia within the framework of their respective Partnership and Cooperation Agreements signed on 22 April 1996;

Whereas Armenia and Georgia agreed with the International Monetary Fund (IMF) in 1994 on a first set of stabilization and policy reform measures which was supported by the IMF's Systemic Transformation Facility; whereas the IMF Board approved in June 1995 stand-by arrangements in support of further ambitious stabilization and structural adjustment reforms for the period July 1995 to June 1996;

Whereas the IMF board approved in February 1996 a three-year enhanced structural adjustment facility (ESAF) on concessional terms for Armenia and Georgia, in replacement of the current stand-by arrangements;

Whereas the Armenian and Georgian authorities have formally undertaken to service fully all their outstanding financial obligations towards the Community;

Whereas those authorities have requested exceptional financial support from the Community;

Whereas Armenia and Georgia are low-income countries and are facing particularly critical economic and social circumstances; and whereas these countries are eligible for highly concessional loans from the World Bank and the IMF;

Whereas concessional financial assistance from the Community in the form of long-term loans and straight

grants is an appropriate measure to help the beneficiary countries at this critical juncture;

Whereas this assistance, both the loan and the grant component, is highly exceptional and therefore in no way constitutes a precedent for the future;

Whereas the inclusion of a grant component in this assistance is without prejudice to the powers of the budgetary authority;

Whereas this assistance should be managed by the Commission;

Whereas the Treaty does not provide, for the adoption of this Decision, powers other than those of Article 235,

HAS DECIDED AS FOLLOWS:

Article 1

1. The Community shall make available to Armenia and Georgia exceptional financial assistance, in the form of long-term loans and straight grants.

2. The total loan component of this assistance shall amount to a maximum of ECU 170 million, with a maximum maturity of 15 years and a grace period of 10 years. To this end, the Commission is empowered to borrow, on behalf of the European Community, the necessary resources that will be placed at the disposal of the beneficiary countries in the form of loans.

3. The grant component of this assistance shall consist of an amount of ECU 10 million for 1997 and of ECU 17 million annually for the 1998-2002 period. The annual grants shall be made available insofar as the net debtor position of the beneficiary countries towards the Community has been reduced by at least a similar amount.

4. The financial assistance provided for in paragraphs 2 and 3 will only be disbursed to the beneficiary countries on condition that:

- (a) those countries have fully settled all existing obligations towards the Community;
- (b) those countries are satisfactorily implementing a comprehensive adjustment and reform programme in the context of an IMF programme.

5. The Community financial assistance shall be managed by the Commission, in close consultation with the Monetary Committee, taking into account existing and future agreements to be reached between the IMF and the beneficiary countries.

⁽¹⁾ OJ C 95, 24. 3. 1997, p. 64.

⁽²⁾ OJ C 304, 6. 10. 1997, p. 39.

Article 2

1. Subject to the provisions of this Decision, the Commission is empowered to agree with the authorities of the beneficiary countries the specific amounts and terms, and the conditions attached to this assistance.
2. The Commission shall verify, in consultation with the Monetary Committee, that the policies of the recipient countries respect the objectives and the conditions of the financial assistance under this Decision.

Article 3

1. The total amount of the loan shall be made available by the Commission in 1997 together with the first instalment of the grant, subject to respect of the conditions of Article 1 (4). Subsequently, the remainder of the grant component shall be made available by the Commission in successive yearly instalments, subject to respect of the conditions of Article 1 (4) (b).
2. The funds shall be paid to the central banks of the recipient countries.

Article 4

1. The borrowing and lending operations referred to in Article 1 shall be carried out using the same value date. Those operations shall not involve the Community in the transformation of maturities, in any exchange or interest rate risk, or in any other commercial risk.
2. The Commission shall ensure that an early repayment clause is included in the loan terms and conditions.
3. At the request of the beneficiary countries, and where circumstances permit an improvement in the in-

terest rate on the loans, the Commission may refinance all or part of its initial borrowings, or restructure the corresponding financial conditions. Refinancing or restructuring operations shall respect the conditions of paragraph 1. Those operations shall not lead to the extension of the average maturity of the borrowing concerned or to the increase of the amount, expressed at the current exchange rate, of capital outstanding at the date of the refinancing or restructuring.

4. All related costs incurred by the Community in concluding and carrying out the operations under this Decision shall be borne by the beneficiary countries.

5. The Monetary Committee shall be kept informed of the operations under paragraphs 2 and 3 at least once a year.

Article 5

1. At least once a year, the Commission shall address to the European Parliament and to the Council a report on the application of this Decision.
2. Before 31 December 2002, the Council shall examine the application of this Decision to that date on the basis of a comprehensive report by the Commission.

Done at Brussels, 17 November 1997.

For the Council

The President

J.-C. JUNKER

COUNCIL DECISION

of 17 November 1997

on the equivalence of checks on practices for the maintenance of varieties
carried out in third countries

(97/788/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 70/457/EEC of 29 September 1970 on the common catalogue of varieties of agricultural plant species⁽¹⁾, and in particular Article 21 (1) (b) thereof,

Having regard to Council Directive 70/458/EEC of 29 September 1970 on the marketing of vegetable seed⁽²⁾, and in particular Article 32 (1) (b) thereof,

Having regard to the proposal from the Commission,

Whereas, by Decision 92/420/EEC⁽³⁾, the Council noted that the official checks on practices for the maintenance of varieties carried out in certain third countries afforded the same guarantees as those carried out by the Member States; whereas the said Decision expired on 30 June 1997;

Whereas it appears that the abovementioned checks carried out in the third countries referred to in Decision 92/420/EEC, without prejudice to the fact that the former 'Czech and Slovak Federal Republic' was replaced by the 'Czech Republic' and the 'Slovak Republic', continue to afford the same guarantees as those carried out by the Member States;

Whereas, in the case of the Republic of Korea, covered by the abovementioned Decision, additional information has been requested; whereas additional information has also been requested from the Federal Republic of Yugoslavia;

Whereas it is therefore appropriate, in the case of these countries, to grant a shorter period of equivalence to allow time for this information to be supplied and assessed;

Whereas, in the case of certain countries, an examination of the conditions under which official checks on practices for the maintenance of varieties of additional species has shown that these checks afford the same guarantees as those carried out by the Member States;

Whereas the equivalence granted to such countries should be extended to these additional species;

Whereas it appears pointless to continue the equivalence granted in respect of the Republic of Bosnia-Herzegovina as no varieties of Community interest are maintained there;

Whereas this Decision in no way prevents Community findings on equivalence from being revoked or the extension of their period of validity being refused when the conditions on which they are based are not, or cease to be, satisfied; whereas, to this end, further practical information on seed of the varieties being maintained in the third country concerned should also be obtained when carrying out Community comparative tests;

Whereas certain of the technical and administrative provisions in the Annex may be subject to frequent adjustment; whereas, in order to simplify the procedure which at present governs amendments to the Annex, recourse should be had to the procedure of the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry,

HAS ADOPTED THIS DECISION:

Article 1

The official checks on practices for the maintenance of varieties carried out in the countries by the authorities listed in the Annex for the species covered by the Directives listed therein and concerning the said countries shall afford the same guarantees as those carried out by the Member States.

Article 2

The technical and administrative adjustments to be made to the Annex, with the exception of those concerning the first column of the table, shall be adopted in accordance with the procedure laid down in Article 23 of Directive 70/457/EEC and in Article 40 of Directive 70/458/EEC.

Article 3

This Decision shall apply from 1 July 1997 to 30 June 1999 in the case of the Republic of Korea and the Federal Republic of Yugoslavia and from 1 July 1997 to 30 June 2002 in the case of the other third countries listed in the Annex.

(1) OJ L 225, 12. 10. 1970, p. 1. Directive as last amended by the 1994 Act of Accession.

(2) OJ L 225, 12. 10. 1970, p. 7. Directive as last amended by Directive 96/72/EC (OJ L 304, 27. 11. 1996, p. 10).

(3) OJ L 231, 13. 8. 1992, p. 22.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 17 November 1997.

For the Council

The President

F. BODEN

ANNEX

Country (1)	Authority responsible for carrying out checks	EEC Directives
AR	Ministerio de Economía y Obras y Servicios Públicos Secretaría de Agricultura, Ganadería y Pesca Instituto Nacional de Semillas Buenos Aires	66/400 66/401 66/402 69/208
AU	Commonwealth Department of Primary Industries and Energy Canberra	66/401 69/208 70/458
BG	Semena i Possadchen Material Sofia	66/400 66/401 66/402 69/208 70/458
CA	Plant Products Division Division des Produits végétaux Nepean Ontario	66/400 66/401 66/402 69/208
CH	Eidgenössische Forschungsanstalt für Landwirtschaftlichen Pflanzenbau Reckenholz Zürich Station fédérale de recherches en production végétale de Changins (RAC) Nyon	66/400 66/401 66/402 69/208 70/458
CL	Servicio Agrícola y Ganadero Departamento de Semillas Santiago	66/400 66/401 66/402 69/208
CZ	Ústřední kontrolní a zkušební ústav zemědělský v Brně Odbor osiva a sadby Praha Central Institute for Supervising and Testing in Agriculture Department of seed testing Praha	66/400 66/401 66/402 69/208 70/458
HR	Bc Institute for Breeding and Production of Field Crops Zagreb	66/400 66/401 66/402 69/208
HU	Országos Mezőgazdasági Minőségellenőrzési National Institute for Agricultural Quality Control 1024 Budapest	66/400 66/401 66/402 69/208 70/458
IL	Ministry of Agriculture Plant Protection Services and Inspection PO Box 78 Bet-Dagan 50250 Israel	66/400 66/401 66/402 69/208 70/458

Country (*)	Authority responsible for carrying out checks	EEC Directives
JP	Ministry of Agriculture, Forestry and Fisheries 1-2-1 Kasumigaseki Chiyodaku Tokyo	70/458
KR	Ministry of Agriculture, Forestry and Fisheries Vegetables Division Seoul	70/458
MA	Ministère de l'agriculture et de la mise en valeur agricole Direction de la protection des végétaux des contrôles techniques et de la répression des fraudes Rabat	66/401 66/402 69/208 70/458
NZ	Ministry of Agriculture Te Manatu Ahuwhenua Aotearoa MAF Regulatory Authority Wellington	66/401
PL	Inspekcja Nasienna Centralny Inspektorat Seed Inspection Service General Inspectorate Warszawa	66/400 66/401 66/402 69/208 70/458
RO	Ministry of Agriculture and Food Control and Inspections Department Bucharest	69/208
SI	Kmetijski Institut Slovenije Agricultural Institute of Slovenia Ljubljana	66/400 66/401 66/402 69/208
SK	Ustredny Kontrolny a Skusobny Ustav Polnohospodarsky Bratislava	66/400 66/401 66/402 69/208 70/458
TW	Council of Agriculture, Food and Agriculture Department Taipei	70/458
US	United States Department of Agriculture Agricultural Research Service Beltsville, Maryland	66/400 66/401 66/402 69/208 70/458
UY	Ministerio de Ganadería, Agricultura y Pesca Dirección General de Servicios Agronómicos Dirección Granos Unidad Ejecutora de Semillas Montevideo	66/400 66/401 66/402 69/208
YU	Savezno Ministarstvo za Poljoprivredu Federal Ministry of Agriculture Beograd	66/402

Country (1)	Authority responsible for carrying out checks	EEC Directives
ZA	Department of Agriculture Directorate of Plant and Quality Control Pretoria	66/401 66/402 69/208

(1) AR = Argentina

AU = Australia

BG = Bulgaria

CA = Canada

CH = Switzerland

CL = Chile

CZ = Czech Republic

HR = Republic of Croatia

HU = Hungary

IL = Israel

JP = Japan

KR = Republic of Korea

MA = Morocco

NZ = New Zealand

PL = Poland

RO = Romania

SI = Republic of Slovenia

SK = Slovak Republic

TW = Taiwan

US = United States of America

UY = Uruguay

YU = Federal Republic of Yugoslavia

ZA = South Africa

COMMISSION

COMMISSION DECISION

of 15 July 1997

concerning the recapitalization of the company Alitalia

(Only the Italian text is authentic)

(Text with EEA relevance)

(97/789/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first paragraph of Article 93 (2) thereof,

Having regard to the Agreement establishing the European Economic Area, and in particular Article 62 (1) (a) thereof,

Having given the parties concerned notice⁽¹⁾, in accordance with the provisions of the abovementioned Articles, to submit their observations, and having regard to those observations,

Whereas:

THE FACTS

I

Alitalia Linee Aeree Italiane S.p.A. (hereinafter referred to as 'Alitalia') was set up on 16 September 1946 with an initial capital of Lit 900 million and is by far the leading Italian airline. It transported 20,9 millions passengers in 1995 and is the fifth largest European airline in terms of passenger-kilometres after British Airways, Lufthansa, Air France and KLM. Its turnover, about Lit 7 830 billion in 1996 (around ECU 4 billion), is comparable to that of SAS, and slightly less than that of the Swissair group. The company's network mainly covers Italy and Europe, but also 40 intercontinental destinations in North and South America, Africa, the Middle East and the Far East. At the end of 1996, Alitalia employed 17 390 people (as against 17 982 at the end of 1995) and had a fleet of 157 aircraft, most of them short- or medium-haul. With an average

age of 6,5 years at the end of 1995, this fleet is one of the youngest of the European airlines.

Alitalia's capital is 90 %, held by the State holding company IRI ('Istituto per la Ricostruzione Industriale'), the rest being held by private investors, among them several major international banks. In 1994, Alitalia absorbed its subsidiary ATI, which specialises in domestic flights, and in autumn 1995 transferred to IRI its majority holding (56 %) in 'Società Aeroporti di Roma'. It has 100 % control of the company Avianova, a third-level air carrier which in July 1996 became Alitalia Team S.p.A. (hereinafter: 'Alitalia Team') and has a 45 % holding in the charter company Eurofly, a 27,61 % holding in Air Europe and a 30 % holding in the Hungarian national airline Malev. Alitalia also has holdings in companies whose business is related to air transport: Atitech (100 %); Racom Teledata (93,8 %), which in turn owns 9 % of the computerized reservation system Galileo; Italiatour (99,67 %); Sisam (60 %) and the airport management companies in Naples, Genoa, Turin, Florence, Lamezia Terme and Rimini. The carriage of goods and passengers by air nevertheless makes up 92 % of the group's total turnover. Lastly, apart from limited agreements with the US company Continental for traffic between Italy and the USA and with the company Air France, Alitalia has not so far allied itself with major partners.

Amounting to about Lit 5 000 billion in 1990, Alitalia's turnover increased by 53 % in nominal value between 1990 and 1995. Its net fixed assets rose from Lit 2 701 billion in 1990 to Lit 4 851 billion in 1995. The numbers of available tonne-kilometres and tonne-kilometres carried increased by 29,5 % and 39,5 % over the same period, during which time the company also acquired 69 new aircraft. This increase in business must not, however, hide the difficulties which Alitalia, like most of the European national airlines, has had to face as a result of the

⁽¹⁾ OJ 346, 16. 11. 1966, p. 13/66.

Gulf War, the recession in 1992 and 1993 and the increased competition resulting from the liberalization of the market. Thus the company's average unit receipts (yield), expressed in constant lire terms, fell by 22 % between 1990 and 1995. Alitalia therefore undertook to reduce its costs and increase its productivity, in particular by reducing its ground staff. The operating cost per tonne-kilometre available, expressed in constant lire (1995 value) consequently fell from Lit 1 323 to Lit 1 147, while the number of available tonne-kilometres per employee rose from 219 700 to 349 700 during the same period.

Despite these efforts, Alitalia was unable to return to profitability. The company's operating result did not substantially improve between 1990 and 1996. Though positive in 1994 and 1995 after the deficits at the start of the decade, it again became slightly negative, falling to - Lit 24 billion in 1996, or 0,3 % of the company's turnover. According to the Italian authorities, Alitalia's operating costs are still 12 % higher than the average of its main European competitors, due mainly to excessively high labour costs. Conversely, the company's receipts are somewhat lower than those of its main competitors when the average length of the routes is taken into account, even if this difference is indeed chiefly due to the depreciation of the lira. Alitalia has been losing market share for five years and has been powerless to stop a large part of its customer base in northern Italy from 'draining away' to the hubs of northern Europe, since Rome-Fiumicino airport, the company's main base, is located too far south according to the Italian authorities. Alitalia also had to face considerable labour unrest in 1995 and 1996.

The operating result has been too weak over the last few years to prevent the company's debt and financial charges from building up considerably as a result of the accumulated losses between 1990 and 1996, major investment in new aircraft (Lit 2 150 billion between 1990 and 1995) and, according to the Italian authorities, the company's insufficient recapitalization in the early 1990s. Alitalia's debt thus increased from Lit 653 billion in 1990 to Lit 3 420 billion in 1995, giving rise to substantial financial costs. The company's net result was therefore constantly negative between 1990 and 1995, falling to - Lit 173 billion in 1994 and - Lit 212 billion in 1995. From + 0,586 in 1990, the ratio of long-term debt (excluding leasing) to equity rose to + 2,91 in 1993, + 7,23 in 1994 and + 8,10 in 1995.

On 31 March 1996, Alitalia's cumulative losses amounted to Lit 905 billion and the company's net assets had fallen to Lit 150 billion. This very serious financial situation, verging on bankruptcy, can only worsen, given that losses of Lit 400 billion are expected in 1996.

This is the background against which the Italian authorities sent the Commission the restructuring plan for Alitalia, which is accompanied by large capital injections.

II

The Italian authorities sent the Commission the restructuring plan for Alitalia on 29 July 1996. The notification was registered at the Commission's Secretariat-General on 30 July 1996. An acknowledgement of receipt was sent to the Italian authorities on 14 August 1996.

By letter of 9 August 1996, the Commission notified the Italian authorities that the intervention would be examined in the light of the provisions of Article 92 of the EC Treaty and in the framework of the procedure provided for in Article 93 (2) of the EC Treaty. It also informed them that the information given in the notification of 29 July 1996 was not sufficient to enable it to examine the matter in full knowledge of the facts and therefore requested additional information. In its letter of 9 August 1996, the Commission also reminded the Italian authorities that the provisions of Article 93 (3) of the EC Treaty did not allow proposed State aid measures to be put into effect until the Commission had adopted a final decision. On 9 September 1996, the Italian authorities sent the Commission most of the information it had requested in its letter of 9 August 1996. A meeting in Brussels between the Commission and the Italian authorities on 17 September 1996 also provided additional information.

According to the Italian Government, the main objective of the restructuring plan is to create favourable conditions for the privatization of the company. The plan, which has been approved by the company's management and trade unions, is accompanied by detailed financial forecasts. It runs for five years (1996-2000) and is in two successive phases which are, however, to some extent interrelated: a restructuring phase in 1996-97 followed by a development phase from 1998 to the year 2000.

The restructuring phase is chiefly designed to reduce Alitalia's operating costs and to bring its ratio of debt to equity down to a reasonable level. It therefore comprises a financial and a management component.

The management component fits in with the efforts which Alitalia has been making since the early 1990s to reduce costs and increase productivity. It is intended to make the company competitive in the short term by pursuing three main aims: reducing costs, maximising receipts and shedding non-strategic activities.

The reduction of costs in particular includes productivity improvements and wage freezes for flying personnel. In this respect, the agreement reached between the company and the trade union representatives on 19 June 1996 will

save costs, during the five-year period from 1996 to the year 2000, of more than Lit 1 000 billion. In return for this cost reduction, employees will receive a net total of Lit 310 billion (Lit 520 billion with tax and social charges), equivalent to the annual saving made in terms of labour costs, to put solely towards the purchasing of Alitalia shares. This agreement is the first of its kind for a quoted Italian company. It assumes that the productivity increases and labour costs reductions will be achieved by reducing allowances, abolishing various benefits and increasing flexibility for existing staff and by setting up a self-contained company, fully controlled by Alitalia, which will take on new cabin personnel on less costly terms. This new company, Alitalia Team, was set up on 23 July 1996. Existing flying personnel will be able to move to this new company voluntarily, thanks to the offer of career incentives, e.g. promotion to higher levels of responsibility.

As for non-flying personnel, the plan provides in particular for reducing ground staff by an additional 1 936 between 1996 and 1998 through early retirement and voluntary redundancies. The cost-reduction programme includes a change in the conditions for ground handling services.

The maximization of receipts consists of two main series of measures: first, Alitalia is to make up for the absence of a proper computerized fares system by introducing an integrated system of fares, fully automating the ticketing process and creating a fare control system to ensure that fare categories match the reservation codes. Secondly, the company will reform its commercial processes, in particular in the domestic market, in order to slow down the drop in receipts by preparing the ground for the segmentation and passenger loyalty strategy which Alitalia intends to develop.

The shedding of non-strategic activities is intended to concentrate the company on its core activities and to release additional financial resources for recapitalization. The plan notified on 29 July 1996 therefore contained disinvestments of about Lit 400 billion during the period from 1996 to the year 2000, in particular the disposal of the administrative centre at Magliana and the disposal of shareholdings in Alfa Romeo Avio and Sisam.

The plan also devotes much effort to the need to adapt or renew the structure of Alitalia's computer systems, in particular in the administrative and commercial sectors.

As far as the financial component is concerned, it is proposed to inject capital initially totalling Lit 3 310

billion: Lit 1 500 billion to be provided by IRI by the end of 1996; a further Lit 1 500 billion to be the subject of a second instalment to be paid in 1997; and Lit 310 billion for staff to have a stake in the company's capital, as stated above. IRI has in fact already advanced Lit 1 000 billion of the Lit 1 500 billion in the first instalment to Alitalia in June 1996, to be set against the future increase in capital. The main aims of these financial measures are to balance the company's capital structure by aligning it on that of the main Community carriers, to fund the proposed development of the fleet, to involve employees in the restructuring project through equity participation, and to start the privatization process. The Italian authorities add that they are also responding, at least in part, to the need to comply with the combined provisions of Articles 2327 and 2447 of the Italian Civil Code, which require Alitalia to have a minimum capital of Lit 200 million. The total restructuring costs provided for in the plan amount to Lit 900 billion and the immediate effect of these exceptional costs would be to push Alitalia's equity, which has already been reduced to Lit 150 billion, below zero.

The total capital increase provided for in the plan should substantially reduce Alitalia's net borrowing between 1995 and 1997, thus reducing its financial costs during that period.

Secondly, the development phase is chiefly based on bringing the Malpensa hub into service as from 1998. According to the Italian authorities, the development of Malpensa will give Alitalia a prime strategic advantage, enabling it to reposition itself on one of the most important markets in Europe, namely that of northern Italy. Strengthening of the company's network in Malpensa, where Alitalia will have a specialised terminal, will include the development of the intercontinental routes serving Milan, in particular those to North America and Asia. This intercontinental network will be fed by transferring domestic and international services from Linate to Malpensa, targeting routes from east to west and increasing services to Eastern Europe and the Middle East.

The creation of the Malpensa hub will be accompanied by restructuring of the terminal at Rome-Fiumicino Airport, which is currently the hub of Alitalia's network. The final structure of this network sees Rome as the Mediterranean terminal but maintaining a strong intercontinental emphasis. Alitalia will therefore have two hubs (Malpensa and Fiumicino) as the end of the period covered by the plan. It should be noted that the plan, as notified to the Commission in July 1996, does not propose discontinuing any of the routes currently operated by Alitalia, not even during the restructuring phase.

During the development phase, Alitalia also plans to introduce shuttle services on the main domestic Italian routes, to reorganize its international network, to develop a series of alliances with its foreign partners and to expand its fleet. According to the plan notified, the shuttle services will have a high level of frequency, a simplified fare structure and ease of booking, these being especially necessary on busy routes on which low-cost organization and a high frequency of services will sharply reduce production costs. The low-cost products may also be extended to the main European routes so as to feed the Malpensa hub. However, the reorganization of the international network will mainly consist of recovering the traffic in northern Italy by introducing new routes from the main airports in the region and rationalising and developing the intercontinental network, in particular to the Far East. A series of alliances targeted on various markets (national, European, intercontinental) should contribute significantly to the expansion of the network. The changes expected between 1998 and the year 2000 were to be accompanied, in the first version of the plan, by an expansion of the fleet which, having been stable from 1995 to 1997 with 157 aircraft, will rise to 172 aircraft in the year 2000 (an increase of 4 long-haul and 11 short-haul and medium-haul aircraft).

Throughout the plan, a particular effort will also be made to improve product quality, to increase customer satisfaction and to create a brand name: Alitalia is at the moment one of the carriers which invest least in quality of service.

The plan sent on 29 July 1996 should, as a whole, according to the Italian authorities, make it possible to transform Alitalia into a very profitable company by the year 2000. Unit production costs in constant lire per seat-kilometre available, which fell by 13 % between 1990 and 1995, are expected to fall by a further 19 % between 1995 and the year 2000. The operating result will increase to Lit 944 billion and the net result to Lit 489 billion, or 9,15 % of turnover, in the year 2000. Turnover is expected to increase modestly at first in 1996 and 1997 and then more sharply in 1998, 1999 and the year 2000, mainly due to the development of the Malpensa hub.

Finally, the Italian authorities stressed in support of their communications of 29 July and 9 September 1996 that the operation to inject Lit 3 000 billion into Alitalia in 1996 and 1997 does not contain State aid components as it meets the principle of the investor operating in a market economy, as defined by the Commission in its guidelines 'Application of Articles 92 and 93 of the Treaty and Article 61 of the EEA Agreement to State aid in the civil aviation sector' ⁽²⁾ and applied in Commission Decision 96/278/EC on the Spanish company Iberia ⁽³⁾. The operation will provide a return, it is hoped, of more than

30 % which will indeed be due to the dividends paid in 1998, 1999 and the year 2000, but mainly to the figure of some Lit 4 500 billion which will be acquired by the company up to the year 2000. The calculation of profitability also takes account of the costs (more than Lit 1 000 billion) which the IRI group will sustain in the event of Alitalia's bankruptcy. These insolvency costs mainly stem from loans granted to carriers by other companies in the IRI group, in particular Cofiri.

In the light of all of the information given in the communications of 29 July and 9 September from the Italian authorities, the Commission decided, on 9 October 1996, to initiate the procedure provided for in Article 93 (2) of the Treaty on the subject of the capital increases provided for in the plan. The grounds for initiating the procedure are the nature of the capital injections made by IRI, which may be considered to be State resources within the meaning of Article 92 (1) of the Treaty, and the Commission's serious doubts as regards:

- the existence of aid, in view of the low probability of IRI's financial effort being satisfactorily recompensed;
- the possibility of applying one of the derogations provided for in Article 92 (2) and (3) of the Treaty to any aid. Here, the Commission has noted that several of the conditions on which its acceptance of restructuring aid generally depend were probably not met in the case in point.

In its decision to initiate the procedure, the Commission also expressly indicated that it would call on one or more independent consultants in order to obtain information to enable it to make a final assessment in this matter.

By letter of 21 October 1996, the Commission notified the Italian Government of its decision to initiate the procedure and gave it formal notice to submit its comments. This letter was published in the *Official Journal of the European Communities* ⁽⁴⁾ and the other Member States and interested parties were also requested to submit their comments.

III

By letter of 21 November 1996, the Italian authorities submitted their comments in reply to the Commission's letter of 21 October 1996 informing them of the decision to initiate the procedure. They assert, firstly, that Alitalia has already made major efforts to improve its situation

⁽²⁾ OJ C 350, 10. 12. 1994, p. 5.

⁽³⁾ OJ L 104, 27. 4. 1996, p. 25.

⁽⁴⁾ See footnote 1.

during the last five years and that careful analysis shows that the company does not at the moment have any handicap in terms of competitiveness, except possibly *vis-à-vis* one or two of its European competitors. The process of restructuring now taking place within the Italian economy should also enable the company to overcome this handicap, which is essentially due to the differences between the economic systems of the Member States of the European Union. In their comments, the Italian authorities then refer specifically to five of the main questions raised by the Commission in its decision to initiate the procedure:

1. The accuracy of the forecasts of growth in the markets in which Alitalia is present

On this subject, the Italian authorities point out that:

- despite the development of the new international airport at Malpensa, the forecast growth in the available capacity of the company is lower than the market growth (5,5 % as against an annual average of 6,7 % during the period covered by the plan), which will result in market losses for Alitalia,
- the data used by Alitalia in its forecasts come from official sources,
- Alitalia, like all other carriers, analyses the profitability of the routes not on a point-to-point basis, but in terms of the 'network',
- the Milan-Rome-Naples high-speed train will not be fully operational until after 2003. Even then, it will have little impact on Alitalia's revenue since it will still be faster to travel by air than by rail, airline passengers will benefit from connecting flights and, lastly, the price difference between travel by air and by rail is likely to narrow.

2. The efficiency of a network designed around two 'hubs' (Malpensa and Fiumicino)

In this respect, the Italian authorities point out that other Community carriers (Lufthansa, SAS, Iberia) have networks based on two hubs. They add that Alitalia's future network based on two hubs is consistent since, firstly, Fiumicino is also well located to serve as a hub for intercontinental flights from north to south and will remain a major international airport in view of the importance of Rome and, secondly, Malpensa is well located to serve as a hub for intercontinental flights from east to west and as a sixth freedom hub for intercontinental flights and will serve the richest part of Italy. With regard more especially to this area, the draining of traffic away from northern Italy to foreign airports has been estimated at 3,3 million in 1995 and the plan notified to the Commission provides for recovering only part of these losses (less than 30 %) by the year 2000.

3. The merits of the plan's objectives as regards catching up in economic and financial terms

According to the Italian authorities, the proposed reductions in labour costs in the plan for the period from 1996 to the year 2000 follow on from the major efforts which have been made since 1990 and must be regarded as the firmest components of the plan, especially in view of the agreement signed with the trade unions on 19 June 1996. In addition, the methodology used to identify the excess number of staff is based on business process reengineering programmes, analysis of the added value for administrative staff and the volumes of activity forecast for operating staff. The Italian authorities also insist on the fact that the programmes set out in the plan will proceed smoothly since Alitalia Team began operating on 1 November 1996 (two months earlier than the initial date) and the staff reduction is taking place more rapidly than expected.

4. The attitude of Alitalia's employees to the plan

On this point, the Italian authorities point out that the trade unions have clearly and unequivocally committed themselves to supporting the plan notified. The general agreement signed with the trade unions on 19 June 1996 thus led to series of implementing agreements with: flight engineers on 30 October 1996; flight assistants on 22 October 1996; and pilots on 4 October 1996, including their possible transfer to Alitalia Team.

5. Calculation of the internal rate of return of the operation

The Italian authorities point out that the method used to calculate the internal rate of return is in conformity with both the Commission's guidelines, in particular as regards the inclusion of insolvency costs in the calculation and Decision 96/278/EC. The direct losses which IRI would sustain in the event of Alitalia's bankruptcy have also been estimated with caution. The rate of average annual growth beyond the year 2000 has been put at 5,9 %.

With regard to the arrangements for the second capital injection, the Italian authorities point out that, even if IRI has confirmed its commitment to pay Lit 1 500 billion as the shareholder controlling the company, minority shareholders or private investors will also be able to contribute to providing this sum with a view to the company's privatization.

Lastly, the Italian authorities inform the Commission that the main obstacle to Alitalia's privatization, namely the rule that IRI had to hold at least 51 % of the capital of the flag company, was recently removed.

IV

Following the initiation of the procedure, the UK, Danish, Norwegian and Swedish Governments and interested parties such as the airlines Air One, British

Airways, British Midland, KLM, Lauda Air, Lufthansa, SAS and Virgin Atlantic, which are Alitalia's competitors, the Association of Airline Companies of the EEC (ACE) and the Associazione Nazionale Utenti di Servizi Pubblici (Assoutenti) submitted their comments on this matter. In total, four Member States and ten interested third parties, including eight airlines, have produced comments — all approving the Commission's decision to initiate the procedure provided in Article 93 (2) of the Treaty and raising a number of questions relating to the doubts expressed in that decision.

In their observations, the States which commented point out first and foremost that the Treaty rules on State aid must be strictly applied in the civil aviation sector since the process of liberalization based on the provisions of the 'third air package' (Council Regulations (EEC) No 2047/92, No 2408/92 and No 2409/92⁽¹⁾) took effect on 1 April 1997. They go on to claim that the recapitalization of Alitalia, as set out in the restructuring plan notified to the Commission, constitutes State aid. Denmark and the United Kingdom in this respect stress the many uncertainties and the unrealistic assumptions on which the plan is based and, further, the fact that no private partner has agreed to take part in this operation. The four Member States add that the aid cannot be exempted under Article 92 (3) (c) of the Treaty since the requirements for such an exemption are not met in the case in hand, in particular because of the expansionist and non-restrictive nature of the restructuring plan. Sweden refers on this subject to the proposed increase in Alitalia's fleet by the year 2000 and the lack of any capacity reduction or termination of unprofitable routes. Denmark and Norway refer specifically to the disproportionate nature of the amount of the aid, which would result in the overcapitalization of the company. The United Kingdom and Denmark also stress that the aid will transfer Alitalia's difficulties to its Community competitors, as it will — in practice — help to finance Alitalia's major investments in new aircraft during the last few years, which are the main cause of its present indebtedness.

With regard to the exemption requirements that should apply to aid, Denmark and Norway refer to Alitalia's disposal of its non-core business. The United Kingdom, for its part, calls for requirements to guarantee non-discrimination as regards slot allocation, ground-handling services, access to airport facilities and the operation of services in Italy, in particular with regard to the transfer of activities from Linate to Malpensa.

Although Denmark also asserts that the Commission's examination should cover all of the Lit 3 310 billion in capital investment provided for in the plan, the UK and

Norway on the contrary believe that the Commission's Decision of 9 October 1996 to initiate the procedure refers only to the first capital injection of Lit 1 500 billion and that the second capital injection of the same amount should be the subject of a further decision to initiate a procedure. Lastly, Denmark and Sweden want the Commission to let the Member States and interested third parties have any new information which comes to its attention in this matter by publishing it in the *Official Journal of the European Communities*.

These various points also appear to various degrees, but often in a more detailed manner, in the observations from interested third parties, all of whom believe the recapitalization of Alitalia as proposed is aid incompatible with the Treaty. The interested third parties do nevertheless also make additional points.

Air One, Assoutenti, British Airways, KLM and SAS express the greatest doubts about the development of Alitalia's activity at Malpensa airport as proposed in the plan because of the delay in completing the infrastructure, the problems related to the transfer of traffic from Linate to Malpensa and the difficulties which Alitalia will have in managing two hubs (Malpensa and Fiumicino) at the same time. Air One and Assoutenti also emphasise the uncertainty as regards the exact arrangements for the shareholding of Alitalia staff in the company's capital, since such a shareholding will require the amendment of Italian tax laws. They also believe that the sale of Alitalia's headquarters building will not bring in the amount expected. Air One and Lauda Air draw attention to the additional, unlawful aid which was granted to Alitalia by the Italian State through the funding of early retirement measures covered by Decree Law No 546/96 of 23 October 1996 (converted into Law No 640 of 20 December 1996; hereinafter 'DL 546/96').

With regard to the existence of the aid, besides the lack of private partners for the operation and the uncertain and excessively optimistic nature of the assumptions on which the plan is based, in particular in terms of traffic and revenue, Air One, Assoutenti and British Airways state that the insolvency costs which IRI has borne should not be taken into account when calculating the profitability of the operation, and that Alitalia is at the moment still making losses despite the favourable economic climate. The inadequacy of the measures and the cost reduction provided in the plan notified to the Commission is also an argument put forward by ACE, British Airways, SAS, Air One and Assoutenti. The two last-named companies also believe that the plan underestimates the competitive pressure which Alitalia will have to face in the next few years.

⁽¹⁾ OJ L 240, 24. 8. 1992, pp. 1, 8 and 15.

With regard to the incompatibility of the aid, apart from the expansionist nature of the plan and the disproportionate nature of the proposed capital increase, British Airways and Virgin Atlantic refer first and foremost to the fact that the aid is not essential, since Alitalia should seek the resources needed for restructuring within its own organization by disposing of assets and reducing its costs, as is done by private companies. They add, together with Air One and SAS, that the aid will not enable Alitalia to return to profitability since the plan does not in particular provide either for a sufficient reduction in operating costs or for the disposal of unprofitable parts of the company's business. Air One, British Airways and SAS also stress the lack of transparency in the implementation of the aid. British Airways also refers to the frequent interference by the Italian Government in Alitalia's management and claims that the aid in question will not facilitate the development of economic activity within the meaning of Article 92 (3) (c) of the Treaty, as this criterion has to be considered at Community level, where there is already a competitive, efficient air-transport sector. Furthermore, ACE, Air One, Assoutenti, British Airways, British Midland, Lufthansa and Virgin Atlantic stress the dangers of transferring Alitalia's difficulties to its Community competitors, noting its predatory, anti-competitive practices on the Italian market (swamping, very low fares, manipulation of slots). Lufthansa and Assoutenti point out in this respect that Alitalia was recently fined by the Italian competition authority. Lauda Air and Air One add that the anti-competitive effects of the aid will be amplified by the Italian Decree of 16 April 1992, which grants Alitalia an exclusive right to operate most of the regular air routes between Italy and third countries within the European Economic Area. The interested parties therefore call on the Commission to oppose the operation.

With regard to the requirements which should govern any acceptance by the Commission of the aid granted to Alitalia, the interested third parties chiefly propose the following solutions:

- making Alitalia dispose of its non-core assets (British Airways, Lufthansa, SAS, Virgin Atlantic),
- significantly reducing the amount of the aid (ACE, British Airways, Virgin Atlantic),
- reducing the available capacity of the Alitalia group (ACE, Assoutenti, British Midland, Lauda Air, Lufthansa, SAS, Virgin Atlantic) and requiring Alitalia to stop operating unprofitable routes,
- prohibiting Alitalia from practising price leadership throughout its network (Lufthansa, SAS, Virgin Atlantic),
- ending the legal monopoly which Alitalia enjoys on routes to third countries (Assoutenti, Lauda Air, Lufthansa),
- making Alitalia accept an interline arrangement with new entrants (Assoutenti, Lufthansa),
- prohibiting Alitalia's anti-competitive practices (Assoutenti, Lufthansa),
- ending the discrimination from which Alitalia benefits, in particular as regards ground-handling services (KLM), the distribution of traffic between Linate and Malpensa airports (KLM, Lufthansa), airport taxes and charges (Lufthansa, SAS), and slot allocation (Lufthansa, Virgin Atlantic).

Lastly, several interested parties referred to the lack of transparency as regards the exact amount of the aid covered by the Commission Decision of 9 October 1996 to initiate the procedure.

All of the observations expressed by Member States and interested third parties were forwarded by the Commission to the Italian Government on 18 December 1996 and 15 January 1997. By letter of 15 January 1997, the Italian authorities, in turn, submitted their comments in reply to the observations which had been sent to them. They reaffirm the commercial nature and profitability of the operation of recapitalizing Alitalia and more especially contest five of the points raised by the Member States and the interested third parties.

First, as regards the absence of private partners from the operation, the Italian authorities state that no such partners were sought to subscribe to all or part of the capital increase in question and that the participation of private partners would in this instance be detrimental to IRI's interests. It is better for IRI to carry out this operation on its own in the immediate future so as to be able to dispose of its shareholding under more advantageous conditions once Alitalia's restructuring is complete. Furthermore, the involvement of private partners in Alitalia's capital at the present stage would make it necessary to devise a long- or medium-term programme which would prevent the company from returning its assets and management to a proper state of balance in 1998 and thus from benefiting fully from the start-up stage of activity at Malpensa airport.

Secondly, as regard the lack of credibility of the restructuring plan, the Italian authorities stress that the assumptions on which the plan are based are not only realistic but also reasonable, since the cost of the capital loans, the traffic forecasts and the cost reductions set out in the plan include a margin of caution. Furthermore, the positive impact of the millennium celebrations at the end of the century has not been taken into consideration. With regard to the coexistence of the two hubs of Malpensa and Fiumicino, the Italian authorities point out that Alitalia already has two airport hubs (Fiumicino and Linate), that it is necessary to improve the company's network by

increasing its traffic on the most important Italian market (northern Italy), that major European companies are successfully operating several hubs, and that the duration of the journey between Malpensa and the centre of Milan would seem to be comparable to that between city centre and airport in other European cities. They also maintain that the increase in Alitalia's traffic on intercontinental routes is compatible with the capacity of its long-haul fleet since, apart from introducing four new long-haul aircraft, the plan provides for agreements with other carriers and for freight business. Lastly, still according to the Italian authorities, the plan reaffirms the trend towards the reduction of labour costs, since Alitalia already has a productivity level which is among the highest in the sector.

Thirdly, with regard to the lack of capacity reduction or the closure of loss-making routes, the Italian authorities explain that the forecasts for Alitalia's growth during the period covered by the plan are still considerably lower than those in the market, despite the business development expected at Malpensa airport. Furthermore, according to the Italian authorities, it is necessary to take account of all of the contributions of each route to the network and, in this respect, the operating margin of the three parts of the company's network (national, international, intercontinental) is positive.

Fourthly, with regard to the claim that the increase in capital is distorting competition, the Italian authorities assert that the commercial initiatives launched by Alitalia during the last few months do not make the company a price leader, are part of the strategy as set out in the plan, and comply with the selectivity criteria (segmentation of demand, feeding of international and intercontinental flights, optimum utilization of aircraft).

Lastly, with regard to the requirements which the Commission should impose, the Italian authorities consider them to be inapplicable since, in their view, the recapitalization of Alitalia does not constitute State aid. They also specify that the imposition of limits on Alitalia's growth would undermine the logic of the plan at a time when the carrier is generally expanding.

V

As was announced in its letter to the Italian authorities of 21 October 1996 initiating the procedure, the Commission has, since November 1996, been calling on the services of an independent consultant (Ernst & Young) to gather information on several of the questions about which it had expressed doubts. The consultant was therefore first of all instructed to apply the principle of the investor operating in a market economy to the operation in question and, with this in mind, to carry out a general assessment of Alitalia's situation, to consider the options available to the company's public shareholder (IRI) and its

private shareholders, in particular in the light of the provisions of Article 2447 of the Italian Civil Code, to calculate the internal rate of return of the operation, and to identify more generally all the components of any aid given, including guarantees. In the event of the consultant's concluding on this initial point that the proposed capital injection of Lit 3 000 billion was not consistent with the behaviour of a rational investor, he was also asked, secondly, to evaluate the viability and adequacy of the restructuring plan, to verify whether the amount of Lit 3 000 billion is essential and its suitability for meeting the plan's objectives and, lastly, to try to find alternatives to the capital injection.

The consultant appointed by the Commission was able to perform his task by working in cooperation with the representatives of IRI and Alitalia and by obtaining from them all of the information needed. On 11 December 1996, the consultant sent the Commission the report which concluded the first part of his work. The main points to emerge from the report are that:

- in the light of Alitalia's situation, the Italian Civil Code requires its shareholders to recapitalize the undertaking or to sell off its assets at an early date,
- in view of this situation, the restructuring plan has more the appearance of a turnaround plan than of a business plan. The minimum annual rate of return (hurdle rate) required by an investor in such a situation is between 30 and 40 %,
- the costs of writing off the losses which the IRI group will sustain in the event of Alitalia's bankruptcy following the loans granted to it by other companies in the group are a very important factor in the calculation and the analysis to be made,
- determination of the growth rate of Alitalia's cash flow after the year 2000 would seem to be fraught with risk, but is also extremely important. While the Italian authorities assume that this rate will be 5,93 %, the consultant assumes a rate of 4 %,
- the early retirement programme provided for Alitalia employees and backed up by funding of some Lit 160 billion from the Italian State budget for the period from 1995 to 2001 might include some components of State aid,
- the internal rate of return on the capital injection of Lit 3 000 billion, as recalculated after adjustment of the information presented by Alitalia, varies between - 12,5 % and + 25,7 % depending on the various scenarios adopted (inclusion or exclusion of insolvency costs or the funding of the early retirement programme, differing assumptions with regard to the growth rate of the cash flow after the year 2000 and the share of Alitalia's capital held by IRI by the year 2000). It is at all events considerably less than the minimum level required, given the risks being taken by the investor.

The consultant's report was sent to the Italian Government on 12 December 1996 for comments. In their comments of 20 December 1996 to the Commission, the Italian authorities expressed little criticism of the consultant's work in overall terms. However, they considered the following four points to be unacceptable or contradictory: fixing the hurdle rate at 30 % or at any higher figure; considering the early retirement programme to be an additional capital injection; the assumption of an average annual growth rate in the cash flow after the year 2000 of only 4 %; exclusion of the insolvency costs from the calculation to be made.

On the basis of all of this information and in particular the report submitted by the consultant, the Commission informed the Italian authorities and Alitalia's management at a meeting in Brussels on 16 January 1997 and by letter of 22 January 1997 that the company's restructuring plan submitted on 29 July 1996 did not appear to be adequate to warrant a positive decision, and that it would be essential to obtain additional information before the changes could be considered necessary. This examination was to be carried out in cooperation with the consultant appointed by the Commission. A technical meeting on this subject was held in Rome on 24 January 1997 between the Commission, Alitalia and their respective consultants.

VI

Following the discussions between the Commission and the Italian authorities in January 1997 and in the light of the comments presented by the Member States and the other parties concerned, the company Alitalia unofficially informed the Commission, in February 1997, of its intention to adjust the restructuring plan notified on 29 July 1996. This adjustment is based on more modest forecasts at both the macro-economic level and as regards the undertaking's own data, in particular the changes in supply and yield. It chiefly includes the following points:

- a reduction, as from 1997, of nearly 10 % in the number of routes and frequencies operated by Alitalia. The total number of flights cancelled would be therefore about 27 000 a year,
- maintaining the fleet at its current level until the end of the restructuring plan: there will be 158 aircraft in service in the year 2000, as compared with 172 initially provided for in the plan and 157 at the end of 1996. This represents a fall of about 16 % in terms of seats available as compared with the initial plan. The number of people to be recruited will therefore be reduced by 476 during the period covered by the plan. In total, the number of Alitalia employees will fall by 1 212 between December 1996 and December 2000,
- a reduction in the total amount of the proposed capital increase, which falls from Lit 3 000 billion to Lit 2 800 billion, owing to less need for investment,
- the disposal of Alitalia's shares in the computerised reservation system Galileo,
- alignment of Alitalia's method for the depreciation of aircraft to that used by the other major Community companies.

In February 1997, the Commission asked its consultant to examine the updating of Alitalia's restructuring plan as described above. On 6 March 1997, the consultant sent the Commission a draft report which was forwarded the same day to the Italian authorities for comment. The draft report took account of Alitalia's known results for 1996. It concludes that, although the updated plan is indeed more cautious than the initial plan and is far less expansionist, it is nevertheless still based on several generous assumptions. The consultant therefore believes that the minimum annual rate of return required by an investor in this situation could not be less than 30 %, since the operation still entails major risks. Again according to the consultant, this rate is still broadly higher than the underlying internal rate of return, although the latter is considerably better as a result of the changes made.

In a document sent to the Commission on 25 March 1997 and by letter of 3 April 1997, the Italian authorities produced comments on the draft report sent to them on 6 March 1997. They challenge several of the points made in the draft report, in particular the supposed generosity of some of the assumptions in the plan and the fixing of the minimum annual rate of return required (hurdle rate) at 30 %. They therefore reaffirm that the investment in question is in conformity with the norm of the investor in a market economy.

Detailed discussions of all of the issues raised by this matter subsequently took place during a meeting between the Commission and its consultant, on the one hand, and Alitalia and its own consultant, on the other, in Brussels on 8 April 1997. In parallel with this meeting, requests for additional information were sent by the Commission on 11 April 1997 to Alitalia and the Italian authorities, to which Alitalia replied by letter of 15 April 1997 and the Italian authorities by letter of 17 April 1997 providing the details and information requested. It was in particular confirmed that IRI would provide the capital injection of Lit 2 800 billion.

By letter of 18 April 1997, the Commission informed Alitalia and the Italian Government that it was not in a position to adopt a positive decision on this matter based on the norm of an investor in a market economy, on account both of the difficulties inherent in taking account of the insolvency costs to be borne by IRI in the event of Alitalia's bankruptcy and of the gravity of the commercial risks which the plan still entails. Following this correspondence, several meetings were held between the Italian authorities and the Commission in Brussels and Rome in May and June 1997.

The meetings enabled the plan to be further improved as regards the following points:

- speeding up the cost reduction by transferring Alitalia employees to Alitalia Team faster than originally planned,
- reducing the amount of the proposed capital increase to Lit 2 750 billion. In addition, the capital increase is now divided into three instalments: the first, amounting to Lit 2 000 billion (including the Lit 1 000 billion granted as an advance in June 1996), to be paid immediately following the adoption of a positive decision; the second, amounting to Lit 500 billion, to be paid in May 1998, the third, amounting to Lit 250 billion, to be paid in May 1999,
- the disposal of shares held by Alitalia in the Hungarian company Malev and in six regional Italian airports (Genoa, Naples, Rimini, Florence, Lamezia Terme and Turin).

The analysis made by the Commission's consultants points to the conclusion that these additional improvements reduce the risks inherent in the restructuring plan and further increase the profitability of the capital injection. In an additional report, the consultant appointed by the Commission also concludes that the plan, as improved and adjusted since January 1997, is realistic and will allow Alitalia to return to a satisfactory level of profitability by the year 2000. The consultant adds that the amount of the capital injection may be regarded as essential and adequate to meet the plan's objectives and the needs generated by the restructuring effort.

On 26 June 1997, the Italian authorities officially sent the Commission all of the information on the adjustment of the plan referred to above. The adjusted plan, which has been discussed with the company's trade unions, includes economic and financial forecasts corrected in the light of this information and the known results for 1996. The main figures and ratios in the adjusted plan are as follows:

	1996	1997	1998	1999	2000
Turnover	7 834	7 966	8 232	8 674	9 167
Operating result	— 24	165	438	718	929
Net result	— 1 291	175	294	487	649
Net debt (including leasing and 'TFR' retirements funds)	4 268	3 077	3 289	3 180	3 319
ATK	7 118	7 014	7 197	7 496	7 724
Number of employees (as at 31.12)	17 390	16 677	15 934	16 044	16 178
Number of aircraft	157	143	148	153	158
Investments	—	443	983	1 097	1 202

	1997	1998	1999	2000
Financial ratios				
<u>Operating result</u>				
Turnover	2,1 %	5,3 %	8,3 %	10,1 %
<u>Debt (gearing) ⁽¹⁾</u>				
Equity	2,1	1,6	1,2	1,1
Productivity ratio				
ATK				
Number of employees	425	452	467	477
Cost ratios				
<u>Operating costs ⁽²⁾</u>				
ATK	1 077	1 022	979	963
<u>Staff expenditure</u>				
Operating costs	23,7 %	22,9 %	22,6 %	22,0 %
Cabin crew				
Operating costs	5,5 %	5,2 %	5,0 %	4,5 %
Cockpit crew				
Operating costs	6,4 %	6,3 %	6,2 %	6,2 %

⁽¹⁾ The debt includes the non-reimbursed capital relating to the financial leasing and the special provision ('TFR') for severance payments to employees.

⁽²⁾ In constant lira for 1996.

In their letter of 26 June 1997, the Italian authorities also acknowledge that the financial section of the adjusted plan is a State aid measure within the meaning of the Treaty and they give several undertakings. The Italian authorities have therefore undertaken:

1. to adopt the behaviour of a normal shareholder towards Alitalia; to enable it to be managed in accordance with commercial principles only and not to become involved in its management for reasons other than those strictly related to the Italian State's status as a shareholder;
2. not to grant Alitalia any further capital payment or any other aid in any form, including loan guarantees;
3. that, until 31 December 2000, the aid will be used by Alitalia solely for the purposes of restructuring the company and not for acquiring new shareholdings in other air carriers;
4. not to give Alitalia priority in any way over other Community companies, in particular as regards the allocation of traffic rights (including those relating to third countries in the European Economic Area), slot allocation, ground-handling assistance and access to airport facilities where preferential treatment would be contrary to Community law. In particular, the Italian authorities confirm that they will not apply any measure that is contrary to Community law and guarantee that:
 - (a) they will immediately start and by 31 December 1998 at the latest will complete the revision of Agreement No 4372 of 15 April 1992 (hereinafter 'the Agreement'), as approved by Decree of 16 April 1992, in order to bring the Agreement into conformity with Community regulations, in particular as regards the 'right of priority', 'government interference', 'compatibility with the regulations on the liberalization of air transport' and 'airport privileges';
 - (b) a '*de facto*' revision of the Agreement has already taken place with regard to the above points following the exchange of letters with Alitalia on the basis of Article 50 of the Agreement, the exchange making it clear that the Agreement applies only if it is compatible with Community law;
 - (c) Alitalia renounces its right of priority pursuant to Article 3 of the above Agreement;
 - (d) in coordinated or fully coordinated Italian airports, it will, before the start of the 1997-98

winter season, appoint a coordinator who does not have any link whatsoever with Alitalia and acts completely independently of it;

5. that, until 31 December 2000, the capacity available on aircraft operated by Alitalia or other carriers in such a way that it poses a commercial risk to Alitalia (wet leasing, block space, joint venture agreements, etc.) will not exceed the following limits:

- (a) the number of seats available will not exceed 28 985, of which 26 350 will be for Alitalia's own fleet;
- (b) the increase in the number of seat-kilometres available for each calendar year

— within the European Economic Area excluding Italy, and

— within Italy

will not exceed 2,7 %, on the understanding that no growth will be authorized if the growth in the corresponding markets remains lower than 2,7 %. However, if the growth rate in the corresponding markets exceeds 5 %, supply may be increased, above 2,7 %, by the percentage of the increase beyond 5 %.

6. that Alitalia will have an analytical accounting system that makes it possible to determine, in the short term and for each route, a profitability ratio defined as the ratio between the full revenue and the full costs (the full cost equivalent to the sum of the variable costs and fixed costs) for the particular route;
7. that, until 31 December 2000, Alitalia will refrain from offering fares lower than those offered by its competitors for an equivalent service supplied on the routes which it operates;
8. that Alitalia will dispose of its shareholding in Malev by [...] ⁽⁶⁾ at the latest;
9. that Alitalia will continue with the full implementation of the restructuring plan notified to the Commission on 29 July 1996 and adjusted on 26 June 1997, in particular as regards meeting the objectives in terms of productivity, profitability and financial restructuring;

⁽⁶⁾ Business secret.

10. to submit to the Commission, by the end of March 1998, March 1999, March 2000 and March 2001, an annual report on the progress of the restructuring plan, Alitalia's economic and financial situation, and the compliance with these requirements. The report will include a description (giving the particulars of co-contractors) of the commercial or operational cooperation agreements concluded by Alitalia during the previous year. The Commission will, if necessary, have the information given in each of the reports checked by an independent consultant chosen by the Commission in agreement with the Italian Government.

The Italian authorities also point out that the payment of the second and third instalments of the capital increase, in May 1998 and May 1999 respectively, is subject to compliance with the above commitments, the actual implementation of the restructuring plan and achievement of the expected results (in particular as regards the above cost and productivity ratios). At least ten weeks before the release of the last two instalments, they will submit a report to the Commission to enable it to express comments with the assistance of an independent consultant, selected by the Commission after consultation with the Italian authorities.

In their letter of 26 June 1997, the Italian authorities also indicated that they had abandoned the draft Law providing for the funding by the Italian State of the modernization of the MD 80 aeroplanes and that the company's headquarters building at Magliana would be transferred by Alitalia at the market rate.

Lastly, in their correspondence of 26 June 1997, the Italian authorities refer to DL No 546/96 on the early retirement of 700 Alitalia employees between 1995 and 1997. The Decree Law provides for the payment of an additional monthly allowance until the employees concerned reach normal retirement age. The total budget for this measure is estimated at Lit 160 billion for the entire period from 1995 to 2001, of which Lit 56,6 billion is for the period from 1995 to 1997 alone.

The Commission notes that the Italian authorities pointed out, in the same correspondence, that, by 5 July 1997, Alitalia had undertaken irrevocably to pay the sum of Lit 56,6 billion, plus interest, into a blocked account in the name of a notary public for the purpose of reimbursing the Italian State. With regard to the remaining amounts, the Italian authorities have indicated that, by the end of June each year until 2001, Alitalia will pay the sums owing to the employees concerned for each of the years in question into the same account.

In the light of the factual information summarized above, the Commission is in a position to make a final assessment in this case.

LEGAL ASSESSMENT

VII

Under the terms of Article 92 (1) of the Treaty and Article 61 (1) of the Agreement on the European Economic Area (hereinafter referred to as 'the Agreement'), any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is incompatible with the common market and with the Agreement.

In this case, it is important to assess, in the light of those provisions, the capital injection totalling Lit 2 750 billion which the State holding company IRI proposes to put into Alitalia in accordance with the plan notified to the Commission.

First of all, there is no doubt whatsoever that this capital injection constitutes State resources within the meaning of the abovementioned provisions. Indeed, the funds concerned come specifically from the Italian Treasury and the decision to increase the capital was taken by the Italian authorities, as in the case examined by the Court of Justice in its judgment of 21 March 1991 in Case C-305/89 *Italy v. Commission* (7).

Regarding the presence of any aid components, the Treaty and the Agreement lay down the principle of neutrality *vis-à-vis* Member States' rules governing the system of property ownership (Article 222 of the Treaty and Article 125 of the Agreement) and the principle of equality between public and private enterprises. Consequently, Commission action may be neither prejudicial nor beneficial to public enterprises, for example when it is examining an operation in the light of the abovementioned provisions of Article 92 of the Treaty and Article 61 of the Agreement. It is therefore necessary to establish on a case-by-case basis whether a transaction between a Member State and a public enterprise constitutes a normal commercial transaction or whether, in whole or in part, it contains any aid components.

(7) [1991] ECR I-1603, points 11 to 16.

In order to do this, the Commission must base its judgment on the principle of the investor operating in a market economy. Under this principle, no State aid is deemed to be involved where a State provides funds in a manner which would be acceptable to a private investor operating under normal market economy conditions⁽⁸⁾. In general, the Commission considers that the provision of capital from public funds is not State aid provided private shareholders participate in the operation in proportion to their number of shares and under conditions identical to those for the public investor. However, the private investor's holding must have real economic significance. In the present case, however, even it is presumed that the 10 % share of Alitalia's capital held by private investors may be deemed to have real economic significance, no private investor is taking part in the capital increase of Lit 2 750 billion. Furthermore, employee participation in the company's capital to the amount of Lit 310 billion, as set out in the agreement of 19 June 1996, cannot be taken into consideration since the conditions under which this works are very different.

Thus, in the absence of substantial participation by private investors in the operation in question, the Commission must have recourse to a more theoretical approach, the rules of which have been explained several times by the Commission and the Court of Justice. The Court has thus held, in its above judgment of 21 March 1991 in Case C-305/89, that it is necessary 'to consider whether in similar circumstances a private investor of a size comparable to that of the bodies administering the public sector might have provided capital of such an amount'⁽⁹⁾, and further, that 'although the conduct of a private investor with which the intervention of the public investor pursuing economic policy aims must be compared need not be the conduct of an ordinary investor laying out capital with a view to realizing a profit in the relatively short term, it must at least be the conduct of a private holding company or a private group of undertakings pursuing a structural policy — whether general or sectoral — and guided by the prospects of profitability in the longer term'⁽¹⁰⁾. Where the undertaking is loss-making, the long-term investor will take his decision in

the light in particular of the existence of a consistent and adequate restructuring plan.

The method normally used to measure the rational nature of an investment consists in comparing the amount of the investment to the amount of revenue it will generate. In this particular case, the deadline to be taken for the comparison is the year 2 000, in which the plan will be completed. The revenue generated by Alitalia includes the dividends which will be paid to IRI by Alitalia by the year 2 000 and in particular the increase in value of the company by the year 2 000. This increase in value is in fact equivalent to the value of IRI's shareholding in the company at that date, since Alitalia's present value is zero according to the specialists consulted. The Commission believes in this respect that, in the present circumstances, it is not necessary to include, in the expected revenue, the costs which IRI will have to bear in the event of Alitalia's bankruptcy. Indeed, these insolvency costs are for the most part due to the loss of short-term loans granted to Alitalia by the financial company Cofiri, a subsidiary of IRI, before June 1996. They have been repaid since June and July 1996 through the payment, at the same time as the advance, of a sum of Lit 1 000 billion, which in practice also enables this double operation to be regarded as a conversion of capital loans. However, a private investor guided by the prospects of profitability in the longer term would not base his decision on the consideration of a possible immediate advantage if the company's true situation was not sufficiently good to justify long-term commitments.

On the basis of the information in the Commission's possession, the internal rate of return for IRI on the investment of Lit 2 750 billion in Alitalia's capital is close to 20 %, bearing in mind that the early retirement costs are being directly met by Alitalia. This internal rate of return is still below the minimum annual rate of return (hurdle rate) which an investor acting in accordance with the laws of the market would demand before injecting the capital concerned. In view of this, the Commission believes that the criterion of an investor in a market economy is not met in this case.

Furthermore, the capital injection in question affects trade between the Member States since it involves a company whose transport activity, which by its nature directly affects trade, covers the whole of the common market and the European Economic Area. It also distorts or threatens to distort competition within that market, since it is directed at just one company which is in competition with other Community companies over most of its European network, in particular since the entry into force of the third package of air-transport liberalization measures on 1 January 1993. Indeed, it constitutes State aid within the meaning of Article 92 (1) of the Treaty and Article 61

⁽⁸⁾ Commission Communication on the application of Articles 92 and 93 of the Treaty to public authorities' holdings, *Bulletin of the European Communities* 9-1984; Judgment of the Court of Justice in Joined Cases 296 and 318/82 *Netherlands and Leeuwarder Papierwarenfabriek BV v. Commission*, [1985] ECR 809, paragraph 17; application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aid in the aviation sector, paragraphs 25 and 26.

⁽⁹⁾ See footnote 8; paragraph 19.

⁽¹⁰⁾ Paragraph 20.

(1) of the EEA Agreement, as the Italian authorities more-over explicitly acknowledged in their correspondence of 26 June 1997. It is therefore necessary to examine the possible compatibility of this aid with Article 92 (2) and (3) of the Treaty and Article 61 (2) and (3) of the Agreement.

VIII

Article 92 (2) (a), (b) and (c) of the Treaty and Article 61 (2) (a), (b) and (c) of the EEA Agreement do not apply to the operation in question since it is neither aid having a social character granted to individual consumers, nor aid to make good the damage caused by natural disasters or exceptional occurrences, nor aid granted to the economy of certain areas of Germany.

Article 92 (3) of the Treaty and Article 61 (3) of the EEA Agreement list the types of aid which may be considered to be compatible with the common market. Such compatibility must be assessed in the context of the entire Community and not simply that of a single Member State. Moreover, in order to safeguard the proper functioning of the common market, and having regard to the principles of Article 3 (g) of the Treaty, the derogations from Article 92 (1), as defined in Article 92 (3), must be interpreted strictly when examining an aid scheme or any individual measures, especially since, in view of the increase in competition resulting from the liberalization of air transport following the third package of measures, the Commission must be strict in its policy on monitoring State aid so as to prevent it from having effects which are contrary to the common interest.

Article 92 (3) (a) and (c) of the Treaty and Article 61 (3) (a) and (c) of the EEA Agreement lay down derogations for aid to promote or facilitate the development of certain areas. The capital injection into Alitalia does not seem to qualify for application of these provisions since it is an *ad hoc* measure designed to solve a specific problem and does not form part of a general scheme or benefit to all Italian air carriers. Indeed, the Italian Government has not cited these heads of exemption.

Article 92 (3) (b) and (d) of the Treaty and Article 61 (3) (b) and (d) of the Agreement are also inapplicable in this case because the measure in question is not designed to promote the execution of a project of common European interest, to remedy a serious disturbance in the economy of a Member State, or to promote the culture or conservation of European heritage.

As for the derogation in Article 92 (3) (c) of the Treaty and Article 61 (3) (c) of the EEA Agreement in respect of aid to facilitate the development of certain economic activities where such aid does not adversely affect trading conditions to an extent contrary to the common interest, the Commission may consider aid for the restructuring of

a company to be compatible with the common market if it meets a number of conditions⁽¹⁾, which can be summarized as follows:

- the aid must form part of a comprehensive restructuring programme aimed at improving the financial health of the company so that it can, within a reasonable period, become viable and competitive in the environment in which it is operating,
- the programme must be self-contained, which means that no further aid will be necessary,
- the programme must include capacity reductions, if required by the market situation or for the company to return to profitability,
- the aid must not result in the transfer of the company's problems to its competitors,
- the government must refrain from interfering in the management of the company for reasons other than those stemming from its ownership rights and must allow the company to be run according to commercial principles,
- the aid must be used exclusively for the purposes of the restructuring programme and must not be disproportionate to its needs,
- the aid must not infringe other Treaty provisions,
- the aid must be so structured that it is transparent and capable of being monitored.

The Commission has verified that the capital increase of Lit 2 750 billion for Alitalia meets these various criteria, having regard in particular to all of the factual information summarized in Parts I to IV above.

With regard, firstly, to the company's viability over time, it should be pointed out that the capital increase in question accompanies a restructuring plan to whose full implementation the Italian authorities have committed themselves, by letter of 26 June 1997. The plan has been the subject of consultations with the company's trade unions. Its aim is to restore Alitalia's competitiveness and to enable it to be privatized in the new context of the liberalized Community market. With this dual objective in mind, the capital increase will substantially reduce the company's debt and help it to return to a financial structure comparable to that of most of its competitors. Restructuring the balance sheet liabilities will also substantially reduce the financial expenses. Furthermore, the plan provides for the continuation of the efforts already made by Alitalia with regard to productivity and costs. Moreover, the Commission notes that the productivity level of the company's staff is currently the same as that of its main Community competitors. With regard to

⁽¹⁾ Application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aid in the aviation sector, cited above (footnote 2).

production costs, the handicap from which Alitalia is still suffering in this respect should progressively decline during the period covered by the plan as a result in particular of the staff reduction and the transfer of company staff to Alitalia Team. The cost and productivity ratios set out in paragraph VI above, which the Italian authorities have undertaken to abide by during the period covered by the plan, also testify to the progress which will be made.

Furthermore, the plan as adjusted on 26 June 1997 limits the company's growth during the next four years. It is aimed at obtaining operating results that are broadly in surplus, not by means of an expansionist policy, but mainly by reducing costs with production capacities practically unchanged during the period covered by the plan and initially even considerably reduced. Like most competitor companies which had to cope with the crisis in air transport in the early 90s, Alitalia is also pursuing a policy of refocusing its activities on its core business, namely air transport itself. Therefore, following the disposal of the shares in the capital of Società Aeroporti di Roma in 1995, the plan provides in particular for the forthcoming sale of the headquarters building at Magliana and of Alitalia's shareholdings in Alfa Romeo Avio, SISAM, the computerized reservation system Galileo, Malev and six regional Italian airports.

On this basis, the extremely positive results expected by the year 2000 should both meet the company's needs in terms of working capital and funding of investments essential for long-term business and open up the prospect of long-term viability. They should also inspire confidence in investors and pave the way for the development of alliances with other companies.

Lastly, with regard to Alitalia's ability to return to profitability, the Commission has noted the undertaking given by the Italian authorities in their letter of 26 June 1997 not to give Alitalia priority in any way over other Community companies and the aim constantly advanced by the Italian Government of proceeding as soon as possible with the company's privatization. The Commission would stress in this respect that the maintenance of a protected situation with regard to Alitalia would, on the contrary, cause it to doubt the Italian authorities' conviction that the company is able to prosper in the competitive environment which now characterises the Community civil aviation market.

Secondly, the Commission has assured itself, with the help of its consultants, that the plan was in itself suf-

ficient to guarantee Alitalia's survival and prosperity without the need for any additional aid. Furthermore, the Italian authorities undertook in their letter of 26 June 1997 not to grant any further aid to Alitalia in any form whatsoever, including explicit or implicit loan guarantees. In this connection, the Commission would point out that it would regard any guarantee of payment explicitly or implicitly granted to Alitalia's creditors by IRI or any other public body as unlawful State aid because it had not been notified⁽¹²⁾. The Commission has also noted that the Italian Government has abandoned the plan to provide funding for a programme to modernize the MD 80 aircraft and that the headquarters building at Magliana will be sold at the market price.

Thirdly, the plan as adjusted includes the capacity reductions needed to return the company to profitability. Thus, the number of aircraft and seats available in all the aircraft operated by Alitalia will increase from 157 and 25 422 respectively, in 1996, to 143 and 23 384 in 1997. The total number of available tonne-kilometres will fall by 1,5 % between 1996 and 1997. The adjusted plan also provides for the abandonment of routes and frequencies amounting to a total of 27 000 flights a year as from 1997 — about 10 % of the total flights operated by Alitalia. These capacity reductions are all the more significant given that the European civil aviation market is currently growing by an annual average of about 6 % a year. The Commission has also taken note of the Italian authorities' undertakings to limit considerably the company's available capacity up to the year 2 000. As indicated above, these capacity reductions followed by a considerable restriction in the company's growth, as provided for in the plan itself, strengthen the credibility of the plan since most of the efforts aimed at restructuring and returning to profitability are based on the reduction of production costs.

Fourthly, the Commission has taken all necessary steps to ensure that the aid received by Alitalia will not shift the company's difficulties to its Community competitors. On this point, it is chiefly important to note that the adjusted plan provides for the continuous diminution of Alitalia's market share throughout the duration of the plan, on the national, international and intercontinental routes operated by the company. In addition, air transport in Europe is currently enjoying high rates of growth in excess of 6 % a year and the prospects are just as good for

⁽¹²⁾ See the letter sent by the Commission to the Member States on 5 April 1989.

the coming years. This general context of sustained growth offers better prospects for competitors than if demand were low. Moreover, in their letter of 26 June 1997, the Italian authorities gave an undertaking that Alitalia's production capacity would be limited in several ways in conformity with the plan. For example, the number of seats available throughout the fleet operated by Alitalia proper may not exceed 26 350 before the end of the year 2 000. This restriction covers all of the network operated by Alitalia. Similarly, the growth in the number of seat-kilometres available by Alitalia within Italy and the European Economic Area will be limited to a level lower than market growth. On top of these restrictions on quantities supplied, Alitalia's freedom with regard to fares is limited since the Italian authorities have also pledged that, during the period covered by the plan, Alitalia may not adopt the behaviour of a price leader by offering fares lower than those of its competitors for an equivalent service on the routes it operates. Consequently, the plan should not increase Alitalia's business to the detriment of the other Community carriers.

Furthermore, the Commission has assured itself that the grant of the aid in question, which will help Alitalia to survive and to stay in business, will not constitute an obstacle to the opening-up of the Italian market and the development of competition within the European Economic Area, especially as regards companies other than Alitalia which are licensed in Italy. The Italian authorities also gave an undertaking, in their abovementioned correspondence of 26 June 1997, not to give Alitalia any form of priority over the other Community companies, in particular as regards the allocation of traffic rights, slot allocation, ground-handling services and access to airport facilities. This principle of non-discrimination will also apply to the application or amendment of rules for the distribution of traffic within the same airport system. It will result, *inter alia*, in the abolition of the preferential rights granted to Alitalia by the Decree of 16 April 1992 approving the Agreement: this Agreement already included a clause confirming the primacy of Community law, but will now be formally brought into line with Community law. With regard to the allocation of traffic rights to third countries, and in particular the immediate non-application of the priority right pursuant to Article 3 of the Agreement, the Italian authorities will now make single designations or multiple designations to these countries simply on the basis of the individual merits of each application for traffic rights. This will also lead to the designation, in the coordinated Italian airports, of a coordinator who will act in total independence and

without any links with Alitalia, in particular without any organizational, legal or technical links. If this were not done, the maintenance of a protected situation for Alitalia would amplify the negative effect of the aid and would thus itself be contrary to the common interest within the meaning of Article 92 (3) (c) of the Treaty and Article 61 (3) (c) of the Agreement.

Fifthly, the Italian authorities have given an undertaking, in their letter of 26 June 1997, to adopt the behaviour of a normal shareholder toward Alitalia and not to interfere in its management for reasons other than those strictly related to the Italian State's status as a shareholder. This undertaking will enable Alitalia to be managed in accordance solely with commercial principles in the liberalized Community civil aviation market, which the Commission regards as a determining factor for the plan's success. The Italian Government therefore makes a clear distinction between the State's role as a shareholder in a company, the main motivation for which must be to maximise financial profits, and the State's role as a public authority, which is motivated by general policy concerns. The above undertaking by the Italian authorities to consider Alitalia henceforth as an ordinary company in regulatory terms and not to give it any preferential treatment also forms part of this distinction.

Sixthly, the Commission believes that the aid will be exclusively used for the purposes set out in the plan and that it is not disproportionate in relation to the requirements of the plan. The total amount of Lit 2 750 billion is indeed necessary to cover both the costs of the restructuring proposed in the plan, which is estimated at Lit 900 billion, and to reduce the company's debt, which was Lit 3 420 billion at the end of 1995 as compared with Lit 422 billion in own capital, to a reasonable level. As stated above, the debt reduction would seem to be essential for the company's recovery, as it is important to restructure the balance-sheet liabilities and to reduce the amount of the financial expenses, which represented 5,3 % of turnover in 1995. With regard more specifically to the structure of the balance-sheet liabilities, the aid will not lead to the overcapitalization of Alitalia. Examination of the changes in Alitalia's gearing (the ratio of debt to own funds) during the period covered by the plan with the leasing operations included in or excluded from the gearing, shows that the value of the gearing will remain comparable to that of the main European and US competitor companies. By refocusing its activities on its core business and shedding a large amount of its investment, Alitalia is helping to cover the financial needs from its own resources.

Furthermore, the aid will not enable Alitalia to adopt an investment policy that is disproportionate or unrelated to the plan. The investment in aircraft proposed in the adjusted plan therefore simply ensures the replacement of the oldest aircraft in the fleet, since the number of aircraft operated by Alitalia will increase to 158 at the end of the year 2000 as compared with 157 at the end of 1996. In addition, the Italian authorities gave an undertaking, in their correspondence of 26 June 1997, that the aid will be exclusively used by Alitalia for the purposes of restructuring and not to acquire new shareholdings in other air carriers. However, the Commission reserves the right to authorize cross-holdings should Alitalia wish to enter into alliance agreements with other companies.

The resources provided by the aid would also seem to be necessary since Alitalia is unable to substitute sufficient resources from the sale of assets. As indicated above, the company has already embarked on a policy of disinvestment and refocusing on its core business. However, although the resources of about 600 billion thus released will make it possible to reduce the capital increase to be made, they are out of all proportion to the financial requirements of the plan. The company would, moreover, be unable to dispose of assets relating to its main activities without compromising the plan's success.

Seventhly, it does not emerge from the information in the Commission's possession that the grant of the aid will produce a result that would be contrary to the specific provisions of the Treaty and, more especially, the other provisions of the Treaty which are also concerned with the objective of undistorted competition in the common market⁽¹³⁾. On the contrary, as already mentioned above, the Italian authorities have agreed to abolish any discriminatory treatment in favour of Alitalia. Furthermore, the restrictions which the Italian authorities have also undertaken to have respected as regards prices and quantities offered by Alitalia during the period covered by the plan greatly limit the risk that the aid recipient may resort to predatory practices contrary to the provisions of Article 85 and 86 of the Treaty. The commitments given by the Italian authorities, whereby Alitalia will not acquire new shareholdings in other air carriers, will have an analytical accounting system that makes it possible to determine, in the short term, a profitability ratio for each route operated and will give details in an annual report of cooperation agreements concluded with other airlines, go in the same direction. On the last-named point, the Commission will check very closely the agreements which Alitalia may be

called on to conclude during the period covered by the plan with the companies Eurofly and Air Europe, in whose capital it already has a shareholding.

Eighthly, with regard to the transparency and verifiable nature of the aid, it should be first of all be pointed out that the Italian authorities have provided the Commission with all the information it had requested in order to be in a position to give an opinion on this case in full knowledge of the facts. Similarly, the consultant appointed by the Commission has been able to have access to all the information needed to fulfil his task properly and to work in cooperation with the representatives of IRI and Alitalia. Moreover, the undertakings given by the Italian authorities on 26 June 1997 as regards the follow up to the plan submitted to the Commission guarantee satisfactory scope for verification and control: the Italian Government will ensure the full implementation of the restructuring plan; it will submit a report on this implementation and the fulfilment of its commitments each year to the Commission until the plan expires; the Commission will be able to have the report checked by a consultant selected in agreement with the Italian Government; the Italian authorities will not pay the second and third instalments of the capital increase in May 1998 and May 1999 if the plan's objectives are not met or if the commitments have not been fulfilled.

Lastly, in general terms and with regard to the Community interest, the Commission believes that the recapitalization and restructuring of Alitalia will contribute to the development of business in the air transport sector within the Community and the European Economic Area since, in particular, Alitalia would seem to be the main carrier in a significant part of the Community and the existence of several large Community airlines guarantees the maintenance of a balanced competitive situation.

IX

The considerations set out in parts VII and VIII above address the concerns expressed by the Commission in its decision of 9 October 1996 to initiate the procedure and by the Member States and interested third parties in the comments they have subsequently produced.

In the light of the foregoing, the aid granted by the Italian Government to Alitalia in the form of a capital injection totalling Lit 2 750 billion accompanying the company's restructuring plan is eligible for the exemption provided for in Article 92 (3) (c) of the Treaty and Article 61 (3) (c) of the Agreement provided that several conditions are met to ensure that the aid in question facilitates the development of the air transport sector and does not adversely affect the conditions of trade to an

⁽¹³⁾ See judgment of the Court of 15 June 1993 in Case C-255/91, *Matra SA v. Commission*, [1993] ECR I-3203, paragraphs 41 *et seq.*

extent contrary to the common interest. However, the Commission regrets the fact that the Italian Government granted an advance of Lit 1 000 billion to Alitalia in June 1996, to be set against the first instalment of Lit 2 000 billion, before the adoption of the final decision and in disregard of Article 93 (3) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The aid granted by Italy to the company called Alitalia Linee Aeree Italiane S.p.A. (hereinafter: 'Alitalia') in the form of a capital injection totalling Lit 2 750 billion for the restructuring of the company in conformity with the plan notified to the Commission on 29 July 1996 and adjusted on 26 June 1997 is deemed to be compatible with the common market and the EEA Agreement pursuant to Article 92 (3) (c) of the Treaty and Article 61 (3) (c) of the Agreement provided that Italy fulfils the following undertakings:

1. to adopt the behaviour of a normal shareholder towards Alitalia; to enable it to be managed in accordance with commercial principles only and not to become involved in its management for reasons other than those strictly related to the Italian State's status as a shareholder;
2. not to grant Alitalia any further capital payment or any other aid in any form, including loan guarantees;
3. that, until 31 December 2000, the aid shall be used by Alitalia solely for the purposes of restructuring the company and not for acquiring new shareholdings in other air carriers;
4. not to give Alitalia priority in any way over other Community companies, in particular as regards the allocation of traffic rights (including those for third countries in the European Economic Area), slot allocation, ground-handling assistance and access to airport facilities where preferential treatment would be contrary to Community law.

In particular, Italy confirms that it will not apply any measure that is contrary to Community law and guarantees that:

- (a) it shall immediately start and by 31 December 1998 at the latest shall have completed the procedure of revising Agreement No 4372 of 15 April 1992, as approved by Decree of 16 April 1992 (hereinafter: 'the Agreement'), in order to bring that Agreement into line with Community

regulations, in particular as regards the 'right of priority', 'government interference', 'compatibility with the regulations on the liberalization of air transport' and 'airport privileges';

- (b) a *de facto* revision of the Agreement has already taken place with regard to the above points following the exchange of letters with Alitalia on the basis of Article 50 of the Agreement, the exchange making it clear that the Agreement applies only if it is compatible with Community law;
 - (c) Alitalia renounces its right of priority pursuant to Article 3 of the above Agreement;
 - (d) in coordinated or fully-coordinated Italian airports, it will, before the start of the 1997-98 winter season, appoint a coordinator who does not have any link whatsoever with Alitalia and acts completely independently of it;
5. until 31 December 2000 the available capacity of aircraft operated by Alitalia or by other carriers under agreements whereby Alitalia assumes the commercial risk for such capacity (wet-leasing, block-space, joint venture agreements, etc.) shall not exceed the following limits:
- (a) the number of seats available shall not exceed 28 985, of which 26 350 shall be for Alitalia's own fleet;
 - (b) the increase in the number of available seat-kilometres for each calendar year
 - within the European Economic Area excluding Italy, and
 - within Italy
 shall not exceed 2,7 %, on the understanding that no growth is to be authorized if the growth in the corresponding markets remains lower than 2,7 %. However, if the growth rate in the corresponding markets exceeds 5 %, supply may be increased above 2,7 %, by the margin of the increase beyond 5 %;
6. Alitalia shall have an analytical accounting system that makes it possible to determine, in the short term and for each route, the profitability ratio defined as the ratio between the full revenue and the full costs (the full cost being equivalent to the sum of the variable costs and fixed costs) for the particular route;
7. until 31 December 2000 Alitalia shall refrain from offering fares lower than those offered by its competitors for an equivalent service supplied on the routes which it operates;

8. Alitalia shall dispose of its shareholding in Malev by [...] ⁽¹⁴⁾ at the latest;
9. Alitalia shall continue with the full implementation of the restructuring plan notified to the Commission on 29 July 1996 and adjusted on 26 June 1997, in particular as regards meeting the productivity, profitability and financial restructuring objectives set out in paragraph VI above;
10. to submit to the Commission, by the end of the months of March 1998, March 1999, March 2000 and March 2001, an annual report on the progress of the restructuring plan, Alitalia's economic and financial situation, and the compliance with these requirements. The report shall include a description (giving the particulars of co-contractors) of the commercial or operational cooperation agreements concluded by Alitalia during the previous year. The Commission shall, if necessary, have the information given in each of the reports checked by an independent consultant chosen by the Commission in agreement with the Italian Government.

Article 2

The payment of a second instalment of Lit 500 billion and a third instalment of Lit 250 billion shall be subject to compliance with the commitments under Article 1 and the actual implementation of the restructuring plan and

achievement of the expected results (in particular as regards the cost and productivity ratios set out in paragraph VI above).

At least 10 weeks before the release of the second and third instalments, planned for May 1998 and May 1999 respectively, Italy shall submit a report to the Commission to enable it to express comments with the assistance of an independent consultant chosen by the Commission after consulting the Italian authorities. The instalments shall not be released if the objectives of the restructuring plan are not met or if the undertakings are not met.

Article 3

The undertakings and requirements set out in Article 1 shall bind both the company Alitalia Linee Aeree Italiane S.p.A. and its subsidiary Alitalia Team.

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels, 15 July 1997.

For the Commission

Neil KINNOCK

Member of the Commission

⁽¹⁴⁾ Business secret.

COMMISSION DECISION

of 24 October 1997

accepting undertakings offered in connection with the anti-dumping proceedings concerning imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Hungary, Poland, the Czech Republic, Romania and the Slovak Republic and repealing Commission Decision 93/260/EEC

(97/790/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁽¹⁾, as amended by Regulation (EC) No 2331/96⁽²⁾, and in particular Article 8 (1) thereof,

After consulting the Advisory Committee,

Whereas:

- (1) By Regulation (EEC) No 1189/93⁽³⁾, the Council imposed definitive anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Hungary, Poland and the Republic of Croatia. In addition, the Commission accepted undertakings⁽⁴⁾ offered by the Hungarian, Polish and Croatian exporters.
- (2) On 31 August 1996, the Commission announced by a notice published in the *Official Journal of the European Communities*⁽⁵⁾ the initiation of an interim review of Regulation (EEC) No 1189/93 in respect of imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Hungary, Poland and the Republic of Croatia and commenced an investigation pursuant to Article 11 (3) of Council Regulation (EC) No 384/96 (hereinafter referred to as 'the Basic Regulation').
- (3) This interim review investigation was initiated in parallel with the initiation of a proceeding on the same date⁽⁶⁾ in respect of such imports originating in Russia, the Czech Republic, Romania and the Slovak Republic following a complaint lodged by the Defence Committee of the Seamless Steel Tube Industry of the European Union.
- (4) By Regulation (EC) No 981/97⁽⁷⁾ (hereinafter referred to as the 'Provisional Regulation'), the Commission imposed a provisional anti-dumping

duty on imports into the Community of the product in question originating in Russia, the Czech Republic, Romania and the Slovak Republic.

- (5) Following the imposition of the provisional anti-dumping measures, the Commission sought and verified all information that it deemed necessary for the purpose of its definitive findings.

It was established that, both for the countries under the new investigation and under the review investigation, with the exception of the Republic of Croatia, definitive anti-dumping measures should be imposed in order to eliminate the injurious effects of dumping.

The findings and conclusions on all aspects of both investigations are set out in the Commission's proposal to the Council for the imposition of definitive duties⁽⁸⁾.

- (6) Having been informed of the Commission's findings, the Hungarian, Polish, Czech, Romanian and Slovak producers referred to in Article 1 of the present Decision offered undertakings pursuant to Article 8 of the Basic Regulation.
- (7) According to these undertakings, the producers in question have offered to sell to their independent customers, up to a certain quantity of the product concerned for export to the Community at revised prices so that the injurious effects of the dumping are eliminated. In addition, they have offered to ensure that their prices per product group fall into line with the price structure in use in the Community.
- (8) Having carefully examined the abovementioned proposals, the Commission is satisfied that the elimination of the injury will be achieved, in case of acceptance, by two means: first, a price undertaking up to an annual volume threshold, and then an *ad valorem* duty for the remainder.

The Commission notes that, to ensure that the quantity of imports exempted from the *ad valorem* duty does not exceed the quantity offered by each undertaking, the exemption should be conditional on the presentation to the Community customs of

⁽¹⁾ OJ L 56, 6. 3. 1996, p. 1.

⁽²⁾ OJ L 317, 6. 12. 1996, p. 1.

⁽³⁾ OJ L 120, 15. 5. 1993, p. 34.

⁽⁴⁾ OJ L 120, 15. 5. 1993, p. 42.

⁽⁵⁾ OJ C 253, 31. 8. 1996, p. 25.

⁽⁶⁾ OJ C 253, 31. 8. 1996, p. 26.

⁽⁷⁾ OJ L 141, 31. 5. 1997, p. 36.

⁽⁸⁾ See page 1 of this Official Journal.

a valid original production certificate issued in conformity with the specifications set out in the Commission's proposal to the Council for the imposition of definitive measures.

Further, taking into account that the producers which have offered undertakings have agreed to provide the Commission with regular and detailed information on their sales for export to the Community, and to keep available copies of the production certificates for subsequent verification, the correct observance of the undertakings can be effectively monitored by the Commission.

- (9) The undertakings will be underpinned by definitive anti-dumping duties which may be imposed in the event of any breach. It is, therefore, considered that they are sufficient to remedy the injurious effects of dumping. Under these circumstances, the undertakings offered by the Hungarian, Polish, Czech, Romanian and Slovak producers mentioned below, are considered acceptable, and the investigations can, therefore, be terminated with respect to those parties.
- (10) The undertakings accepted by Commission Decision 93/260/EEC ⁽¹⁾ have no further purpose and may be repealed.
- (11) All producers concerned were informed of the essential facts and considerations on the basis of which it was intended to recommend:
- the acceptance of the proposed undertakings within the limits of which no duty will be imposed,
 - the imposition of an *ad valorem* duty if the duty free quantities are exceeded,

— the termination of the investigations in respect of these producers.

These parties have had the opportunity to comment on all aspects of the investigations. Accordingly, should the Commission have reason to believe that an undertaking is being breached, a provisional anti-dumping duty may be imposed pursuant to Article 8 (10) of the Basic Regulation. A definitive anti-dumping duty will be imposed, should the conditions of Article 8 (9) of the Basic Regulation be met.

- (12) Having been informed of the main facts and considerations on the basis of which the Commission intended to accept the undertakings, the Community industry did not raise any objections to the acceptance of the proposed undertakings.
- (13) When the Advisory Committee was consulted on the acceptance of the undertakings offered, some objections were raised. Therefore, in accordance with Article 8 (5) of the Basic Regulation, the Commission sent a report to the Council on the results of the consultations and a proposal that the investigation be terminated by the acceptance of undertakings. As the Council did not decide otherwise within one month, the undertakings offered are accepted,

HAS ADOPTED THIS DECISION:

Article 1

The undertakings offered by the producers mentioned below, in the framework of the anti-dumping proceedings concerning imports into the Community of certain seamless pipes and tubes, of iron or non-alloy steel, originating in Hungary, Poland, the Czech Republic, Romania and the Slovak Republic are hereby accepted.

Country	Manufacturer	Taric additional code
Hungary	Csepel Tubes Co. Ltd ('in liquidation')	8521
Poland	Huta Batory SA	8517
	Huta Andrzej SA	8518
	Huta Czestochowa SA	8519
	Huta Jednosc SA	8520
Czech Republic	Válcovny trub Chomutov a.s.	8507
Romania	Artrom SA	8508
	Silcotub SA	8509
	Petrotub SA	8514
	Republica SA	8515
Slovak Republic	Železiarne Podbrezová a.s.	8516

⁽¹⁾ OJ L 120, 15. 5. 1993, p. 42.

Article 2

Decision 93/260/EEC is repealed.

Article 3

The investigations in connection with the anti-dumping proceedings referred to in Article 1 are hereby terminated with regard to the parties named in that Article.

Article 4

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

Done at Brussels, 24 October 1997.

For the Commission

Leon BRITTAN

Vice-President
