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(Acts adopted pursuant to Title V of the Treaty on European Union)

COUNCIL JOINT ACTION
of 21 May 2002
regarding a contribution of the European Union towards reinforcing the capacity of the Georgian
authorities to support and protect the OSCE observer mission on the border of Georgia with the
Ingush and Chechen Republics of the Russian Federation

(2002/373/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and in particular Article 14 thereof,

Whereas:

- (1) On 20 July 2000, the Council adopted Joint Action 2000/456/CFSP regarding a contribution of the European Union towards reinforcing the capacity of the Georgian authorities to support and protect the OSCE observer mission on the border of the Republic of Georgia with the Chechen Republic of the Russian Federation ⁽¹⁾, which expired on 31 December 2000.
- (2) On 26 July 2001, the Council adopted Joint Action 2001/568/CFSP ⁽²⁾ with a view to ensuring the continued support of the European Union towards stability in the Caucasus region.
- (3) From 28 May to 1 June 2001, General Sir Garry Johnson, as an expert of the European Union, carried out an assessment mission in which he concluded that there would be a need for additional EU support, should the OSCE mandate be extended to the Ingush sector.
- (4) On 13 December 2001, the OSCE decided to expand the mandate of the OSCE mission to Georgia to observe and report on movement across the border between Georgia and the Ingush Republic of the Russian Federation,

HAS ADOPTED THIS JOINT ACTION:

Article 1

1. The European Union shall provide assistance to reinforce the capacity of the Georgian authorities to provide, through their border guards, support and protection for the OSCE

observer mission on the border of Georgia with the Ingush Republic of the Russian Federation, as well as continued assistance in relation to the border of Georgia with the Chechen Republic of the Russian Federation.

2. For this purpose, the European Union shall provide financial support to the OSCE's mission to Georgia, and in particular its border monitoring operation, to cover expenditure related to certain equipment.

Article 2

1. The OSCE mission to Georgia shall be responsible for the procurement and handing over of the equipment.

2. The Commission shall conclude a financing agreement with the OSCE on the use of the European Union financial support, which shall take the form of a grant. The grant shall cover the procurement of items selected by the OSCE according to the needs of the Georgian authorities at both the Ingush and Chechen sections of the Georgian border.

3. The Commission, through its delegation in Tbilisi, shall liaise closely with the OSCE in order to monitor and evaluate the effective delivery of the equipment to the Georgian border guards and its further use.

4. In carrying out its activities, the Commission will cooperate, as appropriate, with local missions of Member States.

5. The Commission shall report on the implementation of the Action to the Council under the authority of the Presidency, assisted by the Secretary-General of the Council, High Representative for the CFSP.

⁽¹⁾ OJ L 183, 22.7.2000, p. 3.

⁽²⁾ OJ L 202, 27.7.2001, p. 2.

Article 3

1. The financial reference amount for the purposes referred to in Article 1 shall be EUR 100 000.
2. The expenditure financed by the amount stipulated in paragraph 1 shall be managed in accordance with the European Community procedures and rules applicable to the budget.

Article 4

This Joint Action shall enter into force on the day of its adoption. It shall expire 12 months after the financing agree-

ment between the Commission and the OSCE has been concluded.

Article 5

This Joint Action shall be published in the Official Journal.

Done at Brussels, 21 May 2002.

For the Council

The President

R. DE MIGUEL

I

(Acts whose publication is obligatory)

**COMMISSION REGULATION (EC) No 838/2002
of 21 May 2002
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 1498/98 ⁽²⁾, and in particular Article 4(1) thereof,

Whereas:

- (1) 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.

- (2) 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 22 May 2002.

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

Done at Brussels, 21 May 2002.

For the Commission
J. M. SILVA RODRÍGUEZ
Agriculture Director-General

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 21 May 2002 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	58,3
	204	35,8
	999	47,0
0707 00 05	052	95,3
	220	151,2
	628	150,5
	999	132,3
0709 90 70	052	85,9
	999	85,9
0805 10 10, 0805 10 30, 0805 10 50	052	88,8
	204	48,8
	212	64,5
	220	85,7
	388	49,5
	600	49,0
	624	80,2
	999	66,6
0805 50 10	528	54,5
	999	54,5
0808 10 20, 0808 10 50, 0808 10 90	060	16,2
	388	96,0
	400	142,0
	404	110,7
	508	78,7
	512	100,2
	524	83,4
	528	85,7
	720	142,1
	804	102,6
	999	95,8

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6). Code '999' stands for 'of other origin'.

**COMMISSION REGULATION (EC) No 839/2002
of 21 May 2002
amending Regulation (EC) No 2090/98 concerning the fishing vessel register of the Community**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Article 1

Having regard to Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture ⁽¹⁾, as last amended by Regulation (EC) No 1181/98 ⁽²⁾, and in particular Article 13 thereof,

Regulation (EC) No 2090/98 is hereby amended as follows:

1. The following Article 3a is inserted:

'Article 3a

The information defined in Annex I by Regulation (EC) No 839 must be supplied to the Commission no later than 31 December 2002 in the case of vessels with a fishing licence whose overall length is 15 metres or more or whose length between perpendiculars is 12 metres or more.

For vessels with a fishing licence whose overall length is under 15 metres or whose length between perpendiculars is under 12 metres, the deadline for transmission of the information shall be 31 December 2003 at the latest.'

2. Article 5 is replaced by the following text:

'Article 5

The Commission shall record the information on fishing vessels communicated by the Member States in accordance with this Regulation in the database constituting the register, subject to its conformity with the Annexes to this Regulation.

The Member States shall have access to the register data concerning their own fleet.'

3. The following Article 5a is inserted:

'Article 5a

A vessel shall be identified in a unique way by means of its internal number defined in Annex I to this Regulation.

This number shall be allocated definitively when the vessel is first registered in a national register. Subsequently, it shall neither be modified nor reallocated even if the vessel is transferred from or to another Member State, destroyed, withdrawn from fishing or reassigned.'

4. Annexes I to V are amended in accordance with the Annex to this Regulation.

Article 2

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

Whereas:

- (1) For the purposes of the common fisheries policy, an up-to-date reference database should be maintained on the characteristics of vessels in the Community fishing fleet, constituting the Community fishing vessel register provided for in Regulation (EC) No 2090/98 ⁽³⁾.
- (2) The Member States must monitor the quality of the data transmitted to the Commission for input to this database.
- (3) The information on fishing licences issued in accordance with Council Regulation (EC) No 3690/93 of 20 December 1993 establishing a Community system laying down rules for the minimum information to be contained in fishing licences ⁽⁴⁾ should be integrated into the database.
- (4) The database must contain the information required under bilateral fisheries agreements between the Community and third countries.
- (5) Additional information must also be inserted into the database so as to comply with the Community's international obligations with respect to exchanges of data with the Food and Agriculture Organisation of the United Nations in accordance with Council Decision 96/428/EC of 25 June 1996 on acceptance by the Community of the Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas ⁽⁵⁾.
- (6) Regulation (EC) No 2090/98 should therefore be amended.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Fisheries and Aquaculture,

⁽¹⁾ OJ L 389, 31.12.1992, p. 1.

⁽²⁾ OJ L 164, 9.6.1998, p. 1.

⁽³⁾ OJ L 266, 1.10.1998, p. 27.

⁽⁴⁾ OJ L 341, 31.12.1993, p. 93.

⁽⁵⁾ OJ L 177, 16.7.1996, p. 24.

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

Done at Brussels, 21 May 2002.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX

The Annexes to Regulation (EC) No 2090/98 are amended as follows:

1. In Annex I, the following text is added to the Table entitled 'Definition of the data to be communicated and description of a record':

Name of zone	Width	Alignment	Definition and remarks
Name of agent	50	L	Agent of vessel ⁽⁶⁾ : Natural person: surname, first name Legal person: name
Agent's address	100	L	Free text. The address should be precise enough to enable the agent to be contacted: street, number, box number, postcode, town, country.
Name of owner	50	L	Owner of vessel ⁽⁷⁾ : Natural person: surname, first name Legal person: name
Owner's address	100	L	Free text ⁽⁷⁾ . The address should be precise enough to enable the owner to be contacted: street, number, box number, postcode, town, country.
Place of construction	100	L	Free text ⁽⁷⁾ . Name of shipyard, town and country where the vessel's hull was built.

⁽⁶⁾ If the agent is also the owner of the vessel, the fields relating to the owner must be completed.

⁽⁷⁾ The owner's name and address and the place of construction of the vessel are mandatory for vessels whose length between perpendiculars is 24 metres or more, or whose overall length is 27 metres or more.'

2. The following text is added to Annex II:

	XXX	CST	CHA	IMP	MOD	EXP	RET	DES	COR	DEL
Name of agent	X	X	X	X	X	—	—	—	⁽¹⁾	—
Agent's address	X	X	X	X	X	—	—	—	⁽¹⁾	—
Name of owner	X	X	X	X	X	—	—	—	⁽¹⁾	—
Owner's address	X	X	X	X	X	—	—	—	⁽¹⁾	—
Place of construction	X	X	X	X	X	—	—	—	⁽¹⁾	—'

3. The following text is added to Annex III:

	XXX	CST	CHA	IMP	MOD	EXP	RET	DES	COR	DEL
Name of agent	?	?	?	?	?,=	so	so	so	npc ⁽¹⁾	so
Agent's address	?	?	?	?	?,=	so	so	so	npc ⁽¹⁾	so
Name of owner	?	?	?	?	?,=	so	so	so	npc ⁽¹⁾	so
Owner's address	?	?	?	?	?,=	so	so	so	npc ⁽¹⁾	so
Place of construction	?	?	?	?	?,=	so	so	so	npc ⁽¹⁾	so'

4. The following text is added to Annex IV:

	Unknown	Does not exist	Unchanged	Do not correct
Name of agent	9 ... 99	—	9 ... 97	9 ... 90
Agent's address	9 ... 99	—	9 ... 97	9 ... 90
Name of owner	9 ... 99	—	9 ... 97	9 ... 90
Owner's address	9 ... 99	—	9 ... 97	9 ... 90
Place of construction	9 ... 99	—	9 ... 97	9 ... 90'

5. The following text is added to Annex V:

	XXX	CST	CHA	IMP	MOD	EXP	RET	DES	COR	DEL
Name of agent	none	none	none	none	=	so	so	so	npc	so
Agent's address	none	none	none	none	=	so	so	so	npc	so
Name of owner	none	none	none	none	=	so	so	so	npc	so
Owner's address	none	none	none	none	=	so	so	so	npc	so
Place of construction	none	none	none	none	=	so	so	so	npc	so'

COMMISSION REGULATION (EC) No 840/2002**of 21 May 2002****adjusting certain compensatory agrimonetary aids granted in the United Kingdom and Sweden**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2799/98 of 15 December 1998 establishing agrimonetary arrangements for the euro ⁽¹⁾, and in particular Articles 4 and 5 thereof,

Whereas:

- (1) For various Member States, the maximum amounts of the compensatory aid resulting from the exchange rates applicable on 1 and 2 January 2000 are laid down by Commission Regulation (EC) No 801/2000 ⁽²⁾.
- (2) The maximum amounts of the compensatory aid resulting from the exchange rates for the pound sterling applicable on 31 December 2000 and 1 January 2001 are laid down by Commission Regulation (EC) No 653/2001 ⁽³⁾.
- (3) The maximum amounts of the compensatory aid for appreciable revaluations of the pound sterling and the Swedish krona in 2000 are laid down by Commission Regulation (EC) No 654/2001 ⁽⁴⁾.
- (4) As regards compensatory aid resulting from the exchange rates applicable for certain direct aid and structural or environmental measures, Article 5(3) of Regulation (EC) No 2799/98 lays down that the amounts paid out under the second and third tranches of aid are each to be reduced, vis-à-vis the level of the previous tranche, by at least a third of the amount paid out in the first tranche and Article 5(4) of that Regulation lays down that the maximum amount of the compensatory aid is to be reduced or cancelled as a function of the effect on income of the development of the exchange rates recorded on the first day of the second and third tranches.
- (5) Examination of the exchange rates for the pound sterling and the Swedish krona fixed by Commission Regulation (EC) No 426/2002 of 7 March 2002 fixing the conversion rates applicable to certain direct aids and structural or environmental measures ⁽⁵⁾ indicates a depreciation of those currencies.
- (6) There should therefore be an additional reduction in the maximum amounts of the second tranche of compensatory aid for the United Kingdom linked to the operative events of 31 December 2000 and 1 January 2001. It is

also necessary to cancel the amounts of the third tranche of compensatory aid for Sweden linked to the operative events of 1 January 2000 and 2 January 2000.

- (7) As regards compensatory aid for appreciable revaluations of national currencies, Article 4(5) of Regulation (EC) No 2799/98 lays down that the amounts paid out under the second and third tranches are each to be reduced, vis-à-vis the level of the previous tranche, by at least a third of the amount paid out in the first tranche and that the amounts paid out under the second and third tranches are to be reduced or cancelled as a function of the effect on incomes of the development of exchange rates recorded until the beginning of the month preceding the first month of the relevant tranche, and taking account of the market situation observed over the same period.
- (8) Examination of the average exchange rates fixed for the pound sterling and the Swedish krona between 1 March 2001 and 31 January 2002 indicates a depreciation of those currencies during that period.
- (9) In order to take account of the market situation, pursuant to Article 4(6)(a) of Regulation (EC) No 2799/98 the amount of one or more tranches for one or more sectors may be reduced if it is found that the average market price for the Member State concerned is equal to or higher than the average market prices in the Member States whose currencies have not been appreciably revalued during the same period. That condition was met in the United Kingdom's cereals sector during the period 1 March 2001 to 31 January 2002. However, the United Kingdom did not grant the first tranche of that sector's compensatory aid for an appreciable revaluation of the pound sterling in 2000. As a result, it is not possible to grant the second or third tranches of that aid in the cereals sector. The market situation in the United Kingdom's cereals sector does not therefore affect the maximum amount of the second tranche of compensatory aid for an appreciable revaluation of the pound sterling in 2000.
- (10) Nevertheless, in view of the development of exchange rates, an additional reduction should be applied to the maximum amount of the second tranche of compensatory aids for the United Kingdom for the appreciable revaluation of the pound sterling in 2000 and payment of the second tranche of compensatory aid for Sweden for the appreciable revaluation of the Swedish krona in 2000 should be cancelled.

⁽¹⁾ OJ L 349, 24.12.1998, p. 1.

⁽²⁾ OJ L 96, 18.4.2000, p. 34.

⁽³⁾ OJ L 91, 31.3.2001, p. 62.

⁽⁴⁾ OJ L 91, 31.3.2001, p. 64.

⁽⁵⁾ OJ L 66, 8.3.2002, p. 8.

- (11) The measures provided for in this Regulation are in accordance with the opinions of the Management Committees concerned,

HAS ADOPTED THIS REGULATION:

Article 1

1. The third tranche of compensatory aid for Sweden provided for by Regulation (EC) No 801/2000 relating to aid whose operative event falls on 1 January 2000 shall be cancelled.

2. The third tranche of compensatory aid for Sweden provided for by Regulation (EC) No 801/2000 relating to aid whose operative event falls on 2 January 2000 shall be cancelled.

Article 2

1. The maximum amount of the second tranche of compensatory aid for the United Kingdom provided for by Regulation (EC) No 653/2001 relating to aid whose operative

event falls on 31 December 2000 shall be multiplied by 0,4722.

2. The maximum amount of the second tranche of compensatory aid for the United Kingdom provided for by Regulation (EC) No 653/2001 relating to aid whose operative event falls on 1 January 2001 shall be multiplied by 0,3941.

Article 3

1. The maximum amount of the second tranche of compensatory aid for the United Kingdom provided for by Article 1 of Regulation (EC) No 654/2001 for the appreciable revaluation of the pound sterling in 2000 shall be multiplied by 0,7090.

2. The maximum amount of the second tranche of compensatory aid for Sweden provided for by Article 2 of Regulation (EC) No 654/2001 for the appreciable revaluation of the Swedish krona in 2000 shall be cancelled.

Article 4

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

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

Done at Brussels, 21 May 2002.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION DECISION No 841/2002/ECSC

of 21 May 2002

amending Decision No 283/2000/ECSC imposing a definitive anti-dumping duty on imports of certain flat rolled products of iron or non-alloy steel, of a width of 600 mm or more, not clad, plated or coated, in coils, not further worked than hot-rolled, originating, *inter alia*, in India and accepting an undertaking

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to Commission Decision No 2277/96/ECSC of 28 November 1996 on protection against dumped imports from countries not members of the European Coal and Steel Community ⁽¹⁾ ('the basic Decision'), as last amended by Decision No 435/2001/ECSC ⁽²⁾, and in particular Article 11(4) thereof,

After consulting the Advisory Committee,

Whereas:

A. PREVIOUS PROCEDURE

- (1) By Decision No 283/2000/ECSC ⁽³⁾, ('the definitive Decision'), as corrected by Decision No 2009/2000/ECSC ⁽⁴⁾, the Commission imposed, *inter alia*, a definitive anti-dumping duty of 10,7 % on imports of hot-rolled coils ('product concerned') originating in India, with the exception of imports from several Indian companies specifically mentioned, which are either subject to a lesser rate of duty or to no duty at all.

B. CURRENT PROCEDURE

- (2) The Commission subsequently received an application to initiate a 'new exporter' review of the definitive Decision, pursuant to Article 11(4) of the basic Decision, from the Indian exporting producer Ispat Industries Ltd. ('the company'). This company claimed that it was not related to any of the exporting producers in India subject to the anti-dumping measures in force with regard to the product concerned. Furthermore, it claimed that it had not exported the product concerned during the original period of investigation (1 January 1998 to 31 December 1998), but had exported the product concerned to the Community since then.
- (3) The product covered by the current review is the same product as the one under consideration in the definitive Decision.

- (4) The Commission examined the evidence submitted by the company and considered it sufficient to justify the initiation of a review in accordance with the provisions of Article 11(4) of the basic Decision. After consultation of the Advisory Committee and after the Community industry concerned had been given the opportunity to comment, the Commission initiated, by Decision No 2113/2000/ECSC ⁽⁵⁾, a review of the definitive Decision pursuant to Article 11(4) of the basic Decision with regard to the company and commenced its investigation.

- (5) By the Decision initiating the review, the Commission also repealed the anti-dumping duty imposed by the definitive Decision with regard to imports of the product concerned produced and exported to the Community by the company and directed customs authorities, pursuant to Article 14(5) of the basic Decision, to take appropriate steps to register such imports.

- (6) The Commission informed the company and the representatives of the exporting country. Furthermore, it gave other parties directly concerned the opportunity to make their views known in writing and to request a hearing. However, no such request was received by the Commission.

- (7) The Commission sent a questionnaire to the company and received a reply within the deadline. The Commission also sought and verified all the information deemed necessary for the determination of dumping. A verification visit was carried out at the premises of the company.

- (8) The investigation of dumping covered the period from 1 July 1999 to 30 June 2000 ('the investigation period').

C. RESULTS OF THE INVESTIGATION

1. New exporter qualification

- (9) The investigation confirmed that the company had not exported the product concerned during the original period of investigation and that it had begun exporting to the Community after this period.

⁽¹⁾ OJ L 308, 29.11.1996, p. 11.

⁽²⁾ OJ L 63, 3.3.2001, p. 14.

⁽³⁾ OJ L 31, 5.2.2000, p. 15.

⁽⁴⁾ OJ L 240, 23.9.2000, p. 12.

⁽⁵⁾ OJ L 252, 6.10.2000, p. 3.

- (10) Furthermore, the company was able to satisfactorily demonstrate that it did not have any links, direct or indirect, with any of the Indian exporting producers subject to the anti-dumping measures in force with regard to the product concerned.
- (11) Accordingly, it is confirmed that the company should be considered a new exporter in accordance with Article 11(4) of the basic Decision, and thus an individual dumping margin should be determined for it.

2. DUMPING

Normal value

- (12) As far as the determination of normal value is concerned, the Commission first established, for the company, whether its total domestic sales of hot-rolled coils were representative in comparison with its total export sales to the Community. In accordance with Article 2(2) of the basic Decision, domestic sales were considered representative since the total domestic sales volume of the exporting producer was at least 5 % of its total export sales volume to the Community.
- (13) The Commission subsequently identified those types of hot-rolled coils sold domestically by the company that were identical or directly comparable to the types sold for export to the Community. The investigation showed that the grades and dimensions of the product concerned exported into the Community by the company are identical or comparable to the products sold on the domestic market.
- (14) For each type sold for export to the Community by the exporting producer and found to be directly comparable to the type sold on its domestic market, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Decision. Domestic sales of all types were considered sufficiently representative.
- (15) An examination was also made as to whether the domestic sales of each type could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers of the type in question. In cases where the sales volume of the product concerned sold at a net sales price equal to or above the calculated cost of production ('profitable sales') represented 80 % or more of the total sales volume and where the weighted average price of that type was equal to or above cost of production, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales made during the investigation period, irrespective of whether all these sales were profitable or not. In cases where the volume of profitable sales of the product concerned represented less than 80 % but 10 % or more of the total sales volume, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales only.
- (16) In cases where the volume of profitable sales of any type of the product concerned represented less than 10 % of the total sales volume, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.
- (17) Wherever domestic prices of a particular type sold by the company could not be used, constructed normal value had to be used in preference to domestic prices of other exporting producers or to domestic prices of other similar types. Due to the fact that only one company is concerned by this investigation, the former option was not available. As to the use of similar types, the number of different types and the variety of factors affecting them, would have meant in this case making numerous adjustments, most of which would have had to be based on estimates. It was therefore considered that the constructed value of the company formed a more appropriate basis to establish normal value.
- (18) As a result of the above tests, for 33 types normal value calculations were based on the actual domestic sales prices of hot-rolled coils whilst for all other types (1006) normal value had to be calculated, in accordance with Article 2(3) of the basic Decision, on the basis of a constructed value that was determined by adding to the manufacturing costs of the exported models, a reasonable percentage for selling, general and administrative expenses (SG & A) and reasonable profit margin.
- (19) To this end, the Commission examined whether the SG & A incurred and the profit realised by the company on the domestic market constituted reliable data. Actual domestic SG & A expenses were considered reliable since the domestic sales volume of the company concerned could be regarded as representative when compared to the volume of export sales to the Community. The domestic profit margin was determined on the basis of domestic sales made in the ordinary course of trade.
- (20) The company has claimed an adjustment to its cost of production for start-up costs because of low capacity utilisation rate, pursuant to Article 2(5) of the basic Decision.

- (21) It was found that the company's costs for the investigation period were affected by the use of new production facilities that required a very substantial investment and that were characterised by low capacity utilisation rates. It was also established that these low capacity utilisation rates were partially due to start-up operations. Consequently, pursuant to Article 2(5) of the basic Decision, the Commission has adjusted the company's cost of production for the entire investigation period to reflect the actual costs incurred during the last three months thereof, which corresponded to the moment when the company was considered as commercially put to use pursuant to the applicable Indian law.

Export price

- (22) Since all export sales to the Community were made to independent customers in the Community, the export price was established in accordance with Article 2(8) of the Basic Decision, namely on the basis of export prices actually paid or payable.

Comparison

- (23) For the purpose of ensuring a fair comparison between normal value and export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Decision.
- (24) All of the export sales allowances with the exception of that for commissions, which was double accounted, could be accepted. These relate to inland freight, other freight, bank charges, other charges and packing.
- (25) All the domestic sales allowances claimed by the company with the exception of that for duty drawback could be accepted.
- (26) The duty drawback allowance that was claimed was calculated on the basis of the credits gained on the basis of the Duty Entitlement Passbook Scheme (DEPB) scheme described in recital 40 of Commission Decision No 284/2000/ECSC ⁽¹⁾, as corrected by Decision No 2071/2000/ECSC ⁽²⁾, that imposed a definitive countervailing duty on imports of the product concerned originating in India. This scheme depends on the export sales quantities irrespective of whether or not any import duties have been paid or whether any raw materials have

actually been imported at all. Since the company only imported negligible quantities of raw materials, it could not demonstrate that the imported materials were physically incorporated in the final product when sold on the domestic market of the exporting producer. This allowance cannot therefore be granted as it does not satisfy the requirements of the basic Decision.

Dumping margin

- (27) According to Article 2(11) of the basic Decision, the dumping margin was established on the basis of a comparison between the weighted average normal value by type and the weighted average export price.
- (28) This weighted average dumping margin established for the company, expressed as a percentage of the free-at-Community-frontier price, amounts to 46,5 %.

D. AMENDMENT OF THE MEASURES BEING REVIEWED

- (29) In the light of the foregoing, it is considered that a definitive anti-dumping duty should be imposed at the level of the dumping margin found, but, in accordance with Article 9(4) of the basic Decision should not be higher than the countrywide injury margin established for India by the definitive Decision in the original anti-dumping investigation.
- (30) No individual injury margin can be established in a new exporter review since the investigation, pursuant to Article 11(4) of the basic Decision, is limited to the examination of the individual dumping margin.
- (31) In accordance with Article 24(1) of Commission Decision No 1889/98/ECSC ⁽³⁾ and Article 14(1) of the basic Decision, no product shall be subject to both anti-dumping and countervailing duties for the purposes of dealing with one and the same situation arising from dumping or from export subsidisation. As anti-dumping duties should be imposed on imports of the product concerned it is necessary to determine whether, and to what extent, the subsidy and the dumping margin arise from the same situation.
- (32) In the case in question the schemes investigated in India have been found to constitute export subsidies within the meaning of Article 3(4)(a) of the above Decision No 1889/98/ECSC. As such, the subsidies can affect the export prices of the Indian exporting producers, thus leading to increased margins of dumping. In other words, the dumping margin established is wholly or partly due to the existence of export subsidies. In these circumstances the anti-dumping duty needs to be adjusted to reflect the actual dumping margin remaining after the imposition of the countervailing duties offsetting the effect of the export subsidies.

⁽¹⁾ OJ L 31, 5.2.2000, p. 44.

⁽²⁾ OJ L 246, 30.4.2000, p. 32.

⁽³⁾ OJ L 245, 4.9.1998, p. 3.

E. ADJUSTMENT OF THE ANTI-DUMPING DUTY APPLICABLE TO JINDAL VIJAYANAGAR STEEL LTD

- (33) Jindal Vijayanagar Steel Ltd applied for an accelerated review pursuant to Article 20 of Decision No 1889/98/ECSC, but did not apply, at the initiation of this review, for a review of the anti-dumping duty applicable to it. Following the initiation of a review ⁽¹⁾ an individual countervailing duty rate was established at 5,7 % for this company. Given that pursuant to recital 255 of Decision No 283/2000/ECSC the anti-dumping duty is determined as the difference between the injury margin and the export subsidy established, the anti-dumping duty applicable has to be adjusted. The injury margin attributed to Jindal Vijayanagar Steel Ltd is the residual injury margin of 23,8 %. Consequently, the anti-dumping duty applicable to products exported to the Community by this company has to be fixed at 18,1 %.
- (34) Accordingly, the rate of duty applicable to the free-at-Community-frontier price, before duty and taking into account the results of the parallel anti-subsidy proceeding, shall be:

(%)

Company	Dumping margin	Injury margin	Export subsidy margin	Proposed countervailing duty	Anti-dumping duty to be imposed
Ispat Industries Ltd	46,5	23,8	9,8	9,8	14
Jindal Vijayanagar Steel Ltd	56,3	23,8	5,7	5,7	18,1

- (35) Meanwhile, Jindal Vijayanagar Steel Ltd has requested a review of the anti-dumping duty applicable to it. This review was initiated by Commission Decision No 1699/2001/ECSC ⁽²⁾ which shall remain in force.

F. RETROACTIVE LEVYING OF THE ANTI-DUMPING DUTY

- (36) As the review has resulted in a determination of dumping in respect of the company Ispat Industries Ltd, the anti-dumping duty applicable to this company shall also be levied retroactively from the date of initiation of this review on imports which have been made subject to registration pursuant to Article 3 of Decision No 2113/2000/ECSC.

G. UNDERTAKING

- (37) The company, Ispat Industries Ltd, offered a price undertaking concerning its exports of the product concerned to the Community, in accordance with Article 8(1) of the basic Decision.
- (38) After examination of the offer, the Commission considered the undertaking as acceptable since it would eliminate the injurious effects of dumping pursuant to Article 8(1) of the basic Decision. Moreover, the regular and detailed reports which the company undertook to provide to the Commission will allow effective monitoring. Furthermore, the nature of the product and the sales structure of the company is such that the Commission considers that the risk of circumvention is limited.
- (39) In order to ensure the effective respect and monitoring of the undertaking, when the request for release for free circulation pursuant to the undertaking is presented, exemption from the duty is conditional upon presentation to the customs service of the Member State concerned a valid 'Commercial invoice' issued by Ispat Industries Ltd and containing the information listed in the Annex. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate rate of anti-dumping duty should be payable in order to ensure the effective application of the undertaking.

⁽¹⁾ OJ C 201, 14.7.2000, p. 2.

⁽²⁾ OJ L 231, 29.8.2001, p. 3.

- (40) The information requested pursuant to the Annex has been updated. In order to ensure consistency in the monitoring of undertakings this revised Annex should apply also to all the companies referred to in Article 2(1) of Decision No 283/2000/ECSC.
- (41) In the event of a breach or withdrawal of the undertaking an anti-dumping duty may be imposed, pursuant to Article 8(9) and (10) of the basic Decision.

H. REPEAL OF COMMISSION DECISION No 1357/2001/ECSC ⁽¹⁾

- (42) Decision No 1357/2001/ECSC contained certain errors and should consequently be repealed and replaced with effect from the date of its entry into force by the present Decision. Any anti-dumping and countervailing duties collected in excess of the country-wide injury margin of 23,8 % for India should therefore be reimbursed.

I. DISCLOSURE AND DURATION OF THE MEASURES

- (43) The companies were informed of the facts and considerations on the basis of which it was intended to impose the amended definitive anti-dumping duty on their exports to the Community.
- (44) This review does not affect the date on which Decision No 283/2000/ECSC will expire pursuant to Article 11(2) of the basic Decision,

HAS ADOPTED THIS DECISION:

Article 1

Decision No 1357/2001/ECSC is hereby repealed.

Article 2

Decision No 283/2000/ECSC is amended as follows:

1. In the table in Article 1(2) the section headed 'India' is replaced by the following:

Country	Company	Rate of anti-dumping duty (%)	TARIC additional code
'India	Essar Steel Ltd, 27th KM, Surat Hazira Road, Hazira 394 270, Dist: Surat, State: Gujarat	1,5	A076
	The Steel Authority of India Limited, Central Marketing Organisation, Transport & Shipping Department, Ispat Bhawan 40, Jawaharlal Nehru Road, Calcutta 700 071	11,5	A077
	Tata Iron & Steel Company Limited, 43 Chowringhee Road, Calcutta 700 071	0	A078
	Ispat Industries Ltd, "Park Plaza", 71 Park Street, Calcutta 700 016	14	A204
	Jindal Vijayanagar Steel Ltd, Jindal Mansion, 5-A. G. Deshmukh Marg, Mumbai 400 026	18,1	A270
	All other companies	10,7	A999'

2. In the table in Article 2(1), the following row is inserted:

Company	Country	TARIC additional code
'Ispat Industries Ltd, "Park Plaza", 71 Park Street, Calcutta 700 016	India	A204'

⁽¹⁾ OJ L 182, 5.7.2001, p. 27.

3. In Article 2(2), the reference to an 'undertaking invoice' is replaced by 'Commercial Invoice'.

Article 3

The Annex to Decision No 283/2000/ECSC is replaced by the Annex to this Decision.

Article 4

Where a countervailing duty was collected pursuant to Decision No 284/2000/ECSC in addition to the anti-dumping duty imposed by Decision No 283/2000/ECSC on either:

- (a) goods produced by Ispat Industries Ltd, which were imported between 7 October 2000 and the date of publication of this Decision, and
- (b) goods produced by Jindal Vijayanagar Steel Ltd, which were imported between 6 July 2001 and the date of publication of this Decision,

the amount of anti-dumping duty collected which exceeded the combined duty of 23,8 % shall be reimbursed.

Article 5

Decision No 1699/2001/ECSC, initiating a 'new exporter' review of Decision No 283/2000/ECSC in respect of Jindal Vijayanagar Steel Ltd, continues to apply.

Article 6

- 1. This Decision shall enter into force on the day following its publication in the *Official Journal of the European Communities*.
- 2. Article 2(2) shall apply from 6 July 2001.

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

Done at Brussels, 21 May 2002.

For the Commission
Pascal LAMY
Member of the Commission

ANNEX

**Information necessary for commercial invoices accompanying sales made subject to the undertaking
(Article 2(2))**

1. The heading 'COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING'.
2. The name of the company issuing the commercial invoice.
3. The commercial invoice number.
4. The date of issue of the commercial invoice.
5. The TARIC additional code under which the goods on the invoice are to be customs-cleared at the Community frontier (as specified in the Decision).
6. The exact description of the goods, including:
 - the company product code number (CPC) (if applicable),
 - the product code number (PCN) (as established in the undertaking offered by the producing exporter in question),
 - the technical specification of the PCN,
 - CN code,
 - quantity (to be given in tonnes).
7. The description of the terms of the sale, including:
 - price per tonne,
 - the applicable payment terms,
 - the applicable delivery terms,
 - total discounts and rebates.
8. Name of the first buyer acting as an importer to which the invoice is issued directly by the company.
9. The name of the official of the company that has issued the commercial invoice and the following signed declaration:

'I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by ... (name of company), and accepted by the European Commission through Decision No 841/2002/ECSC. I declare that the information provided in this invoice is complete and correct.'

**COMMISSION DECISION No 842/2002/ECSC
of 21 May 2002**

amending Decision No 284/2000/ECSC imposing a definitive countervailing duty on imports of certain flat rolled products of iron or non-alloy steel, of a width of 600 mm or more, not clad, plated or coated, in coils, not further worked than hot-rolled, originating, *inter alia*, in India and accepting an undertaking

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to Commission Decision No 1889/98/ECSC of 3 September 1998 on protection against subsidised imports from countries not members of the European Coal and Steel Community ⁽¹⁾ ('the Basic Anti-subsidy Decision'), and in particular Article 20 thereof,

After consulting the Advisory Committee,

Whereas:

A. PREVIOUS PROCEDURE

- (1) By Commission Decision No 284/2000/ECSC ⁽²⁾ ('the definitive countervailing Decision'), the Commission imposed, *inter alia*, a definitive countervailing duty of 13,1 % on imports of hot-rolled coils ('product concerned') originating in India, with the exception of imports from several Indian companies specifically mentioned, which are, exempted from the countervailing duty since the Commission accepted price undertakings from these companies according to Article 2 of the definitive countervailing Decision.

B. CURRENT PROCEDURE

- (2) The Commission subsequently received two applications to initiate an accelerated review of the definitive countervailing Decision, pursuant to Article 20 of the Basic Decision, from the Indian exporting producers Ispat Industries Ltd and Jindal Vijanagar Steel Limited ('the companies'). The companies claimed that they were not related to any of the other exporting producers in India subject to the countervailing measures in force with regard to the product concerned. Furthermore, they claimed that they had not exported the product concerned during the original period of investigation (1 January 1998 to 31 December 1998), but had exported the product concerned to the Community since then.
- (3) The product covered by the current review is the same product as the one under consideration in the definitive countervailing Decision.
- (4) The Commission examined the evidence submitted by the companies and considered it sufficient to justify the initiation of a review in accordance with the provisions

of Article 20 of the Basic Anti-subsidy Decision. After consultation of the Advisory Committee and after the Community industry concerned had been given the opportunity to comment, the Commission initiated, by a notice in the Official Journal ⁽³⁾, an accelerated review of Decision No 284/2000/ECSC with regard to the companies and commenced its investigation.

- (5) The Commission informed the companies and the Government of India ('GOI'). Furthermore, it gave other parties directly concerned the opportunity to make their views known in writing and to request a hearing. However, no such request was received by the Commission.
- (6) The Commission sent questionnaires to the companies and received replies within the deadline. The Commission also sought and verified all the information deemed necessary for the determination of subsidisation. Verification visits were carried out at the premises of the companies.
- (7) The investigation of subsidisation covered the period from 1 April 1999 to 31 March 2000 (the 'investigation period').

C. RESULTS OF THE INVESTIGATION

1. NEW EXPORTER QUALIFICATION

- (8) The investigation confirmed that the companies had not exported the product concerned during the original period of investigation and that they had begun exporting to the Community after this period.
- (9) Furthermore, the companies were able to satisfactorily demonstrate that they did not have any links, direct or indirect, with any of the other Indian exporting producers subject to the countervailing measures in force with regard to the product concerned.
- (10) Accordingly, it is confirmed that the companies qualify for an accelerated review in accordance with Article 20 of the Basic Anti-subsidy Decision since they have not been investigated in the original investigation for other reasons than the refusal to co-operate, and thus an individual amount of subsidisation should be determined for the companies.

⁽¹⁾ OJ L 245, 4.9.1998, p. 3.

⁽²⁾ OJ L 31, 5.2.2000, p. 44.

⁽³⁾ OJ C 201, 14.7.2000, p. 2.

2. SUBSIDISATION

1. Introduction

- (11) On the basis of the information contained in the replies to the Commission's questionnaire, the following five schemes were investigated:
- Passbook Scheme (PBS),
 - Duty Entitlement Passbook Scheme (DEPBS),
 - Export Promotion Capital Goods Scheme (EPCGS),
 - Export Processing Zones (EPZ)/Export Oriented Units (EOU),
 - Income Tax Exemption Scheme (ITES).

2. Passbook scheme (PBS)

- (12) Neither of the companies concerned had availed themselves of the PBS, which on 1 April 1997 was abolished and replaced by its successor, the Duty Entitlement Passbook Scheme (DEPBS).

3. Duty Entitlement Passbook Scheme (DEPBS)

General

- (13) It was established that Ispat Industries Limited received benefits under this scheme. This company made use of the DEPB on a post-export basis.
- (14) Under this scheme, any eligible exporter can apply for credits which are calculated as a percentage of the value of exported finished products. Such DEPB rates have been established by the Indian authorities for most products, including the products concerned, on the basis of the Standard Input/Output norms. A licence stating the amount of credit granted is issued automatically.
- (15) DEPB on a post-export basis allows for the use of such credits for the payment of import duty for any subsequent imports (e.g. raw materials or capital goods) except for goods subject to import restrictions. Such imported goods can be sold on the domestic market (subject to sales tax) or used otherwise. DEPB credits are freely transferable. The DEPB licence is valid for a period of 12 months from the date of granting of the licence.
- (16) The characteristics of the DEPB on a post-export basis have not changed since the original investigation. The scheme is clearly a subsidy contingent upon export performance, and it was therefore determined during the original investigation that it is deemed to be specific and countervailable under Article 3(4)(a) of the Basic Decision.

Calculation of the subsidy amount

- (17) It was established that Ispat Industries Limited used the DEPB licences to make duty-free imports. The benefit was therefore calculated on the basis of the import duties otherwise payable. In addition, this company sold some of its licences, and in these cases the benefit was

calculated on the basis of the amount of credit stated in the licence regardless of the sales price of the licence. The sale of a licence at a price less than the face value is a purely commercial decision which does not alter the countervailable benefit from this scheme. Using the same calculation methodology as in the original investigation, the total amount of the licences used for duty-free imports and those that have been sold, has been allocated over total exports in the investigation period. Where the company claimed deductions linked to the payment of fees for obtaining the DEPB Licence, these were granted.

- (18) Ispat Industries Limited benefited from this scheme during the investigation period and obtained subsidies of 8,0 %.

- (19) The other company under investigation, Jindal Vijanagar Steel Limited, did not use DEPBS in the investigation period.

4. Export Promotion Capital Goods scheme (EPCGS)

General

- (20) It was established that both companies had availed themselves of this scheme. To benefit from the scheme, a company must provide, to the relevant authorities, details of the type and value of capital goods which are to be imported. Depending on the level of export commitment which the company is prepared to undertake, the company will be allowed to import capital goods at either a zero rate of duty or a reduced rate. A licence authorising the import at preferential rates is issued automatically. In order to meet the export obligation, goods exported must have been produced using the imported capital goods. An application fee is payable to obtain a licence.
- (21) The characteristics of the EPCGS have not changed since the original investigation. It was determined during the original investigation that the EPCGS is a subsidy as the payment by an exporter of a reduced or zero rate of duty constitutes a financial contribution by the GOI. Moreover, revenue otherwise due is foregone and a benefit is conferred on the recipient by lowering the duties payable or fully exempting him from paying the import duties.

- (22) The subsidy is contingent in law upon export performance within the meaning of Article 3(4)(a) of the Basic Decision, since it cannot be obtained without a commitment to export goods, and is therefore deemed to be specific and countervailable.

Calculation of the subsidy amount

(23) Using the same calculation methodology as in the original investigation, the benefit to the exporter has been calculated on the basis of the amount of unpaid customs duty due on imported capital goods by spreading this amount across a period which reflects the normal depreciation of such capital goods in the industry of the product concerned. This period has been established by using the weighted average (on the basis of production volume of the products concerned) of depreciation periods for capital goods actually imported under the EPCGS by Indian producers during the original investigation period, resulting in a normal depreciation period of 18 years.

(24) Ispat Industries Limited obtained a benefit under this scheme of 1,8 %, and Jindal Vijayanagar Steel Limited obtained a benefit of 5,7 %.

5. Export Processing Zones (EPZ)/Export Oriented Units (EOU)

(25) The Commission established that neither of the companies was located in an EPZ or was an EOU, and that they therefore did not receive any benefits under this scheme.

6. Income tax exemption scheme (ITES)

(26) It was established that neither of the companies concerned had availed themselves of the ITES.

7. Other schemes

(27) It was established that the new exporters had neither made use of new subsidy schemes which were established after the end of the original investigation period, nor had received ad hoc subsidies after this date.

D. AMENDMENT OF THE MEASURES BEING REVIEWED

(28) In the light of the foregoing, it is considered that definitive countervailing duties should be imposed at the level of the amount of subsidy found, but should not be higher than the country-wide injury margin established

for India by the definitive countervailing Decision, i.e. 23,8 %.

(29) No individual injury margin can be established in a new exporter review since the investigation, pursuant to Article 20 of the Basic Decision, is limited to the examination of the individual subsidy margin.

(30) In accordance with Article 24(1) of the Basic Anti-subsidy Decision, no product shall be subject to both anti-dumping and countervailing duties for the purposes of dealing with one and the same situation arising from dumping or from export subsidisation. As countervailing duties should be imposed on imports of the product concerned it is necessary to determine whether, and to what extent, the subsidy and the dumping margin arise from the same situation.

(31) In the case in question, the schemes investigated in India have been found to constitute export subsidies within the meaning of Article 3(4)(a) of the Basic Anti-subsidy Decision. As such, the subsidies affect the normal value or export prices of the Indian exporting producers, thus leading to increased margins of dumping. In other words, the dumping margin established is wholly or partly due to the existence of export subsidies. In these circumstances the rates of anti-dumping duty established in Commission Decision No 283/2000/ECSC ⁽¹⁾ ('the definitive Anti-dumping Decision') for the companies need to be adjusted to reflect the actual dumping margin, or injury margin if lower, which remains after the imposition of the countervailing duties offsetting the effect of the export subsidies.

(32) Accordingly, the rates of countervailing and anti-dumping duty applicable to the free-at-Community-frontier price, before duty and taking into account the results of the parallel anti-dumping and countervailing proceedings, shall be:

(in %)

Company	Dumping margin	Injury margin	Export subsidy margin	Countervailing duty	AD duty
Ispat Industries Ltd	46,5	23,8	9,8	9,8	14
Jindal Vijayanagar Steel Ltd	56,3	23,8	5,7	5,7	18,1

⁽¹⁾ OJ L 31, 5.2.2000, p. 15, as amended by Decision No 2009/2000/ECSC (OJ L 240, 23.9.2000, p. 12) and as last amended by Decision No 1357/2001/ECSC (OJ L 182, 5.7.2001, p. 27).

- (33) The amendment made by Article 1(1) of Commission Decision No 1357/2001/ECSC to the level of anti-dumping duty in Article 1(2) of Decision No 283/2000/ECSC, did not reflect the correct countervailing duties applicable at the date of its publication since the countervailing investigation was still ongoing at the time of the publication of the amending Decision to Decision No 283/2000/ECSC. Consequently Decision No 1357/2001/ECSC shall be repealed and any anti-dumping and countervailing duties collected in excess of the country-wide injury margin of 23,8 % shall be reimbursed. In view of the fact that the revised anti-dumping duties shall be levied retroactively from the date of entry into force of Decision No 1357/2001/ECSC and from the date of initiation of the newcomer review under Article 11(4) of the Basic Anti-dumping Decision in respect of Ispat Industries Ltd, and as the level of anti-dumping duty is assessed taking into account the level of export subsidy found, it is also appropriate to impose the countervailing duty retroactively to the same dates. The individual duty rates in recital 341 of Decision No 284/2000/ECSC were not listed in Article 1 of Decision No 284/2000/ECSC. Therefore, Article 1 of Decision No 284/2000/ECSC should be amended in order to expressly include these individual countervailing duty rates.

E. UNDERTAKING

- (34) One of the companies, Ispat Industries Ltd offered a price undertaking concerning its exports of the product concerned to the Community, in accordance with Article 13(1) of the Basic Anti-subsidy Decision. This company has offered in parallel a price undertaking under the Basic Anti-Dumping Decision.
- (35) After examination of the offer, the Commission considered the undertaking as acceptable since it would eliminate the injurious effects of the subsidisation pursuant to Article 13(1) of the Basic Anti-Subsidy Decision. Moreover, the regular and detailed reports which the company undertook to provide to the Commission will allow effective monitoring. Furthermore, the nature of the product and the sales structure of the company is such that the Commission considers that the risk of circumvention is limited.
- (36) In order to ensure the effective respect and monitoring of the undertaking, when the request for release for free circulation pursuant to the undertaking is presented, exemption from the duty is conditional upon presentation to the customs service of the Member State concerned of a valid 'Commercial Invoice' issued by Ispat Industries Ltd and containing the information listed in the Annex to the definitive Decision. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate rate of countervailing duty should be payable in order to ensure the effective application of the undertaking.
- (37) The information requested pursuant to the Annex has been updated. In order to ensure consistency in the monitoring of undertakings this revised Annex should apply also to all the companies referred to in Article 2(1) of Commission Decision No 284/2000/ECSC.
- (38) In the event of a breach or withdrawal of the undertaking, or a suspected breach, a countervailing duty may be imposed, pursuant to Article 13(9) and (10) of the Basic Decision.

F. DISCLOSURE AND DURATION OF THE MEASURES

- (39) The companies were informed of the facts and considerations on the basis of which it was intended to impose the amended definitive countervailing and anti-dumping duties on their exports of the product concerned to the Community.
- (40) This review does not affect the date on which Decision No 284/2000/ECSC expires pursuant to Article 17 of the Basic Decision,

HAS ADOPTED THIS DECISION:

Article 1

Commission Decision No 284/2000/ECSC is amended as follows:

1. In the table in Article 1(2), the section headed 'India' is replaced by the following:

Company	Rate of CVD duty (%)	TARIC additional code
'Ispat Industries Ltd, "Park Plaza", 71 Park Street, Calcutta — 700 016, India	9,8	A204
Jindal Vijayanagar Steel Ltd, Jindal Mansion, 5-A. G. Deshmukh Marg, Mumbai — 400 026, India	5,7	A270
Essar Steel Ltd, 27 KM, Surat Hazira Road, Hazira 394270, Dist: Surat, State: Gujarat	4,9	A076
Steel Authority of India Limited, Ispat Bhavan, Integrated Office Complex, Lodhi Road, New Delhi — 110 003	12,3	A077
Tata Iron & Steel Company Limited, 43 Chowringhee Road, Calcutta 700 071	6,2	A078
All other companies	13,1	A999'

2. In the table in Article 2(1), the following shall be inserted:

Company	Taric additional code
'Ispat Industries Ltd, "Park Plaza", 71 Park Street, Calcutta — 700 016 India	A204'

3. In Article 2(2), the reference to an 'undertaking invoice' is replaced by 'Commercial Invoice'.

Article 2

- The Annex to Commission Decision No 284/2000/ECSC is replaced by the Annex to this Decision.
- Article 1(2) shall apply from 6 July 2001.

Article 3

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

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

Done at Brussels, 21 May 2002.

For the Commission
Pascal LAMY
Member of the Commission

ANNEX

**Information necessary for Commercial Invoices accompanying sales made subject to the undertaking
(Article 2(2))**

1. The heading 'COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING'.
 2. The name of the company issuing the Commercial Invoice.
 3. The Commercial Invoice number.
 4. The date of issue of the Commercial Invoice.
 5. The TARIC additional code under which the goods on the invoice are to be customs-cleared at the Community frontier (as specified in the Decision).
 6. The exact description of the goods, including:
 - the company product code number (CPC) (if applicable),
 - the product code number (PCN) (as established in the undertaking offered by the producing exporter in question),
 - the technical specification of the PCN,
 - CN code,
 - quantity (to be given in tonnes).
 7. The description of the terms of the sale, including:
 - price per tonne,
 - the applicable payment terms,
 - the applicable delivery terms,
 - total discounts and rebates.
 8. Name of the first buyer acting as an importer to which the invoice is issued directly by the company.
 9. The name of the official of the company that has issued the commercial invoice and the following signed declaration:

'I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by ... (name of company), and accepted by the European Commission through Decision (842/2002/ECSC). I declare that the information provided in this invoice is complete and correct.'
-

COMMISSION REGULATION (EC) No 843/2002**of 21 May 2002****laying down the marketing standard for strawberries and amending Regulation (EEC) No 899/87**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 545/2002 ⁽²⁾, and in particular Article 2(2) and Article 3(3)(c) thereof,

Whereas:

- (1) Strawberries are among the products listed in Annex I to Regulation (EC) No 2200/96 for which standards must be adopted. Commission Regulation (EEC) No 899/87 of 30 March 1987 laying down quality standards for cherries and strawberries ⁽³⁾, as last amended by Regulation (EC) No 888/97 ⁽⁴⁾, has been amended and can no longer ensure legal clarity.
- (2) For clarity, the rules on strawberries should be separated from those on other products under Regulation (EEC) No 899/87. On this occasion, in the interest of preserving transparency on the world market, account should be taken of the standard for strawberries recommended by the Working Party on Standardisation of Perishable Produce and Quality Development of the United Nations Economic Commission for Europe (UN/ECE). The rules concerning strawberries should therefore be recast and Regulation (EEC) No 899/87 amended accordingly.
- (3) Application of new standards should remove products of unsatisfactory quality from the market, bring production into line with consumer requirements and facilitate trade based on fair competition, thereby helping to improve profitability.
- (4) The standards are applicable at all marketing stages. Long-distance transport, storage over a certain period and the various processes the products undergo may cause some degree of deterioration owing to the biological development of the products or their perishable nature. Account should be taken of such deterioration when applying the standard at the marketing stages

following dispatch. As products in the 'Extra' Class have to be particularly carefully sorted and packaged, only lack of freshness and turgidity is to be taken into account in their case.

- (5) Sufficient maturity should be one of the minimum requirements for strawberries. Existing scientific and technical data do not permit reliable and objective criteria for assessing this requirement to be defined.
- (6) The marketing without calyx of strawberries of certain varieties that easily lose their calyx at harvest is traditional in the region of production in Finland and in Denmark. These two Member States have, in accordance with Regulation (EC) No 2200/96, requested that strawberries produced and consumed in those regions should not have to comply with the standards. This Regulation should therefore include a derogation to that effect.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Fresh Fruit and Vegetables,

HAS ADOPTED THIS REGULATION:

Article 1

The marketing standard for strawberries falling within CN code 0810 10 00 shall be as set out in the Annex.

The standard shall apply at all marketing stages under the conditions laid down in Regulation (EC) No 2200/96.

However, at stages following dispatch, products may show in relation to the requirements of the standard:

- (a) a slight lack of freshness and turgidity;
- (b) for products graded in classes other than the 'Extra' Class, slight deteriorations due to their development and their tendency to perish.

Article 2

1. Notwithstanding the provisions of this Regulation, strawberries of varieties that easily lose their calyx at harvest may be sold without calyx in the region of production in Finland and in Denmark.

⁽¹⁾ OJ L 297, 21.11.1996, p. 1.

⁽²⁾ OJ L 84, 28.3.2002, p. 1.

⁽³⁾ OJ L 88, 31.3.1987, p. 17.

⁽⁴⁾ OJ L 126, 17.5.1997, p. 11.

2. For the application of paragraph 1, each package or lot shall bear, in addition to the other indication required, the following indication:

— in Finnish:

‘myydään ainoastaan ... (region of production),’

— in Danish:

‘må kun sælges i ... (region of production),’

— in Swedish:

‘får endast säljas i ... (region of production).’

Article 3

Regulation (EEC) No 899/87 is amended as follows:

- (a) The title is replaced by the following: ‘Commission Regulation (EEC) No 899/87 of 30 March 1987 laying down quality standards for cherries’.

- (b) Article 1(1) is replaced by the following:

‘1. The marketing standards for cherries, falling within CN code 0809 20 95, shall be as set out in the Annex.’

- (c) Annex II is deleted.

- (d) In Annex I, the words ‘Annex I’ are replaced by the following word: ‘Annex’.

Article 3

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

It shall apply from the first day of the third month following its entry into force.

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

Done at Brussels, 21 May 2002.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

STANDARD FOR STRAWBERRIES

I. DEFINITION OF PRODUCE

This standard applies to strawberries of varieties (cultivars) grown from the genus *Fragaria* L. to be supplied fresh to the consumer, strawberries for industrial processing being excluded.

II. PROVISIONS CONCERNING QUALITY

The purpose of the standard is to define the quality requirements of strawberries after preparation and packaging.

A. Minimum requirements

In all classes, subject to the special provisions for each class and the tolerances allowed, the strawberries must be:

- intact,
- sound; produce affected by rotting or deterioration such as to make it unfit for consumption is excluded,
- clean, practically free of any visible foreign matter,
- fresh in appearance, but not washed,
- practically free from pests,
- practically free from damage caused by pests,
- with the calyx (except in the case of wild strawberries); the calyx and the stalk (if present) must be fresh and green,
- free of abnormal external moisture,
- free of any foreign smell and/or taste.

The strawberries must have been carefully picked.

They must be sufficiently developed and display satisfactory ripeness. The development and the condition must be such as to enable them:

- to withstand transport and handling, and
- to arrive in satisfactory condition at the place of destination.

B. Classification

The strawberries are classified in three classes defined below:

(i) 'Extra' Class

The strawberries in this class must be of superior quality. They must be characteristic of the variety.

They must be bright in appearance, allowing for the characteristics of the variety.

They must be free from soil.

They must be free from defects with the exception of very slight superficial defects provided these do not affect the general appearance of the produce, the quality, the keeping quality and presentation in the package.

(ii) Class I

Strawberries in this class must be of good quality. In colouring and shape, they must be characteristic of the variety.

The following slight defects, however, may be allowed provided these do not affect the general appearance of the produce, the quality, the keeping quality and presentation in the package:

- slight defect of shape,
- a white patch, not exceeding one tenth of the surface area of the fruit,
- slight superficial pressure marks.

They must be practically free from soil.

(iii) *Class II*

This class includes strawberries which do not qualify for inclusion in the higher classes, but satisfy the minimum requirements specified above.

The following defects may be allowed provided the strawberries retain their essential characteristics as regards the quality, the keeping quality and presentation:

- defects of shape,
- a white patch not exceeding one fifth of the surface area of the fruit,
- slight dry bruising not likely to spread,
- slight traces of soil.

III. PROVISIONS CONCERNING SIZING

Size is determined by the maximum diameter of the equatorial section.

Strawberries must be of the following minimum sizes:

- 'Extra' Class: 25 mm,
- Classes I and II: 18 mm.

There is no minimum size for wild strawberries.

IV. PROVISIONS CONCERNING TOLERANCES

Tolerances in respect of quality and size shall be allowed in each package for produce not satisfying the requirements of the class indicated.

A. **Quality tolerances**

(i) *'Extra' Class*

5 % by number or weight of strawberries not satisfying the requirements of the class but meeting those of Class I or, exceptionally, coming within the tolerances of that class. Of these 5 % not more than 2 % in total may consist of spoilt fruit.

(ii) *Class I*

10 % by number or weight of strawberries not satisfying the requirements of the class but meeting those of Class II or, exceptionally, coming within the tolerances of that class. Of these 10 %, not more than 2 % in total may consist of spoilt fruit.

(iii) *Class II*

10 % by number or weight of strawberries satisfying neither the requirements of the class nor the minimum requirements, with the exception of produce affected by rotting, severe bruising or any other deterioration rendering it unfit for consumption. Of these 10 %, not more than 2 % in total may consist of spoilt fruit.

B. **Size tolerances**

For all classes: 10 % by number or weight of strawberries not conforming to the minimum size.

V. PROVISIONS CONCERNING PRESENTATION

A. **Uniformity**

The contents of each package must be uniform and contain only strawberries of the same origin, variety and quality.

In the 'Extra' Class, strawberries — with the exception of wood strawberries — must be particularly uniform and regular with respect to degree of ripeness, colour and size. In Class I, strawberries may be less uniform in size.

The visible part of the contents of the package must be representative of the entire contents.

B. Packaging

The strawberries must be packed in such a way as to protect the produce properly.

The materials used inside the package must be new, clean and of a quality such as to avoid causing any external or internal damage to the produce. The use of materials, particularly of paper or stamps bearing trade specifications is allowed provided the printing or labelling has been done with non-toxic ink or glue.

Fruit in the 'Extra' Class must be particularly well presented.

Packages must be free of all foreign matter.

VI. PROVISIONS CONCERNING MARKING

Each package must bear the following particulars, in letters grouped on the same side, legibly and indelibly marked, and visible from the outside:

A. Identification

Packer and/or dispatcher: name and address or officially issued or accepted code mark. However, in the case where a code mark is used, the reference 'Packer and/or dispatcher (or equivalent abbreviations)' must be indicated in close proximity to the code mark.

B. Nature of produce

- 'Strawberries', if the contents of the package are not visible from the outside.
- Name of the variety (optional).

C. Origin of produce

- Country of origin and, optionally, district where grown or national, regional or local place name.

D. Commercial specifications

- Class.

B. Official control mark (optional)

COMMISSION DIRECTIVE 2002/42/EC**of 17 May 2002****amending the Annexes to Council Directives 86/362/EEC, 86/363/EEC and 90/642/EEC as regards the fixing of maximum levels for pesticide residues (bentazone and pyridate) in and on cereals, foodstuffs of animal origin and certain products of plant origin, including fruit and vegetables****(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 86/362/EEC of 24 July 1986 on the fixing of maximum levels for pesticide residues in and on cereals ⁽¹⁾, as last amended by Commission Directive 2002/23/EC ⁽²⁾, and in particular Article 10 thereof,

Having regard to Council Directive 86/363/EEC of 24 July 1986 on the fixing of maximum levels for pesticide residues in and on foodstuffs of animal origin ⁽³⁾, as last amended by Directive 2002/23/EC, and in particular Article 10 thereof,

Having regard to Council Directive 90/642/EEC of 27 November 1990 on fixing of maximum levels for pesticide residues in and on certain products of plant origin, including fruit and vegetables ⁽⁴⁾, as last amended by Directive 2002/23/EC, and in particular Article 7 thereof,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market ⁽⁵⁾, as last amended by Commission Directive 2002/37/EC ⁽⁶⁾, and in particular Article 4(1)(f) thereof,

Whereas:

- (1) The existing active substances bentazone and pyridate were included in Annex I to Directive 91/414/EEC by Commission Directives 2000/68/EC ⁽⁷⁾ and 2001/21/EC ⁽⁸⁾, for use as a herbicide on cereals, vegetables and forage.
- (2) The inclusion in Annex I to Directive 91/414/EEC of the active substances concerned was based on the assessment of the information submitted concerning the proposed uses. Information relating to these uses has been submitted by certain Member States in accordance with Article 4(1)(f) of Directive 91/414/EEC. The information available has been reviewed and is sufficient to allow certain maximum residue levels (MRLs) to be fixed.
- (3) Where no Community MRL or provisional MRL exists, Member States are to establish a national provisional MRL in accordance with Article 4(1)(f) of Directive 91/414/EEC before plant protection products containing these active substances may be authorised.
- (4) With respect to the inclusion in Annex I to Directive 91/414/EEC of the active substances concerned, the related technical and scientific evaluations were finalised in the form of Commission review reports. The reports were finalised on 13 July 2000, in the case of bentazone and on 12 December 2000 in the case of pyridate. They fixed the acceptable daily intake (ADI) for bentazone at

⁽¹⁾ OJ L 221, 7.8.1986, p. 37.

⁽²⁾ OJ L 64, 7.3.2002, p. 13.

⁽³⁾ OJ L 221, 7.8.1986, p. 43.

⁽⁴⁾ OJ L 350, 14.12.1990, p. 71.

⁽⁵⁾ OJ L 230, 19.8.1991, p. 1.

⁽⁶⁾ OJ L 117, 4.5.2002, p. 10.

⁽⁷⁾ OJ L 276, 28.10.2000, p. 41.

⁽⁸⁾ OJ L 69, 10.3.2001, p. 17.

0,1 mg/kg bw/day and for pyridate at 0,036 mg/kg bw/day. The lifetime exposure of consumers of food products treated with the active substances concerned has been assessed and evaluated in accordance with Community procedures. Account has also been taken of guidelines published by the World Health Organisation ⁽¹⁾ and the opinion of the Scientific Committee for Plants ⁽²⁾ on the methodology employed. It is concluded that the MRLs proposed will not lead to those ADIs being exceeded.

- (5) No acute toxic effects requiring the setting of an acute reference dose were noted during the evaluations and discussions preceding the inclusion of pyridate in Annex I to Directive 91/414/EEC. The acute reference dose for bentazone was established at 0,25 mg/kg bw/day. According to the exposure assessment the MRLs proposed will not lead to an unacceptable acute exposure of consumers.
- (6) In order to ensure that the consumer is adequately protected from exposure to residues in or on products, for which no authorisation has been granted, it is prudent to set provisional MRLs at the lower limit of analytical determination for all such products covered by Directives 86/362/EEC, 86/363/EEC and 90/642/EEC.
- (7) The setting at Community level of such provisional MRLs does not prevent the Member States from establishing provisional MRLs for bentazone and pyridate in accordance with Article 4(1)(f) of Directive 91/414/EEC and Annex VI thereto. It is considered that a period of four years is sufficient to permit most further uses of the active substances concerned. The provisional MRL should then become definitive.
- (8) The Annexes to Directives 86/362/EEC, 86/363/EEC and 90/642/EEC should therefore be amended accordingly.
- (9) The Commission notified this Directive in draft form to the World Trade Organisation and no comments have been received. The possibility of fixing import tolerance MRLs for specific pesticide/crop combinations will be examined by the Commission on the basis of the acceptable data submitted.
- (10) This Directive is in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The following maximum pesticide residue levels are added to Part A of Annex II to Directive 86/362/EEC:

Pesticide residue	Maximum level in mg/kg
Bentazone (sum of bentazone and the conjugates of 6-OH- and 8-OH-bentazone expressed as bentazone)	0,1 ^(p) (*) Cereals
Pyridate (sum of pyridate, its hydrolysis product CL 9673 (6-chloro-4-hydroxy-3-phenylpyridazin) and hydrolysable conjugates of CL 9673 expressed as pyridate)	0,05 ^(p) (*) Cereals

^(p) Indicates provisional maximum residue level in accordance with Article 4(1)(f) of Directive 91/414/EEC: unless amended, this level will become definitive with effect from 4 years from date of coming into force of the Directive introducing this amendment.

(*) Indicates lower limit of analytical determination.

⁽¹⁾ Guidelines for predicting dietary intake of pesticide residues (revised), prepared by the GEMS/Food Programme in collaboration with the Codex Committee on Pesticide Residues, published by the World Health Organisation 1997 (WHO/FSF/FOS/97.7).

⁽²⁾ Opinion of the Scientific Committee on Plants regarding questions relating to amending the annexes to Council Directives 86/362/EEC, 86/363/EEC and 90/642/EEC (Opinion expressed by the Scientific Committee on Plants, 14 July 1998) (http://europa.eu.int/comm/food/fs/sc/out21_en.html).

Article 2

The following maximum pesticide residue levels are added to Part B of Annex II to Directive 86/363/EEC:

Pesticide residue	Maximum level (mg/kg)		
	Of meat, including fat, preparations of meat, offals and animal fats as listed in Annex I within CN codes 0201, 0202, 0203, 0204, 0205 00 00, 0206, 0207, ex 0208, 0209 00, 0210, 1601 00 and 1602	For milk and milk products listed in Annex I within CN codes 0401, 0402, 0405 00 and 0406	Of shelled fresh eggs, for birds' eggs and egg yolks listed in Annex I within CN codes 0407 00 and 0408
Bentazone	0,05 ^(p) (*)	0,02 ^(p) (*)	0,05 ^(p) (*)
Pyridate (sum of pyridate and its hydrolysis product CL 9673 (6-chloro-4-hydroxy-3-phenylpyridazin) expressed as pyridate)	Kidney except poultry 0,4 ^(p) Other products ^(p) (*)	0,05 ^(p) (*)	0,05 ^(p) (*)

^(p) Indicates provisional maximum residue level in accordance with Article 4(1)(f) of Directive 91/414/EEC: unless amended, this level will become definitive with effect from 4 years from date of coming into force of the Directive introducing this amendment.

(*) Indicates lower limit of analytical determination.

Article 3

The maximum pesticide residue levels for bentazone and pyridate as shown in the Annex to this Directive are added to Annex II to Directive 90/642/EEC.

Article 4

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2002 at the latest. They shall forthwith inform the Commission thereof.

They shall apply these provisions with effect from 1 January 2003.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 5

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

Article 6

This Directive is addressed to the Member States.

Done at Brussels, 17 May 2002.

For the Commission

David BYRNE

Member of the Commission

ANNEX

Groups and examples of individual products to which the MRLs apply	Pesticide residues and maximum residue levels (mg/kg)	
	Bentazone (sum of bentazone and the conjugates of 6-OH- and 8-OH-bentazone expressed as bentazone)	Pyridate (sum of pyridate, its hydrolysis product CL 9673 (6-chloro-4-hydroxy-3-phenylpyridazin) and hydrolysable conjugates of CL 9673 expressed as pyridate)
1. Fruits, fresh, dried or uncooked, preserved by freezing, not containing added sugar: nuts	0,1 (p) (*)	0,05 (p) (*)
(i) CITRUS FRUIT Grapefruit Lemons Limes Mandarins (including clementines and other hybrids) Oranges Pomelos Others		
(ii) TREE NUTS (shelled or unshelled) Almonds Brazil nuts Cashew nuts Chestnuts Coconuts Hazelnuts Macadamia Pecans Pine nuts Pistachios Walnuts Others		
(iii) POME FRUIT Apples Pears Quinces Others		
(iv) STONE FRUIT Apricots Cherries Peaches (including nectarines and similar hybrids) Plums Others		
(v) BERRIES AND SMALL FRUIT (a) Table and wine grapes Table grapes Wine grapes (b) Strawberries (other than wild)		

Groups and examples of individual products to which the MRLs apply	Pesticide residues and maximum residue levels (mg/kg)	
	Bentazone (sum of bentazone and the conjugates of 6-OH- and 8-OH-bentazone expressed as bentazone)	Pyridate (sum of pyridate, its hydrolysis product CL 9673 (6-chloro-4-hydroxy-3-phenylpyridazin) and hydrolysable conjugates of CL 9673 expressed as pyridate)
(c) Cane fruit (other than wild) Blackberries Dewberries Loganberries Raspberries Others (d) Other small fruit and berries (other than wild) Bilberries Cranberries Currants (red, black and white) Gooseberries Others (e) Wild berries and wild fruit (vi) MISCELLANEOUS Avocados Banans Dates Figs Kiwi Kumquats Litchis Mangoes Olives Passion fruit Pineapples Pomegranate Others		
2. Vegetables, fresh or uncooked, frozen or dry		
(i) ROOT AND TUBER VEGETABLES Beetroot Carrots Celeriac Horseradish Jerusalem artichokes Parsnips Parsley root Radishes Salsify Sweet potatoes Swedes Turnips Yam Others	0,1 (p) (*)	0,05 (p) (*)

Groups and examples of individual products to which the MRLs apply		Pesticide residues and maximum residue levels (mg/kg)	
		Bentazone (sum of bentazone and the conjugates of 6-OH- and 8-OH-bentazone expressed as bentazone)	Pyridate (sum of pyridate, its hydrolysis product CL 9673 (6-chloro-4-hydroxy-3-phenylpyridazin) and hydrolysable conjugates of CL 9673 expressed as pyridate)
(ii)	BULB VEGETABLES Garlic Onions Shallots Spring onions Others	0,1 (p) (*)	0,05 (p) (*)
(iii)	FRUITING VEGETABLES (a) Solanacea Tomatoes Peppers Aubergines Others (b) Cucurbits — edible peel Cucumbers Gherkins Courgettes Others (c) Cucurbits — inedible peel Melons Squashes Watermelons Others (d) Sweetcorn	0,1 (p) (*)	0,05 (p) (*)
(iv)	BRASSICA VEGETABLES (a) Flowering brassica Broccoli Cauliflower Others (b) Head brassica Brussels sprouts Head cabbage Others (c) Leafy brassica Chinese cabbage Kale Others (d) Kohlrabi	0,1 (p) (*)	0,05 (p) (*) 0,2 (p) 0,05 (p) (*) 0,05 (p) (*)
(v)	LEAF VEGETABLES AND FRESH HERBS (a) Lettuce and similar Cress Lamb's lettuce Lettuce Scarole Others	0,1 (p) (*)	0,05 (p) (*)

Groups and examples of individual products to which the MRLs apply	Pesticide residues and maximum residue levels (mg/kg)	
	Bentazone (sum of bentazone and the conjugates of 6-OH- and 8-OH-bentazone expressed as bentazone)	Pyridate (sum of pyridate, its hydrolysis product CL 9673 (6-chloro-4-hydroxy-3-phenylpyridazin) and hydrolysable conjugates of CL 9673 expressed as pyridate)
(b) Spinach and similar Spinach Beet leaves (chard) Others	0,1 (p) (*)	
(c) Water cress	0,1 (p) (*)	
(d) Witloof	0,1 (p) (*)	
(e) Herbs Chervil Chives Parsley Celery leaves Others	0,1 (p) (*)	
(vi) LEGUME VEGETABLES (fresh) Beans (with pods) Beans (without pods) Peas (with pods) Peas (without pods) Others	0,5 (p) 0,2 (p) 0,1 (p) (*)	0,05 (p) (*)
(vii) STEM VEGETABLES (fresh) Asparagus Cardoons Celery Fennel Globe artichokes Leek Rhubarb Others	0,1 (p) (*)	1 (p) 0,05 (p) (*)
(viii) FUNGI (a) Cultivated mushrooms (b) Wild mushrooms	0,1 (p) (*)	0,05 (p) (*)
3. Pulses Beans Lentils Peas Others	0,1 (p) (*)	0,05 (p) (*)
4. Oils seeds Linseed Peanuts Poppy seed Sesame seed Sunflower seed Rapeseed Soya bean Mustard seed Cotton seed Others	0,1 (p)	0,05 (p) (*)
	0,1 (p) (*)	

Groups and examples of individual products to which the MRLs apply	Pesticide residues and maximum residue levels (mg/kg)	
	Bentazone (sum of bentazone and the conjugates of 6-OH- and 8-OH-bentazone expressed as bentazone)	Pyridate (sum of pyridate, its hydrolysis product CL 9673 (6-chloro-4-hydroxy-3-phenylpyridazin) and hydrolysable conjugates of CL 9673 expressed as pyridate)
5. Potatoes Early potatoes Ware potatoes	0,1 (p) (*)	0,05 (p) (*)
6. Tea (leaves and stems, dried, fermented or otherwise, of <i>Camellia sinensis</i>)	0,1 (p)	0,1 (p) (*)
7. Hops (dried), including hop pellets and unconcentrated powder	0,1 (p) (*)	0,1 (p) (*)

(p) Indicates provisional maximum residue level. For those agricultural products listed in Annex II to Directive 90/642/EEC where the maximum residue levels for flupyrsulfuron-methyl, pymetrozine and azoxystrobin are indicated as provisional as '(p)', this shall mean that they are provisional in accordance with the provisions of Article 4(1)(f) of Directive 91/414/EEC.

By 1 December 2005, provisional maximum residue levels for flupyrsulfuron-methyl and pymetrozine shall cease to be provisional and shall become definitive in the sense of Article 3 of Directive 90/624/EEC. For azoxystrobin this shall be 1 August 2003.

(*) Indicates lower limit of analytical determination.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 22 April 2002

on the conclusion of the Agreement in the form of an Exchange of Letters concerning the provisional application of the Protocol defining, for the period 18 January 2002 to 17 January 2005, the fishing possibilities and the financial contribution provided for by the Agreement between the European Economic Community and the Republic of Seychelles on fishing off Seychelles

(2002/374/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 300(2) thereof,

Having regard to the proposal from the Commission

Whereas:

- (1) Under the Agreement between the European Economic Community and the Republic of Seychelles on fishing off Seychelles ⁽¹⁾, signed in Brussels on 28 October 1987, the Contracting Parties have held negotiations with a view to determining amendments to be made to the abovementioned Agreement at the end of the period of application of the Protocol in force which is attached to the said Agreement.
- (2) As a result of those negotiations, a new Protocol defining, for the period from 18 January 2002 to 17 January 2005, the fishing possibilities and the financial contribution provided for by the abovementioned Agreement was initialled on 28 September 2001.
- (3) Under this Protocol, Community fishermen are to enjoy fishing possibilities in the waters falling within the sovereignty or jurisdiction of the Republic of Seychelles for the period 18 January 2002 to 17 January 2005.
- (4) In order to avoid interruption of fishing activities by Community vessels, both parties have initialled an Agreement in the form of an Exchange of Letters providing for the provisional application of the said Protocol from 18 January 2002.
- (5) The method for allocating the fishing possibilities among the Member States should be defined on the basis of the traditional allocation of fishing possibilities under the Fisheries Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement in the form of an Exchange of Letters concerning the provisional application of the Protocol defining, for the period 18 January 2002 to 17 January 2005, the fishing opportunities and the financial contribution provided for by the Agreement between the European Economic Community and the Republic of Seychelles on fishing off Seychelles is hereby approved on behalf of the Community.

The texts of the Agreement in the form of an Exchange of Letters and of the Protocol are attached to this Decision.

⁽¹⁾ OJ L 119, 7.5.1987, p. 26.

Article 2

The fishing opportunities fixed in the Protocol shall be allocated among the Member States as follows:

(a) tuna seiners:	Spain:	18 vessels
	France:	20 vessels
	Italy:	1 vessel
	United Kingdom:	1 vessel
(b) surface longliners	Spain:	15 vessels
	France:	5 vessels
	Portugal:	7 vessels.

If licence applications from these Member States do not cover all the fishing opportunities fixed by the Protocol, the Commission may take into consideration licence applications from any other Member State.

Article 3

The Member States whose vessels are fishing under this Protocol shall notify the Commission of the quantities of each stock taken in Seychelles waters in accordance with the arrangements laid down in Commission Regulation (EC) No 500/2001 ⁽¹⁾.

Article 4

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement in the form of an Exchange of Letters in order to bind the Community.

Done at Luxembourg, 22 April 2002.

For the Council

The President

M. ARIAS CAÑETE

⁽¹⁾ OJ L 73, 15.3.2001, p. 8.

AGREEMENT IN THE FORM OF AN EXCHANGE OF LETTERS
concerning the provisional application of the Protocol defining, for the period from 18 January 2002 to 17 January 2005, the fishing possibilities and the financial contribution provided for in the Agreement between the European Economic Community and the Republic of Seychelles on fishing off Seychelles

A. Letter from the Republic of Seychelles

Sir,

With reference to the Protocol, initialled on 28 September 2001, establishing the fishing possibilities and the financial contribution for the period from 18 January 2002 to 17 January 2005, I have the honour to inform you that the Republic of Seychelles is ready to apply this Protocol on a provisional basis, with effect from 18 January 2002, pending its entry into force in accordance with Article 7 of the Protocol, provided that the European Community is prepared to do the same. This is on the understanding that the first instalment of the financial compensation specified in Article 2 of the Protocol is to be paid by 30 September 2002.

I should be obliged if you would confirm the European Community's agreement to such provisional application.

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

For the Republic of Seychelles

B. Letter from the European Community

Sir,

I am in receipt of your letter of today's date, which reads as follows:

'With reference to the Protocol, initialled on 28 September 2001, establishing the fishing possibilities and the financial contribution for the period from 18 January 2002 to 17 January 2005, I have the honour to inform you that the Republic of Seychelles is ready to apply this Protocol on a provisional basis, with effect from 18 January 2002, pending its entry into force in accordance with Article 7 of the Protocol, provided that the European Community is prepared to do the same. This is on the understanding that the first instalment of the financial compensation specified in Article 2 of the Protocol is to be paid by 30 September 2002.

I should be obliged if you would confirm the European Community's agreement to such provisional application.'

I have the honour to confirm the Community's agreement to such provisional application of the Protocol.

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

On behalf of the European Community

PROTOCOL

defining, for the period 18 January 2002 to 17 January 2005, the fishing possibilities and the financial contribution provided for by the Agreement between the European Economic Community and the Republic of Seychelles on fishing off Seychelles

Article 1

Pursuant to Article 2 of the Agreement, and notwithstanding Article 12 of the Agreement relating to further periods of the Agreement, annual licences to fish simultaneously in Seychelles waters shall be granted to:

- (a) 40 ocean-going tuna seiners, and
- (b) 27 surface longliners

for a period of three years beginning on 18 January 2002.

Article 2

The financial contribution referred to in Article 6 of the Agreement shall be fixed at EUR 3 460 000 per year, out of which Seychelles agrees to allocate EUR 1 160 000 per year for the purpose of the matters specified in Article 3. The balance (EUR 2 300 000), hereinafter referred to as 'financial compensation', shall be paid into an account belonging to the Government of Seychelles notified by the Central Bank of Seychelles.

The financial contribution corresponds to a catch of 46 000 tonnes of tuna per year in Seychelles waters. If the catch by Community vessels in Seychelles waters exceeds 46 000 tonnes, the Community shall increase the financial contribution proportionately.

The first instalment of the financial compensation is to be paid not later than 30 September 2002 and the others by 18 January 2003 and 18 January 2004.

Article 3

During the three year period referred to in Article 1, the measures set out below shall be financed from the financial contribution provided for in Article 2, to the total amount of EUR 3 480 000, broken down as follows:

- (a) EUR 1 230 000 for the development of local fisheries;
- (b) EUR 1 000 000 for the setting up and development of a monitoring control and surveillance system, including appropriate technical assistance;
- (c) EUR 950 000 for scientific and technical programmes aiming at greater knowledge of fish stocks;
- (d) EUR 300 000 for training courses in the various scientific, technical and economic fields linked to fishing and for attending international meetings.

The above amounts shall be made available no later than 30 September 2002. They shall be paid, as and when requested by the Seychelles fishing authority (hereinafter referred to as the 'SFA'), into a bank account of that authority, the Seychelles

authority responsible for the management of these programmes.

All these measures shall be decided by the SFA who will inform the European Commission.

The competent Seychelles authorities shall transmit an annual report on the implementation of these measures and the results achieved to the Delegation of the European Commission in charge of the Seychelles, three months after the anniversary date of the entry into force of the Protocol. The European Commission reserves the right to request further information on these results from the competent Seychelles authorities and to review the payments concerned in the light of the actual implementation of such measures, after consultation in the framework of the Joint Committee as provided for in Article 7 of the Agreement.

Article 4

If the European Community fails to make the payments provided for in Articles 2 and 3, Seychelles may suspend the implementation of this Protocol.

Article 5

Where as a result of circumstances solely attributable to the fault or negligence of Seychelles fishing activities cannot be carried out in Seychelles waters, the European Community may, after prior consultation with Seychelles, suspend the payment of the financial contribution, provided that the Community shall pay any amount which has become due at the time of the suspension.

Payment of the financial contribution shall recommence once the situation has returned to normal and following consultation and agreement between the two Parties confirming that the situation is likely to allow a return to normal fishing activities.

Article 6

The Protocol and Annex I, dated 17 January 1999, to the Agreement between the European Economic Community and the Republic of Seychelles on fishing off Seychelles, which came into force on 28 October 1987, are hereby rescinded and replaced by this Protocol and its Annex.

Article 7

This Protocol and its Annex shall enter into force when the Parties exchange the notification concerning the accomplishment of the respective appropriate adoption procedures.

They are applicable from 18 January 2002.

ANNEX

CONDITIONS FOR THE PURSUIT OF FISHING ACTIVITIES BY COMMUNITY VESSELS IN SEYCHELLES WATERS**1. Licence application and issuing formalities**

The procedure for applications for, and issue of, licences enabling Community vessels to fish in Seychelles waters shall be as follows:

- 1.1. the European Commission shall present to the SFA, via its Delegation in charge of Seychelles, an application, made by the shipowner, for each vessel that wishes to fish under this Agreement at least 20 days before the date of commencement of the period of validity requested. The application shall be made on the form provided for that purpose by Seychelles, a specimen of which is annexed as Appendix 1;
- 1.2. every licence shall be issued for one designated vessel. At the request of the European Commission, the licence for a vessel may, and, in case of *force majeure*, shall be replaced by a licence for another Community vessel;
- 1.3. the licences shall be delivered by the Seychelles authorities to the shipowners, or their representatives or agents. The Delegation of the European Commission in charge of Seychelles shall be notified of the licences granted by the Seychelles authorities;
- 1.4. the licence document must be held on board at all times; however, on reception of notification of payment of the advance sent to the Seychelles authorities by the European Commission, the vessel shall be entered on a list of vessels authorised to fish, which shall be sent to the Seychelles authorities responsible for inspection. A copy of the said licence may be obtained by fax pending arrival of the licence itself; that copy shall be kept on board;
- 1.5. the authorities of Seychelles shall communicate before the date of entry into force of the Agreement the arrangements for payment of the licence fees, and in particular the details of the bank accounts and the currencies to be used.

2. Validity of licences and payment

- 2.1. Licences shall be valid for a period of one year. They are renewable.
- 2.2. The fee shall be set at EUR 25 per tonne caught within Seychelles waters.

Licences shall be issued following advance payments to Seychelles of a lump sum, per year and for each vessel, of EUR 10 000 for tuna seiners, EUR 2 000 for surface longliners of more than 150 GRT and EUR 1 500 for surface longliners of 150 GRT or less. Such amounts are equivalent to the fees for respectively 400 tonnes, 80 tonnes and 60 tonnes caught within Seychelles waters per year.

- 2.3. Surface longliners shall, before the starting of their fishing campaign in Seychelles waters and at the end of it, call into Port Victoria to check the catches held on board. However, at the request of the shipowner, the Seychelles authorities might exempt the vessel from that requirement.

Fishing licences for surface longliners shall authorise the fishing of not only tuna but also swordfish, marlin and sailfish.

- 2.4. The SFA will draw up a statement of fees due in respect of the previous calendar year on the basis of catch declarations by Community vessels and other information in the possession of the SFA.

The statement will be sent to the Commission before 31 March of the current year. The Commission will transmit it before 15 April simultaneously to shipowners and national authorities of the concerned Member States.

Where the shipowners do not agree with the statement submitted by the SFA, they may consult the scientific institutes competent for verifying catch statistics such as the IRD (Institut de Recherche pour le Développement), the IEO (Instituto Español de Oceanografía) and IPIMAR (Instituto de Investigação das Pescas e do Mar), and thereafter discuss together with the Seychelles authorities to establish the final statement before 15 May of the current year. In the absence of observations by the shipowners at that date, the statement submitted by the SFA is considered as the final one.

The Member States will notify the Commission of the final statement relating to their own fleet.

Shipowners shall make any additional payment above the advance to the Seychelles fishery authorities at the latest by 31 May of the same year.

Where the final statement is less than the abovementioned advance, the balance shall not be recoverable by the shipowner.

3. Declarations of catches

- 3.1. The Community vessels licensed to fish in Seychelles waters shall fill a fishing form as set out in Appendices 2 and 3, for each trip it undertakes in Seychelles waters. In the absence of catches, the fishing forms shall still be filled in.
- 3.2. For the periods for which a Community vessel referred to in point 3.1 was not present in Seychelles waters, it shall provide the abovementioned fishing form with the notation 'Outside Seychelles EEZ'.
- 3.3. As far as the release of the fishing forms referred to in points 3.1 and 3.2 is concerned, the Community vessels shall:
- in the case where call into Port Victoria, submit the completed forms to the Seychelles authorities within five days of arrival, or in any event before they leave port, whichever occurs first;
 - in any other case, send the completed forms to the Seychelles authorities within 14 days of arrival in any port other than Victoria.
- Copies of these fishing forms shall also be sent to the scientific institutes referred to in point 2.4.
- 3.4. In the event of failure to comply with these provisions, the sanctions referred to in point 11 shall be applicable.

4. Observers

Tuna seiner vessels shall, at the request of the Seychelles authorities, take on board one observer, and when the Seychelles authorities think it appropriate and necessary, two observers, designated by the said authorities in order to check the position of vessels and catches made in Seychelles waters including for scientific research.

Observers shall have all facilities necessary for the performance of these duties, including access to places, documents and communication equipment. An observer must not be present for longer than the time required to fulfil his duties. Observers shall be granted officer status while on board. Should a tuna seiner with a Seychelles observer on board leave Seychelles waters, every step will be taken to ensure that the observer returns to Seychelles as soon as possible, at the shipowner's expense.

If an observer is not present at the time and place agreed and during the 12 hours following the time agreed, shipowners shall be automatically absolved of their obligation to take the observer on board.

The salary and the social contributions of the observer shall be borne by the relevant Seychelles authorities.

5. Vessel monitoring systems

Community vessels fishing under the Agreement shall be monitored, *inter alia*, by vessel monitoring systems, without discrimination, under the conditions to be agreed by the Parties.

6. Employment of seamen

Each tuna seiner shall take on board at least two Seychelles seamen designated by the Seychelles authorities, in agreement with the shipowner, during its fishing campaign.

The employment contracts of the seamen shall be drawn up in Victoria between the shipowner's representatives and the seamen in agreement with the Seychelles Ministry responsible for employment.

These contracts shall also cover the social security arrangements applicable to the seamen, including life, accident and sickness insurance.

7. Landing

Tuna seiners landing in the port of Victoria will endeavour to make their by-catches available to the Seychelles authorities at the local market price.

Furthermore, the Community tuna seiners shall participate in supplying tuna to the Seychelles canneries at international market price.

8. Communications

Within three hours of each entry and exit of the zone and every three days during their fishing activities in Seychelles waters, Community vessels shall communicate directly to the Seychelles authorities, in priority by fax or, in the event of failure, by radio, their position and the volume of catches held on board.

The number of the fax and the radio frequency shall be indicated on the licence.

A copy of the communications by fax or a record of the radio communications referred to above shall be kept by the Seychelles authorities and the shipowners until the approval by both parties of the final statement of the fees referred to in point 2.4.

In the event of failure to comply with these provisions, the sanctions referred to in point 11 shall be applicable.

9. Fishing zones

To avoid any adverse effect on small-scale fisheries in Seychelles waters, fishing by Community vessels shall not be authorised in the zones defined in Seychelles legislation nor within three miles around any fish-aggregating device placed by Seychelles authorities, the geographical positions of which have been communicated to the shipowners' representatives or agents.

10. Port equipment and use of supplies and services

Community vessels shall endeavour to procure in Seychelles all supplies and services required for their operations. The Seychelles authorities shall lay down, in agreement with the shipowners, the conditions for using port equipment and, if necessary, supplies and services.

11. Sanctions

Failure to observe any one of the above rules, the management and conservation of living resources measures or the Seychelles legislation may be penalised by suspension, revocation or non-renewal of the vessel's fishing licence. Suspension or revocation of a fishing licence shall be regarded as *force majeure* for the purpose of point 1.2 of this Annex.

The European Commission shall immediately be fully informed of any suspension or revocation and of all relevant facts related thereto.

12. Arrest of fishing vessels

The Seychelles authorities shall inform the Delegation of the European Commission and the flag State, within 48 hours, of the arrest of any fishing vessel flying the flag of a Member State of the Community fishing under the Agreement in Seychelles fishing zone and shall transmit a brief report of the circumstances and reasons leading to such arrest.

The Delegation and the flag State shall be kept informed of any proceedings initiated and sanctions imposed.

Appendix 1

APPLICATION FORM FOR A FOREIGN FISHING VESSEL LICENCE

Name of applicant:

Address of applicant:

.....

Name and address of charterer of vessel if different from above:

.....

Name and address of other legal representative in Seychelles:

.....

Name and address of master of vessel:

.....

Name of vessel:

Type of vessel:

Length and registered net tonnage of vessel:

Engine type, horsepower and gross registered tonnage:

Port and country of registry:

Registration number:

Fishing vessel external identification:

Radio call sign/signal letters:

Frequency:

Particulars of equipment:

Number and nationality of crew:

Proposed fishing area and species of fish:

.....

.....

Description of fishing operations, joint ventures and other contractual arrangements:

.....

.....

.....

.....

I certify that the above particulars are correct.

Date:

Signature:

STATEMENT OF CATCH FOR TUNA SEINERS

One line per haul whether yielding a catch or not. Enter crosses under 'Indicators' and 'Haul'. Thank you.

[illegible]

Appendix 3

STATEMENT OF CATCH FOR SURFACE LONGLINERS

Name of vessel: Skipper's name:

Date of setting: / / Start of trip / / at:

Trip number: Setting number:

Wind direction:	Force: (Beaufort)
Sea conditions:	Swell:
Surface temperature: °C	Current: speed: direction:
Moon: new moon + days	Moon rises: 0 to 24 hours
	Moon sets:

Setting details

Start time: Finishing time:

Section	Position	Heading	Speed	Remarks
Depart: radio buoy number 1				
Radio buoy number 2				
Radio buoy number 3				
Radio buoy number 4				
Radio buoy number 5				
Radio buoy number 6				
Radio buoy number 7				

Number of hooks:

Length: buoy lines:	branch lines:
Length of line:	
Recorded depth of the line (sounder):	
Bait: shrimp: %	mackerel: % : %

Details of catch

	Time (0 to 24 hours)		Latitude			Longitude		
Start of turn								
End of turn								

Species	Number	Estimated unit weight	Total weight	Number of fish eaten
Swordfish (*)				
Yellowfin (**)				
Bigeye (**)				
Marlin (**)				
Sailfish (*)				
Seabream				
Shark				
Other (give details)				

Total weight

Total weight of catch landed (weighed)

(*) VDK.

(**) With head, grilled.

State the type of weight used (VAT, VDK, whole) if different from that specified.

COUNCIL DECISION

of 7 May 2002

authorising Luxembourg to apply a differentiated rate of excise duty to low-sulphur diesel in accordance with Article 8(4) of Directive 92/81/EEC

(2002/375/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils ⁽¹⁾, and in particular Article 8(4) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Luxembourg has requested authorisation to apply a differentiated rate of excise duty to low-sulphur (50 ppm) diesel used as fuel.
- (2) The other Member States have been informed of Luxembourg's request.
- (3) The differentiation of excise duty will take the form of a EUR 15 per 1 000 litre increase in excise duty on diesel fuel with a sulphur content exceeding 50 ppm. The effective rates will remain above the minimum Community rates of excise duty laid down in accordance with Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils ⁽²⁾.
- (4) The derogation is sought on environmental grounds — the benefits in terms of air quality are known.
- (5) Low-sulphur diesel complies with the environmental specifications (50 ppm) laid down in Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels ⁽³⁾. Under Article 4 of that Directive, the use of 50 ppm diesel will in principle be compulsory from 1 January 2005. The Luxembourg measure will expire on 31 December 2003.
- (6) On the information available at present, the Commission and the Member States as a whole consider that the application of a differentiated rate of excise duty on low-sulphur diesel will not cause distortions of

competition affecting the common interest or hinder the operation of the single market.

- (7) The Commission regularly reviews reductions and exemptions to check that they do not distort competition or the operation of the internal market and are not incompatible with Community environmental policy,

HAS ADOPTED THIS DECISION:

Article 1

Luxembourg is authorised to apply a differentiated rate of excise duty to low-sulphur (50 ppm) diesel from 1 June 2002 to 31 December 2003.

Article 2

The differentiation in excise duty referred to in Article 1 may not exceed EUR 15 per 1 000 litres of fuel.

The rate of excise duty on diesel used as fuel must comply with the obligations set out in Council Directive 92/82/EEC, and in particular the minimum rate laid down in Article 5 thereof.

Article 3

This Decision shall expire on 31 December 2003.

Article 4

This Decision is addressed to Luxembourg.

Done at Brussels, 7 May 2002.

*For the Council**The President*

R. DE RATO Y FIGAREDO

⁽¹⁾ OJ L 316, 31.10.1992, p. 12. Directive as last amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

⁽²⁾ OJ L 316, 31.10.1992, p. 19. Directive as last amended by Directive 94/74/EC.

⁽³⁾ OJ L 350, 28.12.1998, p. 58. Directive as amended by Commission Directive 2000/71/EC (OJ L 287, 14.11.2000, p. 46).

**DECISION No 6/2001 OF THE EU-CZECH REPUBLIC ASSOCIATION COUNCIL
of 16 November 2001**

amending, through the setting up of a Joint Consultative Committee between the Committee of the Regions and the Czech Liaison Committee for Cooperation with the Committee of the Regions, Decision No 1/95 adopting the rules of procedure of the Association Council

(2002/376/EC)

THE ASSOCIATION COUNCIL,

Having regard to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part ⁽¹⁾ and in particular Article 109 thereof,

Whereas:

- (1) Dialogue and cooperation between the regional and local authorities in the European Community and those in the Czech Republic can make a major contribution to the development of their relations and to the integration of Europe.
- (2) It seems appropriate that such cooperation should be organised at the level of the Committee of the Regions, of the one part, and of the Czech Liaison Committee for Cooperation with the Committee of the Regions, of the other part, by setting up a Joint Consultative Committee.
- (3) It follows that the rules of procedure of the Association Council, adopted by Decision No 1/95, need to be amended accordingly,

HAS DECIDED AS FOLLOWS:

Article 1

The following Articles shall be added to the rules of procedure of the Association Council:

'Article 16

A Joint Consultative Committee (hereinafter referred to as "Committee") is hereby established with the task of assisting the Association Council with a view to promoting dialogue and cooperation between the regional and local authorities in the European Community and those in the Czech Republic. Such dialogue and cooperation shall be aimed in particular at:

1. preparing Czech regional and local authorities for activity in the framework of future membership of the European Union;
2. preparing Czech regional and local authorities for their participation in the work of the Committee of the Regions after accession of the Czech Republic;
3. exchanging information on current issues of mutual interest, in particular on up-to-date state of play concerning Community regional policy and accession

process as well as preparation of Czech regional and local authorities for these policies;

4. encouraging multilateral structured dialogue between (a) Czech regional and local authorities and (b) regional and local authorities from EU Member States, including through networking in specific areas where direct contacts and cooperation, between regional and local authorities from the Czech Republic and those from EU Member States, might prove the most effective way of solving particular problems;
5. providing regular exchange of information on inter-regional cooperation between regional and local authorities from the Czech Republic and those from Member States;
6. encouraging exchange of experience and knowledge in the field of regional policy and structural interventions, between (a) Czech regional and local authorities and (b) regional and local authorities from EU Member States, in particular know-how and techniques concerning preparation of regional and local development plans or strategies and most efficient use of Structural Funds;
7. assisting Czech regional and local authorities by means of information exchange in practical implementation of the principle of subsidiarity in all aspects of life at regional and local level;
8. discussing any other relevant matters proposed by any side, as they can arise in the context of implementation of the Europe Agreement and in the framework of the pre-accession strategy.

Article 17

The Committee shall comprise eight representatives of the Committee of the Regions, on the one hand, and eight representatives of the Czech Liaison Committee for Cooperation with the Committee of the Regions, on the other hand. An equal number of alternate members shall be appointed.

The Committee shall carry out its activities on the basis of consultation by the Association Council or, as concerns the promotion of the dialogue between the regional and local authorities, on its own initiative.

The Committee may make recommendations to the Association Council.

⁽¹⁾ OJ L 360, 31.12.1994, p. 2.

Members shall be chosen to ensure that the Committee is as faithful a reflection as possible of the various levels of regional and local authorities in both the European Community and the Czech Republic.

The Committee shall adopt its Rules of Procedure.

The Committee shall meet at intervals, which it shall itself determine in its Rules of Procedure.

The Committee shall be co-chaired by a member of the Committee of the Regions and a member of the Czech Liaison Committee for cooperation with the Committee of the Regions.

Article 18

The Committee of the Regions, on the one hand, and the Czech Liaison Committee for Cooperation with the Committee of the Regions, on the other hand, shall each defray the expenses they incur by reason of their participation in the meetings of the Committee with regard to staff, travel and subsistence expenditure and to postal and telecommunications expenditure.

Expenditure in connection with interpreting at meetings, translation and reproduction of documents shall be borne by the Committee of the Regions, with the exception of expenditure in connection with interpreting or translation into or from Czech, which shall be borne by the Czech Liaison Committee for Cooperation with the Committee of the Regions.

Other expenditure relating to the material organisation of meetings shall be borne by the Party which hosts the meetings.'

Article 2

This Decision shall enter into force on the first day of the second month following the date of its adoption.

Done at Brussels, 16 November 2001.

For the Association Council

The President

L. MICHEL

COMMISSION

COMMISSION DECISION

of 17 October 2001

on the State aid implemented by Germany for Neue Harzer Werke GmbH

(notified under document number C(2001) 3018)

(Only the German text is authentic)

(Text with EEA relevance)

(2002/377/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

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

Having called on interested parties to submit their comments pursuant to the provision(s) cited above and having regard to their comments,

Whereas:

- a complete restructuring plan, allowing a proper assessment and containing:
- a complete and updated table on investments and their funding,
- measures to reduce personnel costs,
- a complete and updated market analysis,
- information on the company results from 1996 to 1997, as well as for subsequent years;
- the precise loan conditions of the loans granted by Nord LB and Kreditanstalt für Wiederaufbau,
- a confirmation that the interest on the loans is paid by NHW,
- the necessity of the participation of 20 % in Eisenguss Torgelow GmbH taken during the restructuring period,
- full information on the capacity and its utilisation of the company for the two production lines,
- updated information on the development of the company in 1999 and especially the (certified) profit and loss statement and personnel development.

I. PROCEDURE

- (1) By letter of 23 February 1999 Germany communicated information on aid for the second restructuring of Neue Harzer Werke GmbH (hereinafter NHW) based on a plan of 1996. As the aid had partly been granted as loan to the undertaking at the time of the information, the case was registered as NN 38/99.
- (2) By letter dated 13 July 2000 ⁽¹⁾, the Commission informed Germany that it had initiated the procedure laid down in Article 88(2) of the EC Treaty in respect of the Bundesanstalt für vereinigungsbedingte Sonderaufgaben (BvS) grant of DM 2 million to NHW. The Commission also enjoined Germany to provide it with all such documentation, information and data as necessary in order that it may examine the compatibility of the aid awarded to NHW with the common market. The following issues were specifically mentioned:

- (3) The opening of the Article 88(2) of the EC Treaty investigations was published in the *Official Journal of the European Communities* ⁽²⁾. The Commission invited interested parties to submit their comments on the aid. No comments from interested parties were however received.
- (4) Germany submitted its comments on the opening of procedure by letters of 10 October 2000, 22 December 2000, 16 February 2001, 7 June 2001 and 23 July 2001.

⁽¹⁾ SG(2000) D/104924.

⁽²⁾ OJ C 301, 21.10.2000, p. 16.

- (5) The Commission evokes that the opening of investigation concerned only a grant by the BvS. Aim of this evaluation is to terminate the investigation C 31/2000 as far as this grant is concerned. Note that, aid of DM 2,774 million stated initially to have been granted under a regime will be treated in an extension of the procedure C 31/2000 (yet to be confirmed).

II. DESCRIPTION OF THE AID

1. RELEVANT UNDERTAKING

- (6) The aid beneficiary, NHW, is located in Saxony-Anhalt, Germany, which is an assisted region in the meaning of Article 87(3)(a) of the EC Treaty. With some 177 employees, the company achieved a turnover of DEM 20,765 million in 1999 while making an operational loss of DEM 2,797 million.
- (7) NHW is active in the casting of iron. The undertaking produces elements of boilers, one piece iron boilers and heating units for the house construction sector. It has another production line for high-alloy cylinder liners with an inner diameter between 130 mm and 450 mm for ship engines. In 1999 63 % of the turnover was achieved in the boiler production and 33 % in the liners production.

2. BACKGROUND

(a) PRIVATISATION IN 1991

- (8) In 1870 the undertaking was set up as 'Berg- und Hüttenwerke AG Werke zu Rübeland und Zorge' in order to produce cast iron equipment. In 1948 it was converted into 'VEB Harzer Werke' and later assigned to 'Kombinat SKL Magdeburg'. In 1990, the undertaking became owned by Treuhandanstalt (hereinafter THA) and was converted into 'SKL Harzer Werke GmbH Blankenburg'.
- (9) With the contract of 28 March 1991, the undertaking was privatised to Mr and Mrs Stöckmann for DEM 500 000 and was renamed 'Harzer Werke GmbH' (hereinafter HW). In line with the privatisation contract, State aid totalling DEM 53,25 million was granted under the first Treuhandregime of 1991. An open, trans-

parent and unconditional bidding procedure had been effected and the shares went to the highest bid.

- (10) On 1 March 1996, bankruptcy procedure was opened on the assets of HW. Reasons for the insolvency were the collapse of the Eastern block sales area, an inadequate management and too high overhead expenses.

(b) THE SECOND RESTRUCTURING (AS OF MARCH 1996)

- (11) In March 1996, the assets of HW in liquidation were brought into a shell company being incorporated by the receiver. With the contract of 27 March 1996, this legal entity was taken over by the new investor, a Mr Brunke, who renamed it 'Neue Harzer Werke GmbH'. In March 1998, additional partners came in and since then the ownership of the undertaking is organised, as indicated in the table:

	(in %)
Mr Brunke	21,48
Mrs M. Brunke	9,92
Mrs A. Brunke	9,92
Mrs Fröhlich	9,92
AIP Allgemeine Industriebeteiligungs- und Produktionsgesellschaft mbH ⁽¹⁾	24,40
Saparmet SA AD (LUX) ⁽²⁾	24,37

^(*) In April 1996 the Wagnisbeteiligungsgesellschaft mbH (hereinafter WBG), a Land entity, had become a silent partner.

⁽¹⁾ According to the information in the case NN 6/2000, AIP is owned and managed by a Mr Behrmann.

⁽²⁾ According to the information in the case NN 6/2000, Saparmet is likewise controlled by a Mr Behrmann.

- (12) In June 1998, Mr Brunke and NHW took each a 20 % stake in 'Eisenguss Torgelow GmbH', another undertaking being assessed by the Commission under aid NN 6/2000. In July 2000, the participation in question was sold to TKU TreuReal Kapital- und Unternehmensberatung GmbH.
- (13) In July 2000 the investor withdrew from the management of NHW and, soon after, from the partner's agreement.

(c) BANKRUPTCY PROCEDURE AGAINST NHW (AS OF SEPTEMBER 2000)

- (14) Insolvency procedure against NHW had to be opened on 1 September 2000 ⁽³⁾. Main grounds for the insolvency were the recession in the house building industry and yet again too high overhead costs. The creditor assembly opted for a maintenance of the business and ordered the receiver to introduce the 'Insolvenzplanverfahren' ⁽⁴⁾.

⁽³⁾ BvS registered a claim of DEM 2 million and interests of DEM 0,487 million as part of the bankruptcy estate. Saxony-Anhalt via the Landesförderinstitut (hereinafter LFI) put in claims totalling DEM 4,3 million.

⁽⁴⁾ The possibility of an 'Insolvenzplanverfahren' was introduced by the new insolvency code of 1999. In an early hearing, the creditor assembly opts for the liquidation or the maintenance of the business. It can then require the administrator to set up an 'Insolvenzplan', which is, in line with the option chosen, a liquidation or a restructuring plan. The plan is to be endorsed by the creditors, the latter being organised in groups, acting by majority of votes and of claims. The insolvency tribunal needs to confirm the plan. In line with 245 InsO this confirmation of the tribunal prevails over the rejection of a group.

- (15) All the groups of creditors except the one including the 'Bundesanstalt für vereinigungsbedingte Sonderaufgaben' (hereinafter BvS) and the 'Landesförderinstitut' ⁽⁵⁾ (hereinafter LFI) approved the 'Insolvenzplan' (hereinafter insolvency plan). At the end of 2000 the insolvency tribunal confirmed, however, the plan according to German bankruptcy law, namely Article 245 of the Insolvenzordnung. It was submitted to the Commission at the beginning of 2001. Key element of the insolvency plan is a settlement agreement between the creditors waiving liabilities in total of DEM 16,115 million so as to tackle the over-indebtedness of the undertaking.
- (16) At the beginning of 2001, the Landgericht Magdeburg cancelled the order of the insolvency tribunal for grounds of misinterpretation of Article 245 InsO. In line with this judgement, the settlement was adjusted by reducing the waiver of the group including the BvS and the LFI to 95 % in order to match with the quota of the other creditor groups. In the hearing of 28 June 2001 this updated plan was endorsed by all the groups plus the insolvency tribunal. It was submitted to the Commission in July 2001.
- (17) Pursuant to the latest information, 'Asset GmbH' became the new shareholder of NHW. No additional information on the transaction was however received.

3. THE RESTRUCTURING

(a) THE ORIGINAL PLAN OF 1996, AS SUBMITTED IN 1999 TO THE COMMISSION

- (18) A restructuring plan was established on the occasion of the bankruptcy of HW in 1996 and stretched over 4 years. Profitability was anticipated for 1999. However, by letter of 10 February 2000, Germany indicated that this target would not be met.

(i) *Organisational aspects*

- (19) According to the 1996 plan, the restructuring consisted of various elements:
- adjustment of the product-mix: the production of radiators and liners up to an inner diameter of 130 mm was ended. The undertaking concentrated on the manufacture of heaters and boilers as well as of liners above 130 mm. Additionally, the production of liners for car engines was started,
 - reduction of the number of employees from an average of over 200 before the take-over in 1996 to an average of under 160 in 2000 so as to improve the low productivity of the undertaking:

	1996	from 5/1996	1997	1998	1999	2000
Total	203	173	177	177	161	157

the Commission notes however that, in 1999, the undertaking had still an average of 177 employees,

- substitution of outdated machinery and equipment: investment of DEM 10,7 million was to be effected between 1996 and 1999, hereof around 52 % for the boiler production and around 48 % for the liners production. The Commission notes that, according to the insolvency plan, investment of DEM 12,813 million was effected between 1996 and mid-2000.
- (20) Regarding the production capacity, it was assessed on the basis of maximum production hours per year for the total workforce. Germany opted for this kind of assessment as the production of NHW varies according to the specifications by the individual client. Information on the effective capacity utilisation was not received.

⁽⁵⁾ The LFI, a *Land* entity, is in charge of the programme N 74/95 Konsolidierungsfond des *Landes* Saxony-Anhalt.

- (21) Overview (in maximum production hours per annum):

1991 (HW)	1996 (HW)	5/1996 (NHW)	1997 (NHW)	1998 (NHW)
947 568	203 728	174 624	174 624	172 912

- (22) NHW has currently three ovens. Regarding the heater production, two ovens with a capacity of four tons per hour each, had been replaced by one oven with a capacity of four tons per hour in 1995. Regarding the liners' production, two ovens with a capacity of 1,5 tons per hour each were replaced by two ovens with a capacity of three tons per hour each in 1999. Germany stated that these can only produce alternatively and that capacity would therefore not be increased.

(ii) *Costs of the restructuring*

- (23) According to the 1996 plan, the costs of the restructuring included:

(in million DEM)	
Investments 1997-1999	10,740
Acquisition of raw material and inventory	4,091
Loss compensation 1996 and 1997	1,346
Marketing	0,213
Penetration of export markets	0,100
Total	16,490

- (24) The restructuring was to be supported by public entities and the investor, as laid down in the table below:

(in million DEM)				
Origin	No	Resource	Measure	Sum
Public	1	Land	Subsidy; GEMEINSCHAFTSAUFGABE, 26th plan, N 123/97	4,402
	2	Land	Investment tax refund; PROGRAMME N 494/A/95	0,531
	3 (*)	WBG	Equity loan; CONSOLIDATION PROGRAMME N 337/96	2,000
	4 (*)	LFI	Loan; CONSOLIDATION PROGRAMME N 74/95	0,774
	5	BvS	Grant	2,000
				= 9,707
Investor	6	Investor	Capital injection	0,500
	7		Loan 'Kreditanstalt für Wiederaufbau'	2,750
	8		Investment loan 'Norddeutsche Landesbank'	2,000
	9		Leasing agreement	1,179
	10		Cash flow	0,354
				= 6,783
				= 16,490

(*) Note that this aid will be treated in the extension of the procedure C 31/2000.

- (25) The total restructuring costs were indicated as being DEM 16,49 million. According to the plan State entities would contribute DEM 9,707 million and the investor DEM 6,783 million.

(b) THE INSOLVENCY PLAN, AS SUBMITTED IN 2001

- (26) During the investigation, the Commission received the insolvency plan. It is to be noted that, in July 2001, a slightly updated version of the insolvency plan was endorsed by the creditors and the insolvency tribunal.
- (27) The aim of the insolvency plan is to continue the business of NHW in order to prepare it for its resale. Key element of the insolvency plan is a settlement agreement waiving liabilities in total of DEM 13,749 million so as to tackle the over-indebtedness of the undertaking. The production of heaters and liners is maintained, the company will however give more emphasis to liners. For the year 2001, a turnover of DEM 10,155 million is anticipated for the heaters and of DEM 9,412 million for liners; for the year 2002 an increase in turnover of 5,6 % is envisaged. Overhead costs would be adjusted, especially personnel costs would be cut back by DEM 2,436 million per annum by way of reducing the number of employees from 160 to 133. NHW is supposed to achieve an operational profit of DEM 0,507 million in 2001. Regarding production capacity, it is still assessed on the basis of maximum production hours and 108 750 hours are envisaged for 2001.

4. MARKET INFORMATION

- (28) The liners belong to the product market of casting of iron (NACE Rev.1 27.51). Germany asserted that the market for liners was stable in 1997 and will remain like this for the years to come. The liners for big diesel engines are mainly sold to Caterpillar MAK in Kiel.
- (29) Regarding the heaters, the product market of casting of iron is likewise applicable. Germany informed that 70 % of boiler production is used in the house construction industry. For 1996, the market was shrinking in West Germany. In the New German *Länder*, an increase of 5 % was expected. The Commission was told that the outlook was rather good as new obligatory environmental standards had been introduced and adaptation became urgent. About 70 % of the boiler market is concentrated in five major companies: Buderus, Viessmann, Junkers, Vaillant, and Wolf. Main customers are Stiebel Eltron, Rapido Wärmetechnik, August Brötje and Klöckner.

5. GROUNDS FOR OPENING PROCEDURE

- (30) In the opening proceedings, the Commission established that the public measures Nos 1 to 5 totalling DEM 9,707 million qualify as aid in the sense of Article 87(1) of the EC Treaty. Of this, DEM 2 million was judged as new aid. As it was intended to be restructuring aid, it had to be examined under Article 88(3)(c) of the EC Treaty and the Community Guidelines on State aid for restructuring of 1994 ⁽⁶⁾.
- (31) The Commission had serious reservations about the ability of the 1996 plan to establish the viability of NHW. The letter from the German authorities was quoted, in which it asserted that the target of reaching viability in 1999, as envisaged in 1996 plan, had not been met.
- (32) As to the proportionality of the aid, the Commission noted in its opening proceedings that it was unable to evaluate whether the investor contribution was significant. Particularly, it was unable to evaluate whether the bank loans of NordLB and KfW were granted at market terms. Besides, it had been unclear whether all the investment was essential for the restructuring and the aid hence limited to the minimum as the company had taken a 20 % stake in 'Eisenguss Torgelow GmbH' in 1998 which was not included in the plan.

⁽⁶⁾ OJ C 368, 23.12.1994, p. 12.

- (33) Moreover, the Commission questioned whether the 1996 plan was implemented given that NHW seemed to have more workers than envisaged by the 1996 plan.
- (34) Likewise, the Commission stated that not enough information had been provided in order to judge whether the transfer of HW to the investor in 1996 involved aid.

III. COMMENTS FROM GERMANY

- (35) The Commission was informed that the undertaking had filed for bankruptcy on 21 July 2000 ⁽⁷⁾. Germany underlined that when the plan was set up in 1996, it had been convinced of its ability to establish the viability of NHW.
- (36) Germany stated that the creditor assembly had opted for a maintenance of the business and ordered the receiver to introduce the 'Insolvenzplanverfahren' ⁽⁸⁾. According to Germany the insolvency plan is to be judged as modification of the 1996 plan and would, together with the latter, satisfy the viability criterion.

IV. ASSESSMENT

- (37) Within the opening of the Article 88(2) of the EC Treaty procedure, Germany was requested by means of an injunction to provide the Commission with enough information so as to assess the measures under investigation. The information provided afterwards remains however inadequate. The Commission shall therefore base its evaluation on the information available ⁽⁹⁾.

1. AID BENEFICIARY

- (38) Germany claims the undertaking qualifies as SME in the meaning of the Community recommendation of 3 April 1996 ⁽¹⁰⁾ (hereinafter Recommendation). When Mr Brunke took over the undertaking in March 1996, it qualified as SME according to the information provided ⁽¹¹⁾. Based on information in the case NN 6/2000 Eisenguss Torgelow GmbH, it is however questionable whether NHW has adhered to the independence criterion since 1998. This issue is however of no relevance, as the aid under investigation was granted at a time when the undertaking qualified as SME.

2. AID IN THE SENSE OF ARTICLE 87(1) OF THE EC TREATY

- (39) In the opening of the proceedings the Commission expressed the preliminary view that the measures Nos 1 to 5 granted to NHW qualify as aid. This evaluation remained undisputed by Germany in its comments. Indeed, the measures were financed by State resources, provided a specific advantage to the beneficiary, affected trade between Member States since the beneficiary is active in a sector where intra-Community trade takes place, and thereby distorted or threatened to distort competition.
- (40) In its opening proceedings the Commission raised likewise the question whether the sale of HW to the investor Mr Brunke in 1996 involved aid elements. However, the Commission notes that the transfer was effected by the receiver of HW in liquidation. No public entity was among the shareholders of HW in 1996, as it was already privatised in 1991. On the basis of the available information, the Commission is of the opinion that no aid was involved in the sale of HW by the receiver to the investor in 1996.

3. COMPATIBILITY

(a) EXISTING AID

- (41) Aid Nos 1 to 4 totalling DEM 7,707 million was claimed to have been granted under schemes endorsed by the Commission. In the opening the Commission had reservations about whether the aid complied with the terms of the schemes on the basis upon which they had purportedly been granted.

⁽⁷⁾ See letter of 12.8.2001.

⁽⁸⁾ See letter of 27.12.2000.

⁽⁹⁾ Article 13(1) of Council Regulation (EC) No 659/1999 of 22.3.1999, laying down detailed rules for Article 88 of the EC Treaty (OJ L 83, 27.3.1999).

⁽¹⁰⁾ OJ L 107, 30.4.1996, p. 4.

⁽¹¹⁾ In the year 1995 it had 203 employees and achieved a turnover of some DEM 21 million. The independence criterion pursuant to Article 1(3) of the Recommendation was likewise met.

- (42) Aid No 1 of DEM 4,402 million was provided under a regional scheme endorsed by the Commission ⁽¹²⁾. The investment project is located in Article 87(3)(a) of the EC Treaty, region in which the maximum aid intensity for SMEs totals 50 % gross. According to the insolvency plan, investments of DEM 12,132 million were carried out between 1996 and 1999 ⁽¹³⁾. As the total regional aid, including aid No 1 and No 2, comes to DEM 4,933 million, the intensity equals 40,7 %. The requirements of the scheme were therefore adhered to. On the basis of the available information, the aid is hence judged as existing and will not be reviewed by the Commission. It will however be considered for the proportionality assessment under the restructuring Guidelines.
- (43) Aid No 2 of DEM 0,531 million was likewise provided under a scheme approved by the Commission ⁽¹⁴⁾. The requirements, especially the maximum aid intensity of 10 % gross for SMEs located in the ex-GDR, were met ⁽¹⁵⁾. Therefore, on the basis of the available information, the aid qualifies as existing and will not be reviewed by the Commission. It will however be taken into account for the proportionality evaluation.
- (44) Aid No 3 was purportedly granted under a scheme endorsed by the Commission ⁽¹⁶⁾. Aid No 4 of DEM 0,774 million was invoked to be have been likewise granted under a scheme ⁽¹⁷⁾. Note that aid Nos 3 and 4 will however be treated in the extension of procedure C 31/2000.

(b) NEW AID

- (45) As previously stated, the aid No 5 of DEM 2 million is regarded as new aid.

Such aid is generally incompatible with the common market. It should however be examined whether the aid measures could be exempted from the basic interdiction in Article 87(1) of the EC Treaty. Hence, the Commission has assessed if the exemptions set out in Article 87(2) and (3) of the EC Treaty apply.

- (46) The exemptions in Article 87(2) of the EC Treaty could serve as a basis to render aid compatible with the common market. However, the aid measures (a) do not have a social character and are granted to individual consumers, (b) do not make good the damages caused by natural disasters or exceptional occurrences and (c) are not required in order to compensate for the economic disadvantages caused by the division of Germany. Neither apply the exemptions of Article 87(3)(b) and (d) of the EC Treaty that refer to projects of common European interest and to the promotion of culture and conservation. Neither did the German authorities attempt to justify the aid on the grounds enumerated above.
- (47) As to the exemption of Article 87(3)(a) of the EC Treaty, the Commission has taken into account that the new German *Länder* belong to the assisted regions in the meaning of Article 87(3)(a) of the EC Treaty, where the standard of living is abnormally low and where there is a high unemployment rate. Nevertheless, it should be evoked that, in accordance with point 2 of the Guidelines on national regional aid ⁽¹⁸⁾ (hereinafter regional guidelines), individual ad hoc aid payment made to a single undertaking may have a major impact on competition in the market in question, and its effects on regional development are likely to be too limited. Therefore, the Commission thinks that, unless it

⁽¹²⁾ N 123/97 'Gemeinschaftsaufgabe, Förderung der regionalen Wirtschaftsaufgabe,' 26th plan; measures under this law qualify as regional investment aid.

⁽¹³⁾ See p. 16 of the insolvency plan.

⁽¹⁴⁾ N 494/A/95 Investitionszulagengesetz 1993, in the version of 1996; measures under this law qualify as regional investment aid.

⁽¹⁵⁾ Since investment totalling DEM 6,607 million was effected until 31 December 1998, the intensity amounts to 8,03 %.

⁽¹⁶⁾ N 337/96 Richtlinie zur Förderung von Konsolidierungsbeteiligungen im Mittelstand (Saxony-Anhalt).

⁽¹⁷⁾ N 74/95 Konsolidierungsfond des Landes Sachsen-Anhalt.

⁽¹⁸⁾ OJ C 74, 10.3.1998, p. 9.

can be shown otherwise, such aid does not meet the terms of the regional guidelines. Hence, the exemption in question will normally be granted only for multisectoral aid schemes open, in a given region, to all undertakings in the sectors concerned. Germany did not show that the equilibrium between the resulting distortions of competition and the advantages of the aid in terms of the development of a less-favoured region can be guaranteed. Moreover, point 4 of the regional guidelines foresees that the beneficiary's contribution must be at least 25 % to ensure that the productive investment aid is viable and sound. In the present case this requirement was not satisfied, either.

- (48) The aid measures were described as restructuring aid given in order to establish the viability of an undertaking in difficulty. Therefore, the Commission considers, in particular, the exception as foreseen by Article 87(3)(c) of the EC Treaty, according to which aid to facilitate the development of certain economic activities, where such aid does not affect trading conditions to an extent contrary to the common interest may be seen as compatible. Hence, the Commission evaluates the measures in question according to the conditions laid down in its Community Guidelines on State aid for rescue and restructuring of firms in difficulties (hereinafter Guidelines) in the version of 1994 ⁽¹⁹⁾. The latter remain applicable in case of unnotified aid, if the aid is granted before the publication of the 1999 version ⁽²⁰⁾. This is the case regarding the aid granted under the 1996 plan.

(i) Eligibility

- (49) In the opening proceedings, the Commission stated that NHW is eligible for restructuring aid under the Guidelines.

(ii) Viability

- (50) According to point 3.2.2(i) of the Guidelines, the plan must establish the long-term viability of the company within an adequate time scale and on the basis of realistic assumptions as to its future operating terms.

(1) The plan of 1996

- (51) According to the original plan of 1996, viability of NHW was to be achieved in 1999, as laid down in the table:

(in million DEM)

	4-12/1996	1997	1998 (*)	1999 (**)
Overall sales	14,471	19,835	21,352	26,711
Material costs	6,977	10,193	10,064	12,889
Personnel costs	5,787	8,967	9,264	8,648
Operational results	0,155	- 2,103	- 1,375	1,294
Earnings before tax	0,343	- 0,671	- 0,473	2,075

(*) Provisionally.

(**) Expected.

- (52) In the opening proceedings, reservations had been expressed about the viability criterion because of the only slight increase of turnover for the years 1997 and 1998, the high personnel costs and the growing losses.

- (53) The Commission believes that the sales were overestimated in the 1996 plan.

⁽¹⁹⁾ OJ C 368, 23.12.1994, p. 12.

⁽²⁰⁾ See chapter 7.5. of the 1999 Restructuring Guidelines (OJ C 288, 9.10.1999, p. 2).

- (54) The operational result continued to be negative in 1998 with DEM 1,375 million. As to achieve viability in 1999, an increase in turnover of almost 30 % was envisaged by the 1996 plan. The operational profit of 1999 was supposed to come to DEM 1,294 million which represented an increase of more than 200 %.
- (55) Almost 50 % of the 1999 turnover was intended to be achieved in the German building market and especially in the German house-building sector, which is under high competitive pressure since 1995. The German overall building activities have been undergoing a crisis since 1995, which has not yet ended ⁽²¹⁾. Regarding the new house-building sector, the production has declined, apart from a growth in 1997, with 3,4 % in 1995, with 4,3 % in 1996, 1,6 % in 1998 and 1,8 % in 1999. The quantity of constructed houses has been falling in Germany since 1995. It is chiefly the new German *Länder*, where the number of houses built declined by more than one third within 3 years, which have been affected. In view of this, the increase in turnover as anticipated in the 1996 plan, seems too optimistic.
- (56) Moreover, the Commission is of the view that the overhead costs as the one of grounds for the insolvency of HW in 1996 were not adequately tackled in the 1996 plan.
- (57) Concerning staff expenses, it appears that the reduction from 203 to 177 staff with effect from mid-1996, as anticipated in the plan, was insufficient. The share of personnel expenses could not be reduced, on the contrary:

	1995	1996 (*)	1997	1998	1999
Personnel	207	203	177	176	177
Overall sales (in DEM)	20,939	14,709	19,835	21,352	17,427
Sales/employees (in DEM)	0,101	0,072	0,112	0,121	0,098
Personnel costs (in %)	52	40	45	43	52

(*) The year 1996 covers only a period of 8 months, starting from May 1996.

- (58) The share of the expenses continued to be much too high throughout the restructuring, with 40 % at the beginning of the restructuring in 1996 to over 50 % in 1999. Moreover, although the income per employee increased from DEM 72 000 per annum in 1996 to around DEM 100 000 per annum in 1999, it is nevertheless significantly below the average of DEM 160 000 in a comparable undertaking in the market ⁽²²⁾. The cut back of 25 workers, as anticipated in the 1996 plan, was insufficient to improve the efficiency of the undertaking.
- (59) Regarding the likewise excessive other operational costs, specially the high maintenance costs, the latter were not tackled in the 1996 plan. The share of these costs amounted to 9 % at the beginning of the restructuring, before increasing to 13 % in 2000 notwithstanding a lower turnover.
- (60) The Commission is therefore of the opinion that the 1996 plan could not establish the viability of NHW.
- (61) As mentioned, Germany informed the Commission before the opening of proceedings, that the break-even of NHW had not been achieved in 1999, as envisaged in the 1996 plan. Later the Commission was informed about the insolvency procedure against NHW. All of this confirms the evaluation of the Commission under recital 57.

⁽²¹⁾ See European Construction Industry Association, 'Construction activity in Europe', 2000, p. 33.

⁽²²⁾ See insolvency plan, p. 13.

(2) The insolvency plan of 2000

- (62) Germany argues that the insolvency plan of 2000 is to be considered as element of the restructuring operation of 1996. In its opinion, the 1996 plan and the insolvency plan need to be seen together when evaluating the viability criterion.
- (63) In the opinion of the Commission the insolvency plan can, however, not be judged as element of the 1996 restructuring operation.
- (64) The Commission notes that the investor Mr Brunke withdrew from the undertaking in July 2000. With the withdrawal of the investor, the very basis of the 1996 plan was altered. In the New German *Länder* cases, the Commission has accepted that a restructuring operation might involve the withdrawal of an investor⁽²³⁾. However, this interpretation was only justified in connection with the transformation from a planned to a market economy, which the new German *Länder* were undergoing, as being unpredictable and market-exogenous for the undertakings under restructuring. It appears that the insolvency of NHW in 2000 was not linked to the transformation process being external to the company but was instead generated by the management which responded inadequately or belatedly to the stagnation in the house-building industry. This assessment is confirmed by the insolvency plan⁽²⁴⁾.
- (65) The Commission notes also that insolvency procedure had to be opened in September 2000. As a result of the bankruptcy, the initial legal personality (NHW GmbH) ceases to exist in accordance with the German corporation law⁽²⁵⁾. In its practice, the Commission has accepted that a restructuring operation might involve the bankruptcy of the undertaking and its resale, the so-called 'Auffanglösung'. However, this line was equally justified with the transformation from a planned to a market economy, which the new German *Länder* were undergoing. As concluded under recital 61, it seems that the insolvency of undertaking in 2000 was rather generated by errors of the management and therefore inside the company.
- (66) In view of the above, the Commission thinks that the withdrawal of the investor and the opening of the insolvency procedure signifies a break in the restructuring process of 1996⁽²⁶⁾. Hence, the Commission is of the opinion that the 1996 plan and the insolvency plan should not be evaluated as one consistent action. The restructuring therefore includes two terms: the first term, stretching from March 1996 until the bankruptcy of NHW in 2000 and covered by the 1996 plan, and the second term, as of the bankruptcy and enclosed by the insolvency plan.
- (67) The insolvency plan is hence not included in the current evaluation in order to assess whether viability was to be restored. As stated before, the 1996 plan on its own was unable to restore the viability of NHW.

(iii) Proportionality of the aid

- (68) According to 3.2.2.(iii) of the Guidelines, the aid shall be in proportion to the restructuring costs and benefits.

(1) Significance of the investor contribution

- (69) Aid beneficiaries should make a significant contribution of their own to the restructuring plan. In the opening, the Commission questioned the significance of the investor participation.
- (70) According to the investigation of the Commission, the second restructuring is supported by both public entities and the investor.
- (71) As mentioned, State entities contribute DEM 9,707 million.

⁽²³⁾ See C 42/97 Everts GmbH, letter of 4.10.1999, SG (99) D/7944, p. 10.

⁽²⁴⁾ See page 18 of the insolvency plan.

⁽²⁵⁾ No 1, point 4 of Article 60 GmbHG.

⁽²⁶⁾ See also C 36/2000, Graf v. Henneberg, letter of 27.4.2001, SG (2001) D/288186, p. 23.

- (72) On the basis of the information available, it can be established that the investor contributes DEM 0,5 million. As no supplementary information was provided on the terms of the lease of DEM 1,179 million during the procedure, the Commission was generally unable to judge whether it was agreed upon under market terms. As the injunction pursuant to Article 10 of Council Regulation (EC) No 659/1999 ⁽²⁷⁾ in the opening of proceedings did not embrace the lease, it will however need to be accepted as investor contribution in this evaluation. As it can be seen below, the qualification of the lease has no effects on the assumption whether the investor contribution was significant.

- (73) The other contributions cannot be considered as investor contribution:

(in million DEM)		
Resource	Measure	Sum
KfW	Loan	2,750
Nord LB	Investment loan	2,000
Undertaking	Cash flow	0,354
		= 5,104

- as, notwithstanding the information injunction, no supplementary information was provided on the terms on the loans of KfW, the Commission was unable to judge whether the loan was granted under market terms,
- the same reasoning applies to the investment loan of NordLB,
- regarding the cash flow, this element is not to be accepted as investor contribution ⁽²⁸⁾. The cash flow is to a large extent to be realised on the basis of State interventions in the past. Additionally, at the time the plan was established in 1996, the cash flow was still to be generated and was therefore conditional.

- (74) Therefore, these contributions shall not qualify as investor contribution and shall hence not be taken into account for the proportionality.
- (75) Accordingly, total costs of the restructuring amount to DEM 16,49 million, of which the State bodies contribute DEM 9,707 million or 58,9 % and the investor DEM 1,679 million or 10,2 % (or possibly only DEM 0,5 million, representing 3 %). In view of all the circumstances of this case, this investor contribution cannot be regarded significant as established in the Guidelines.

(2) Limitation to the minimum

- (76) Pursuant to the guidelines, investment can only be supported if it is essential for the restructuring. Otherwise the aid is not limited to the strict minimum.
- (77) In the opening of the proceedings, the Commission expressed reservations whether the aid is limited to the strict minimum given that the undertaking took a participation of 20 % in Eisenguss Torgelow GmbH during the restructuring.
- (78) As it can be seen from the information in the case NN 6/2000, Mr Brunke acquired a 40 % participation with the contract of 4 April 1998, hereof 20 % directly and 20 % via NHW ⁽²⁹⁾. In July 2000, at the time NHW went bankrupt, the 40 % participation had been taken over by TKU TreuReal Kapital- und Unternehmensberatung ⁽³⁰⁾. As, notwithstanding the information injunction, no information on the aim of this stake was provided, the Commission is however unable to judge whether the latter was essential for the 1996 restructuring of NHW.
- (79) The Commission is hence of the opinion that aid was not limited to the strict minimum.

⁽²⁷⁾ OJ L 83, 27.3.1999, p. 1.

⁽²⁸⁾ NN 5/2000 Messacon GmbH, letter of 27.10.2000, SG (2000) D/107934; N 4/2000 Schiffsanlagenbau Barth GmbH, letter of 8.1.2001, SG (2001) D/200101.

⁽²⁹⁾ NN 6/2000 Eisenguss Torgelow GmbH, letter of 3.3.2000.

⁽³⁰⁾ NN 6/2000 Eisenguss Torgelow GmbH, letter of 4.7.2000.

(iv) **Implementation of the plan**

- (80) According to 3.2.2.(iv) of the Guidelines the beneficiary must completely implement the restructuring plan.
- (81) The Commission in its opening proceedings, questioned whether this requirement is met given that NHW seemed to have more employees than envisaged by the 1996 plan.
- (82) The Commission notes that the undertaking had 177 staff in 1999 meaning that the reduction of staff between 1998 and 1999 as envisaged in the plan was not carried out in time. The cut back of staff from 177 to about 160 in 2000 was effected in order to address the threatening insolvency of the undertaking rather than in implementation of the plan.
- (83) Hence, the Commission is of the opinion that the plan had not been entirely implemented by NHW.

V. CONCLUSION

- (84) The BvS grant of DEM 2 million qualifies as new aid. Since the criteria established in the guidelines were not met, the aid is thought to be incompatible with the common market.
- (85) The Commission states that Germany has unlawfully implemented the aid in question in breach of Article 88(3) of the EC Treaty. The DEM 2 million grant by the BvS, together with interests, is to be recovered by Germany in accordance with its applicable national legal provisions.
- (86) As to the aid Nos 3 and 4 invoked to be granted under schemes, the Commission notes that they will be treated in the extension of the procedure C 31/2000,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Germany has implemented for Neue Harzer Werke GmbH amounting to EUR 1 022 588 (DEM 2 million) is incompatible with the common market.

Article 2

- 1. Germany shall take all necessary measures to recover, from the beneficiary, the aid referred to in Article 1 and unlawfully made available to the beneficiary.
- 2. Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of the decision. The aid to be recovered shall include interest from the date on which it was at the disposal of the beneficiary until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant-equivalent of regional aid.
- 3. For the purposes of this Article the term 'beneficiary' comprises not only NHW but any other undertaking to which assets have been transferred in such a way as to deprive paragraph 1 of effect.

Article 3

Germany shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 17 October 2001.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION DECISION
of 17 October 2001
on the State aid implemented by Germany for MESAcon Messelektronik GmbH

(notified under document number C(2001) 3065)

(Only the German text is authentic)

(Text with EEA relevance)

(2002/378/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

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

Having called on interested parties to submit their comments pursuant to the provisions cited above,

Whereas:

I. PROCEDURE

- (1) By letter dated 22 December 1999 and received on 10 January 2000, the Commission was informed that Germany had implemented the aid for MESAcon Messelektronik GmbH, Dresden. The questions asked by the Commission in its letter of 26 January 2000 were answered by letter of 8 March 2000, registered as received on 9 March. The Commission asked further questions in its letter of 19 April 2000, which was answered on 5 June.
- (2) By letter dated 27 October 2000, the Commission informed Germany that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of aid of DEM 2,25 million for MESAcon Messelektronik GmbH, Dresden.
- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽¹⁾. The Commission invited interested parties to submit their comments on the aid. It received no comments from interested parties.
- (4) Germany's response to the decision to initiate the formal investigation procedure was submitted by letter of 19 December 2000, received on the same day. Further information was received on 10 January 2001. Following questions put by the Commission on 4 April 2001, Germany provided further information by letter of 31 May 2001, registered as received on the following day.

II. DESCRIPTION

A. The undertaking

- (5) MESAcon Messelektronik GmbH, Dresden (hereinafter MMED) is the second hive-off vehicle (Auffanggesellschaft) of the former Messelektronik Dresden (hereinafter MED). MMED is a firm of engineering consultants specialising in the development of radiometric and laser-optic measurement systems mainly for the steel and aluminium industries.
- (6) MMED was created on 3 December 1997 by Mr Riegel, who acquired the assets of the bankrupt Neue Messelektronik Dresden (hereinafter NMED), which was itself a hive-off vehicle of MED.

⁽¹⁾ OJ C 37, 3.2.2001, p. 29.

- (7) MMED currently employs some 20 people. In 2000 it achieved a turnover of DEM 4,1 million and held assets of DEM 2,8 million. Its sole shareholder is Mr Riegel. The employees are silent partners in the company with an interest in 10 % of its profits.
- (8) The company is located in Dresden, Saxony, an assisted area under Article 87(3)(a) of the EC Treaty with an unemployment rate of 15 %.

B. The restructuring

- (9) Having been part of a planned economy, MED was short of capital and had inadequate management and a deficient economic structure. These problems were inherited by NMED. Since neither MED nor NMED underwent a substantial restructuring process, some of these structural deficiencies were passed on to MMED.
- (10) The first restructuring measures were carried out in December 1997, when MMED was founded. Restructuring continues until December 2001. However, according to Germany, most of the restructuring measures have already been implemented and the main intention is simply to consolidate the restructuring in 2002.
- (11) The plan was to transform MMED into a firm of engineering consultants concentrating on design, with production being closed down and fixed costs reduced. This transformation from a production company to a firm of engineering consultants meant the cessation of the main activity of NMED and a change of policy towards customised production, with the workforce being retrained and a distribution network being set up to serve MMED's new customers.
- (12) Firstly, as part of the restructuring, all activities were concentrated at a single site. This was accomplished as early as February 1998.
- (13) Secondly, research and development measures were necessary to ensure long-term viability in the areas of density and level measurement techniques. In the area of density measurement, MMED has developed a new isotope system to replace the one created by MED. In addition, specific software was devised for application in this area. The new systems are designed as modules which are assembled according to the client's needs. As regards level measurement techniques, no technology was available to the hive-off vehicle in this area. MMED developed its own system as well as specific probes (potash probes).
- (14) Thirdly, it was necessary to develop technical systems for measuring surface roughness; this required substantial investment as well as research and development measures in order to ensure that the firm's new policy would be successful.
- (15) The ordering and delivery system also had to be adapted to the new customised policy. Distribution is organised in cooperation with LDV-Systeme, which sells and distributes MMED's products in western Europe, South Africa and North America. The experience of the former employees of NMED allows MMED to continue its activities in eastern Europe and distribute LDV-Systeme's products in this market. As a result of this cooperation, distribution costs should be reduced and the product markets for MMED should expand.
- (16) Finally, the company needed to increase its working capital to be able to meet pending and future orders.
- (17) The overall costs of the restructuring were initially estimated at DEM 4,436 million. This amount originally included several research and development measures, most of which were not directly linked to the main restructuring objective but formed part of a parallel research and development

project. This project was started in 2000, once the situation of the company had stabilised and the most urgent restructuring measures had been implemented. Measures under this parallel project have been excluded from the restructuring costs since they do not relate to restructuring ⁽²⁾.

- (18) The revised overall restructuring costs amount to DEM 3,721 million and are summarised in the table below.

Table 1

(DEM million)	
Restructuring measures	Costs
Investment in plant and machinery	0,733
Research and development	0,458
Technical development	1,574
Working capital	0,956
Total	3,721

C. The financial commitment to the restructuring

- (19) The overall restructuring costs were jointly financed by the investor and the public authorities.
- (20) Measure A: investment grants and investment premiums totalling DEM 0,320 million granted by the *Land* of Saxony to cover part of the investment in plant and machinery. These measures originally amounted to DEM 0,419 million but this figure was reduced to respect the maximum aid intensities provided for in the schemes under which they were granted.
- (21) Measure B: a subordinated loan of DEM 1,016 million at an interest rate of 8,5 % granted on 27 August 1998 by the Stadtparkasse Dresden. Originally, DEM 1,5 million was promised but, in the end, this amount was reduced by DEM 0,484 million. Part of the loan was intended to cover investment in plant and machinery and part was to be used for project development. The Kreditanstalt für Wiederaufbau (KfW) guaranteed 85 % of the risk of default, i.e. DEM 0,864 million, through a refinancing loan to the Stadtparkasse Dresden. The Federal Government itself assumed 75 % of the risk of default on the refinancing loan from the KfW.
- (22) Measure C: a loan of DEM 0,65 million granted on 20 November 1998 by the BvS (successor to the Treuhand privatisation agency) to cover part of the investment. If the Commission decision is positive, the loan will be converted into a grant.
- (23) Measure D: a further Stadtparkasse Dresden loan of DEM 1,1 million granted in 1998. This consisted of a credit line of DEM 0,5 million, which was made available on 9 September 1998, and an additional DEM 0,6 million, which was disbursed on 1 December 1998. DEM 1 million of this loan is covered by the investor's personal guarantee and the remainder by a subsidiary guarantee (80 %) from the Bürgschaftsbank Sachsen.
- (24) Measure E: Federal Government grants totalling DEM 0,138 million for research and development.
- (25) As well as his personal guarantee for DEM 1 million of the loan under Measure D, the investor was to provide a further cash amount of DEM 0,1 million from his own resources (measure F). Lastly, according to the information provided by Germany, DEM 0,397 million was to be contributed as future cash flow (Measure G).

⁽²⁾ These research and development projects are financed by the firm itself and by the Federal Government under approved aid schemes.

- (26) The overall financing of the restructuring is shown in Table 2, which also indicates the person/body ultimately responsible for paying for the measures described above.

Table 2

(DEM million)			
Measure	Origin	Form	Amount
A	Land	Investment grants	0,152
		Investment premiums	0,168
B	KfW	Refinancing loan on 85 % of a subordinated loan of DEM 1,016 million granted by the Stadsparkasse Dresden (*)	0,864
	Stadsparkasse Dresden	15 % of a subordinated loan of DEM 1,016 million	0,152
C	BvS	Loan/grant	0,650
D	Investor	Personal guarantee	1,000
	Bürgschaftsbank Sachsen	Subsidiary guarantee (80 %)	0,080
	Stadsparkasse Dresden	Remaining risk of default on a loan of DEM 1,100 million	0,020
E	Federal Government	R & D grants	0,138
F	Investor	Cash	0,100
G	Firm	Cash flow	0,397
Total			3,721

(*) The risk of default on 75 % of this amount, i.e. DEM 0,647 million, is assumed by the Federal Government.

D. Market analysis

- (27) MMED develops, manufactures, tests and markets radiometric and laser-optic measurement equipment. Its radiometric systems are used to measure density and coating thickness, surface, roughness, level, density and potash density as well as length, velocity and flatness. Its laser-optic systems measure surface roughness. These systems are intended mainly for the steel and aluminium industries. MMED is also diversifying its products to serve, among others, the wood and plastics industries.
- (28) The production value of measuring equipment (NACE 33.2) in the EU totalled almost EUR 40 billion in 1998. This was a sizeable increase on 1993, when the industry experienced a deep recession. From 1994 onwards, production recovered. The largest producer in the EU is Germany, with a 27,7 % share of total EU output ⁽³⁾. However, in order to be able to benefit from the improved market conditions, EU producers must continue to keep production costs low, while investing sufficient resources to new technology and product development so that they can compete with manufacturers in Japan and the United States.
- (29) In its decision to initiate the formal investigation procedure, the Commission noted a steady increase in apparent consumption over the period 1995 to 1998 which did not, however, fully meet demand. The information available provided some indications of a reduced level of economic activity. However, there was no conclusive evidence of this. Several competitors reported growth for the year 2000 and remain optimistic for the future.

⁽³⁾ 'Panorama of EU Industry 1999', Chapter 12, p. 325.

- (30) The Commission also noted that the market for measurement systems is an extremely segmented market covering a wide range of technologies and customers. It considered that MMED's reference markets are the production of measurement systems for the steel and aluminium industries. It noted that the metal industry as a whole faces broad competition from substitute materials and that the steel industry suffers from chronic overcapacity ⁽⁴⁾. Germany explained that this was the reason why MMED had diversified its products to cover other industries as well. None the less, it also pointed out that the steel industry needs increasingly sophisticated measurement equipment in order to be able to modernise and restructure. There was therefore an increasing need for more reliable, more accurate and more rapid analysis. The Commission noted that the aluminium industry was experiencing growth as a result of the increased recycling of metals, especially in the transportation and packaging sectors.
- (31) It can therefore be concluded that the sector is very dynamic but that there is keen competition which compels firms to make large investments if they are to come to terms with the requisite specialisation.

III. REASONS FOR THE INITIATION OF THE FORMAL INVESTIGATION PROCEDURE

- (32) On 27 October 2000 the Commission initiated the formal investigation procedure in respect of the financial measures for MMED. It was unable to establish whether MMED was a small or medium-sized enterprise (SME), took the view that the financial measures in its favour constituted aid within the meaning of Article 87(1) of the EC Treaty and doubted whether they were compatible with the common market.
- (33) On the basis of the information received, it could not be ruled out that, at the time when the aid was granted, management or corporate relationships existed with the former MESAcon Gesellschaft für Messtechnik mbH Dortmund. In addition, the information was insufficient to be able to determine whether LDV-Systeme GmbH, TSI Inc. and MMED operated together as a single economic entity.
- (34) The Commission took the view that aid for MMED totalling DEM 2,25 million should be assessed as ad hoc aid under Article 87(3)(c) of the EC Treaty and the Community guidelines on State aid for rescuing and restructuring firms in difficulty ('the guidelines') ⁽⁵⁾. On the basis of the information at its disposal, the Commission doubted whether the criteria laid down in the guidelines had been met. The restructuring measures described by Germany seemed insufficient to be described as a viable restructuring programme. On the basis of the information submitted, the Commission was unable to judge whether MMED's expected financial results were realistic or whether the company would be able to operate in the market on the strength of its own resources. Nor could it rule out the possibility that the aid would lead to undue distortions of competition. Lastly, the Commission was unable to state for certain that the aid was restricted to the strict minimum needed to enable restructuring to be undertaken and was in proportion to the overall restructuring costs.
- (35) The Commission received no comments from interested parties.

IV. COMMENTS FROM GERMANY

- (36) In its response to the decision to initiate the formal investigation procedure, Germany clarified the firm's SME status and pointed out that, apart from cooperation in product distribution, no other management or corporate relationships existed with the former MESAcon Gesellschaft für Messtechnik mbH Dortmund. That company had been wound up and part of its workforce incorporated into LDV-Systeme GmbH, which develops and distributes laser-optic measurement systems. Some of the assets of MESAcon Gesellschaft für Messtechnik mbH Dortmund were bought by TSI Inc., an American competitor, and part of the TSI workforce also joined LDV-Systeme GmbH. However, Germany demonstrated that these companies do not operate together.
- (37) Germany also submitted extensive information on the restructuring plan, as described in Section II.B.

⁽⁴⁾ Commission Decision of 26 November 1997, Case IV/36.069 Wirtschaftvereinigung Stahl (OJ L 1, 3.1.1998, p. 10).

⁽⁵⁾ 1994 guidelines (OJ C 368, 23.12.1994, p.12). See also the 1999 Community guidelines on State aid for rescuing and restructuring firms in difficulty (Notice to Member States including proposals for appropriate measures) (OJ C 288, 9.10.1999, p. 2).

V. ASSESSMENT OF THE AID

- (38) MMED is a recently established hive-off vehicle that continues the activities and has taken over the assets of a company which was declared insolvent and retained all its liabilities. According to the information provided by Germany, NMED and MMED, the two hive-off vehicles of the former MED, were not established as subsidiaries of the companies declared insolvent. They were both sold off by their respective administrators in bankruptcy to different investors. For these reasons, the present assessment is limited to the public-sector measures in favour of MMED.
- (39) The information submitted after the initiation of the formal investigation procedure has dispelled the Commission's doubts as to whether MMED, LDV-Systeme GmbH and TSI Inc. formed a single economic entity. The Commission has therefore concluded that MMED is an SME within the meaning of the Community guidelines on State aid for small and medium-sized enterprises ⁽⁶⁾.

A. Aid within the meaning of Article 87(1) of the EC Treaty

- (40) At the time when the relevant financial measures were granted, MMED was short of capital, was in a loss-making situation and had lost the confidence of its traditional customers following the insolvency proceedings. The company was therefore in difficulty.
- (41) As already stated in the decision to initiate the formal investigation procedure, with the exception of DEM 1 million of the loan under Measure D, which was personally guaranteed by the investor, the remaining financial measures in favour of MMED qualify as aid within the meaning of Article 87(1) of the EC Treaty. These measures were granted through State resources and conferred advantages on the company in difficulty which it would not have received from a private investor. Since there are competitors on the MMED product market in Europe and since there is trade, the aid threatens to distort competition in the common market and to affect trade between Member States.

(a) Existing aid schemes

- (42) As stated in the decision initiating the formal investigation procedure, the grants under Measure A were based on schemes approved by the Commission ⁽⁷⁾. According to the information available, these regional investment aid measures respect the maximum limits and conditions laid down by the Commission in its decision approving the schemes, on the basis of which the aid was granted. As stated in the decision initiating the formal investigation procedure, these measures constitute an existing aid scheme which does not need to be reassessed by the Commission.
- (43) The research and development grants under Measure E were also awarded under aid schemes approved by the Commission ⁽⁸⁾. Although the Commission was informed of the grants only after initiating the formal investigation procedure, it has verified that the conditions of those schemes have been complied with, in particular as regards the maximum aid intensities and the aggregation rules. On the basis of the information available, these grants constitute existing aid which does not need to be reassessed by the Commission.
- (44) The amount of aid in question must be taken into account when evaluating whether the aid measures, taken as a whole, are in proportion to the objective they purportedly pursued.

⁽⁶⁾ OJ C 213, 23.7.1996, p. 4.

⁽⁷⁾ 26. Rahmenplan der Gemeinschaftsaufgabe zur Förderung der Investitionen (C 52/97, ex N 123/97) and Investitionszulagegesetz 1999 (N 702/97, SG (98) D/12438). Measures under this law qualify as regional investment aid under Article 87(1) of the EC Treaty and were approved by the Commission on the basis of the derogation in Article 87(3)(a).

⁽⁸⁾ Innovationskompetenz mittelständischer Unternehmen (N 357/98, SG(98) D/8229, 2 October 1998) and Programm zur Förderung der Forschung, Entwicklung und Innovation in KMUs und externen Industrieforschungseinrichtungen in den neuen Bundesländern (N 331/96, SG (97) D/482, 23 January 1997).

(b) *Ad hoc aid*

- (45) The Measure B subordinated loan of DEM 1,016 million from the Stadtparkasse Dresden, guaranteed by a refinancing loan from the KfW, was said to have been granted under an approved aid scheme to promote research and development by SMEs ⁽⁹⁾. As stated in the decision to initiate the formal investigation procedure, the relevant aid scheme does not explicitly provide for the granting of subordinated loans from State resources to companies in difficulty; in addition, the maximum coverage of the risk of default allowed by the scheme is exceeded by 10 %. On the basis of the information available, the Commission therefore maintains its view that the terms of the relevant aid scheme were manifestly not respected and that the full amount of DEM 1,016 million must be assessed as new aid.
- (46) As stated in the decision to initiate the formal investigation procedure, the Measure C BvS loan of DEM 0,65 million is also regarded as *ad hoc aid* since there is no approved legal basis for it.
- (47) As stated in the decision to initiate the formal investigation procedure, the risk of default on the Measure D DEM 0,1 million loan was covered by an 80 % subsidiary guarantee from the State-controlled Bürgschaftsbank Sachsen and by the Stadtparkasse Dresden at its own risk. In view of the firm's difficulties when the loan was granted and taking into account the absence of private securities and the existence of a State guarantee, this amount is regarded as aid. Since there is no approved legal basis for it, it must be assessed as *ad hoc aid*.

B. Derogation under Article 87(3)(c) of the EC Treaty

- (48) The aid to MMED totalling DEM 1,766 million must be assessed as *ad hoc aid*. Article 87(1) of the EC Treaty declares that State aid granted to specific undertakings which distorts or threatens to distort competition is, in so far as it affects trade between Member States, incompatible with the common market. Such aid is generally incompatible with the common market unless it falls within the scope of the derogations in either Article 87(2) or (3) of the EC Treaty.
- (49) The derogations in Article 87(2) do not apply in the present case because the aid does not have a social character, is not granted to individual consumers, does not make good the damage caused by natural disasters or exceptional occurrences and is not granted to the economy of certain areas of the Federal Republic of Germany affected by its division.
- (50) Under Article 87(3)(a) and (c), certain forms of aid may be exempted. In the present case Article 87(3)(c) is relevant because the main objective of the aid is not regional development but the restoration of the long-term viability of a firm in difficulty. Accordingly, the Commission may permit State aid granted 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.
- (51) In its guidelines ⁽¹⁰⁾ the Commission spelled out the preconditions for a favourable assessment. Since the relevant *ad hoc* restructuring aid was disbursed before October 1999, it will apply the guidelines of 23 December 1994 ⁽¹¹⁾. It considers that none of the other sets of Community guidelines could apply in the present case.

⁽⁹⁾ Beteiligungskapital für kleine Technologieunternehmen (N 582/97, SG (97) D/9490, 14 November 1997).

⁽¹⁰⁾ See footnote 6.

⁽¹¹⁾ Point 7.5 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty of 9 July 1999 states: 'The Commission will examine the compatibility with the common market of any rescue or restructuring aid granted without its authorisation and therefore in breach of Article 88(3) of the Treaty: (a) on the basis of these guidelines if some or all of the aid is granted after their publication in the *Official Journal of the European Communities*...' (OJ C 288, 9.10.1999, p. 2).

(a) *Company in difficulty*

- (52) In general, a newly founded company cannot be considered a company in difficulty within the meaning of the abovementioned guidelines. However, because of the exceptional process of transformation in the new *Länder*, the Commission is provisionally continuing to apply the guidelines in the case of *Auffanglösungen* (i.e. the creation of a new enterprise subsequent to insolvency proceedings — *Gesamtvollstreckung*) if the activity of the previous company is continued and individual assets are not simply sold. These tests are met in the case of MMED ⁽¹²⁾.
- (53) MMED was in a loss-making situation when it was set up. Activities had to be concentrated at a single site and the firm's plant and machinery needed to be replaced and modernised so that it could compete on the market. Moreover, NMED's traditional line of business had proved not to be viable, with the result that MMED had to be converted into a firm of engineering consultants; this could be achieved only by means of restructuring. Furthermore, Germany states that without joint action, including intervention by the BvS, the firm would have been unable to obtain any external bank financing. MMED ranked therefore as a company in difficulty when the relevant ad hoc aid was granted.

(b) *Restoration of long-term viability*

- (54) The granting of restructuring aid requires a realistic, coherent and far-reaching restructuring plan capable of restoring the long-term viability of the firm within a reasonable timescale. The precise timescale for the restructuring is particularly important. Restructuring must involve the abandonment of activities which would remain structurally loss-making even after restructuring. According to the information provided by Germany, it was only NMED's profitable business activities that were taken over by MMED.
- (55) In its decision to initiate the formal investigation procedure, the Commission expressed doubts as to whether the few measures described by Germany could amount to a restructuring plan that would lead to long-term viability. In response to that decision, Germany submitted exhaustive information on the restructuring measures undertaken by the firm (see Section II.B). The Commission takes the view that the restructuring measures constitute a viable restructuring programme within the meaning of the guidelines.
- (56) In addition, Germany has provided up-to-date figures which forecast moderate but realistic growth in turnover and profit (Table 3) ⁽¹³⁾.

Table 3

(DEM million)

	1997 (*)	1998 (*)	1999 (*)	2000	2001
Turnover	[...] (**)	[...]	[...]	[...]	[...]
Expenditure on materials	[...]	[...]	[...]	[...]	[...]
Expenditure on staff	[...]	[...]	[...]	[...]	[...]
Depreciation	[...]	[...]	[...]	[...]	[...]
Other costs	[...]	[...]	[...]	[...]	[...]
Pre-tax result	[...]	[...]	[...]	[...]	[...]

(*) Consolidated figures.

(**) Business secret.

- (57) According to the latest data submitted by Germany, the breakeven point was achieved in 1999, one year earlier than originally predicted. The Commission notes that, although the firm's operating results are very close to original expectations, the forecasts for the individual items have changed. Germany explained that the accounting method had to be changed to comply with the specifications of the *Land* of Saxony. In addition, most of the investment took place in 1998 and 2000, leading to higher depreciation and poorer results. It was during 2000 that the bulk of the restructuring was

⁽¹²⁾ See also footnote 10 to the Community guidelines on State aid for rescuing and restructuring firms in difficulty of 9 July 1999 (OJ C 288, 9.10.1999, p. 2).

⁽¹³⁾ Table 3 is a summary of the profit and loss account. Not all items have been included.

completed, and this meant that the company concentrated more on restructuring than on selling its products. In addition, some of the orders received that year ⁽¹⁴⁾ could not be met until 2001. The turnover figures for 2000 are therefore lower than originally forecast. However, on this point, Germany states that the orders received for this year already cover some 80 % of the expected turnover.

- (58) The latest financial figures confirm that MMED has overcome its initial difficulties. The financial results allow it to cover all costs including depreciation. The Commission considers that the revised figures reflect the fact that MMED operates on a market on which keen competition allows only moderate profit margins for SMEs. It also notes that the turnover for the year 2001, when the restructuring will be concluded, is largely secured. Consequently, it takes the view that viability will be restored by the restructuring and that the firm will be able to compete in the marketplace on its own merits.

(c) No undue distortion of competition

- (59) Restructuring must include measures to offset, as far as possible, adverse effects on competitors. Otherwise, aid would be contrary to the common interest and ineligible for exemption pursuant to Article 87(3)(c) of the EC Treaty. Where an objective assessment of the demand and supply situation shows that there is no structural overcapacity in a relevant market in the European Union served by the recipient, a reduction in capacity is not needed. In determining how the continued existence of MMED would affect the market and competitors, the output of the company and the fact that the aid is granted in an assisted area in accordance with Article 87(3)(a) have to be taken into consideration.
- (60) On the basis of the information available, the Commission is of the opinion that there is no conclusive indication of overcapacity in the market on which MMED operates. It therefore concludes that there is no need for any reduction in capacity.
- (61) Moreover, the Commission takes into account that MMED is not a manufacturing company but a small firm of engineering consultants that designs different measurement systems according to its clients' needs. Its production is therefore determined by demand. Germany has informed the Commission that MMED currently has a workforce of 19 full-time employees and one part-time employee, i.e. fewer than the original 22 employees taken over by the hive-off vehicle.
- (62) In view of the fact that MMED is a small enterprise situated in an assisted area under Article 87(3)(a) of the EC Treaty, the Commission concludes that there will be no adverse effects on competitors.

(d) Aid in proportion to the restructuring costs and benefits

- (63) The aid must be limited to the strict minimum needed to enable restructuring to be undertaken and must be related to the overall restructuring costs. In addition, the beneficiary must make a significant contribution to the restructuring costs. Moreover, the form in which the aid is granted must be such as to avoid providing the company with surplus cash which could be used for aggressive, market-distorting activities not linked to the restructuring process.
- (64) In the case of MMED, the aid amounts to DEM 2,224 million. The Commission notes that the total amount of aid is less than was originally planned when the formal investigation procedure was initiated and that 20 % of this aid is covered by approved aid schemes. Moreover, Measures A and D were divided into payment tranches to counterbalance any possible distortive effects.
- (65) The total costs of restructuring MMED are estimated at DEM 3,721 million. According to the information provided by Germany, the investor's contribution to restructuring consists of:
- a DEM 1 million loan granted by the Stadtparkasse Dresden and personally guaranteed by Mr Riegel. Under the terms of this preference guarantee, the investor is prohibited from disposing of his personal goods,

⁽¹⁴⁾ Orders for the year 2000 totalled DEM 4,742 million.

- a cash amount of DEM 0,1 million brought in by the investor,
- a cash flow at first estimated at DEM 0,667 million and subsequently at DEM 0,397 million, as a contribution from the firm. As stated in the decision to initiate the formal investigation procedure, these internally generated financial measures cannot be regarded as a significant contribution within the meaning of the guidelines because, directly or indirectly, they are attributable largely to public intervention in favour of MED, NMED and, finally, MMED. Moreover, in the absence of evidence that this cash flow has actually been generated and forms part of the reserves, expected future income cannot be considered a significant contribution within the meaning of the guidelines.

- (66) The Commission has therefore reached the conclusion that the investor's contribution amounts to DEM 1,1 million, equivalent to 29,56 % of the overall restructuring costs. Bearing in mind that MMED is an SME and its investor has committed his private property, it can be said that the investor's own contribution should be rated as significant in this case.
- (67) For a company of MMED's size, the amount of aid should be regarded as limited. It serves mainly to finance investments and to develop new research, essential for the company to operate successfully in the market. It can therefore be said that the amount of the aid is limited to the strict minimum and that it is in proportion to both the investor's own contribution and the benefits to be expected from the restructuring.

(e) Full implementation of the restructuring plan

- (68) A company in receipt of restructuring aid must fully implement the restructuring plan that was submitted to and accepted by the Commission. Germany states that the restructuring plan has been largely implemented and undertakes to report on its full implementation.

VI. CONCLUSION

- (69) The Commission finds that Germany has unlawfully implemented the aid in question in breach of Article 88(3) of the EC Treaty. However, for the reasons set out above, it considers that the aid is compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Germany has implemented for MESAcon Messelektronik GmbH, amounting to DEM 1,766 million (EUR 0,908 million), is compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 17 October 2001.

For the Commission

Mario MONTI

Member of the Commission
