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

**COUNCIL FRAMEWORK DECISION
of 19 July 2002
on combating trafficking in human beings**

(2002/629/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29, Article 31(e) and Article 34(2)(b) thereof,

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

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

Whereas:

(1) The Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice ⁽³⁾, the Tampere European Council on 15 and 16 October 1999, the Santa Maria da Feira European Council on 19 and 20 June 2000, as listed in the Scoreboard, and the European Parliament in its Resolution of 19 May 2000 on the communication from the Commission 'for further actions in the fight against trafficking in women' indicate or call for legislative action against trafficking in human beings, including common definitions, incriminations and sanctions.

(2) Council Joint Action 97/154/JHA of 24 February 1997 concerning action to combat trafficking in human beings and sexual exploitation of children ⁽⁴⁾ needs to be followed by further legislative action addressing the divergence of legal approaches in the Member States and contributing to the development of an efficient judicial and law enforcement cooperation against trafficking in human beings.

(3) Trafficking in human beings comprises serious violations of fundamental human rights and human dignity and involves ruthless practices such as the abuse and deception of vulnerable persons, as well as the use of violence, threats, debt bondage and coercion.

(4) The UN protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the UN Convention against transnational organised crimes, represents a decisive step towards international cooperation in this field.

(5) Children are more vulnerable and are therefore at greater risk of falling victim to trafficking.

(6) The important work performed by international organisations, in particular the UN, must be complemented by that of the European Union.

(7) It is necessary that the serious criminal offence of trafficking in human beings be addressed not only through individual action by each Member State but by a comprehensive approach in which the definition of constituent elements of criminal law common to all Member States, including effective, proportionate and dissuasive sanctions, forms an integral part. In accordance with the principles of subsidiarity and proportionality, this Framework Decision confines itself to the minimum required in order to achieve those objectives at European level and does not go beyond what is necessary for that purpose.

(8) It is necessary to introduce sanctions on perpetrators sufficiently severe to allow for trafficking in human beings to be included within the scope of instruments already adopted for the purpose of combating organised crime such as Council Joint Action 98/699/JHA of 3 December 1998 on money laundering, the identification, tracing, freezing, seizing and confiscation of the instrumentalities and the proceeds from crime ⁽⁵⁾ and Council Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union ⁽⁶⁾.

⁽¹⁾ OJ C 62 E, 27.2.2001, p. 324.

⁽²⁾ OJ C 35 E, 28.2.2002, p. 114.

⁽³⁾ OJ C 19, 23.1.1999, p. 1.

⁽⁴⁾ OJ L 63, 4.3.1997, p. 2.

⁽⁵⁾ OJ L 333, 9.12.1998, p. 1. Joint Action as last amended by Framework Decision 2001/500/JHA (OJ L 182, 5.7.2001, p. 1).

⁽⁶⁾ OJ L 351, 29.12.1998, p. 1.

- (9) This Framework Decision should contribute to the fight against and prevention of trafficking in human beings by complementing the instruments adopted in this area such as Council Joint Action 96/700/JHA of 29 November 1996 establishing an incentive and exchange programme for persons responsible for combating trade in human beings and sexual exploitation of children (STOP) ⁽¹⁾, Council Joint Action 96/748/JHA of 16 December 1996 extending the mandate given to the Europol Drugs Unit ⁽²⁾, Decision No 293/2000/EC of the European Parliament and of the Council of 24 January 2000 adopting a programme of Community action (the Daphne programme) (2000 to 2003) on preventive measures to fight violence against children, young persons and women ⁽³⁾, Council Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network ⁽⁴⁾, Council Joint Action 96/277/JHA of 22 April 1996 concerning a framework for the exchange of liaison magistrates to improve judicial cooperation between the Member States of the European Union ⁽⁵⁾ and Council Joint Action 98/427/JHA of 29 June 1998 on good practice in mutual legal assistance in criminal matters ⁽⁶⁾.
- (10) Council Joint Action 97/154/JHA should accordingly cease to apply in so far as it concerns trafficking in human beings,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:

the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:

- (a) use is made of coercion, force or threat, including abduction, or
- (b) use is made of deceit or fraud, or
- (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or

⁽¹⁾ OJ L 322, 12.12.1996, p. 7.

⁽²⁾ OJ L 342, 31.12.1996, p. 4.

⁽³⁾ OJ L 34, 9.2.2000, p. 1.

⁽⁴⁾ OJ L 191, 7.7.1998, p. 4.

⁽⁵⁾ OJ L 105, 27.4.1996, p. 1.

⁽⁶⁾ OJ L 191, 7.7.1998, p. 1.

- (d) payments or benefits are given or received to achieve the consent of a person having control over another person

for the purpose of exploitation of that person's labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or

for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, 'child' shall mean any person below 18 years of age.

Article 2

Instigation, aiding, abetting and attempt

Each Member State shall take the necessary measures to ensure that the instigation of, aiding, abetting or attempt to commit an offence referred to in Article 1 is punishable.

Article 3

Penalties

1. Each Member State shall take the necessary measures to ensure that an offence referred to in Articles 1 and 2 is punishable by effective, proportionate and dissuasive criminal penalties, which may entail extradition.

2. Each Member State shall take the necessary measures to ensure that an offence referred to in Article 1 is punishable by terms of imprisonment with a maximum penalty that is not less than eight years where it has been committed in any of the following circumstances:

- (a) the offence has deliberately or by gross negligence endangered the life of the victim;
- (b) the offence has been committed against a victim who was particularly vulnerable. A victim shall be considered to have been particularly vulnerable at least when the victim was under the age of sexual majority under national law and the offence has been committed for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including pornography;

- (c) the offence has been committed by use of serious violence or has caused particularly serious harm to the victim;
- (d) the offence has been committed within the framework of a criminal organisation as defined in Joint Action 98/733/JHA, apart from the penalty level referred to therein.

Article 4

Liability of legal persons

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for an offence referred to in Articles 1 and 2, committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

- (a) a power of representation of the legal person, or
- (b) an authority to take decisions on behalf of the legal person, or
- (c) an authority to exercise control within the legal person.

2. Apart from the cases already provided for in paragraph 1, each Member State shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 have rendered possible the commission of an offence referred to in Articles 1 and 2 for the benefit of that legal person by a person under its authority.

3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in an offence referred to in Articles 1 and 2.

4. For the purpose of this Framework Decision, legal person shall mean any entity having such status under the applicable law, except for States or other public bodies in the exercise of State authority and for public international organisations.

Article 5

Sanctions on legal persons

Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 4 is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

- (a) exclusion from entitlement to public benefits or aid, or
- (b) temporary or permanent disqualification from the practice of commercial activities, or
- (c) placing under judicial supervision, or
- (d) a judicial winding-up order, or
- (e) temporary or permanent closure of establishments which have been used for committing the offence.

Article 6

Jurisdiction and prosecution

1. Each Member State shall take the necessary measures to establish its jurisdiction over an offence referred to in Articles 1 and 2 where:

- (a) the offence is committed in whole or in part within its territory, or
- (b) the offender is one of its nationals, or
- (c) the offence is committed for the benefit of a legal person established in the territory of that Member State.

2. A Member State may decide that it will not apply or that it will apply only in specific cases or circumstances, the jurisdiction rules set out in paragraphs 1(b) and 1(c) as far as the offence is committed outside its territory.

3. A Member State which, under its laws, does not extradite its own nationals shall take the necessary measures to establish its jurisdiction over and to prosecute, where appropriate, an offence referred to in Articles 1 and 2 when it is committed by its own nationals outside its territory.

4. Member States shall inform the General Secretariat of the Council and the Commission accordingly where they decide to apply paragraph 2, where appropriate with an indication of the specific cases or circumstances in which the decision applies.

Article 7

Protection of and assistance to victims

1. Member States shall establish that investigations into or prosecution of offences covered by this Framework Decision shall not be dependent on the report or accusation made by a person subjected to the offence, at least in cases where Article 6(1)(a) applies.

2. Children who are victims of an offence referred to in Article 1 should be considered as particularly vulnerable victims pursuant to Article 2(2), Article 8(4) and Article 14(1) of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings ⁽¹⁾.

3. Where the victim is a child, each Member State shall take the measures possible to ensure appropriate assistance for his or her family. In particular, each Member State shall, where appropriate and possible, apply Article 4 of Framework Decision 2001/220/JHA to the family referred to.

Article 8

Territorial scope

This Framework Decision shall apply to Gibraltar.

⁽¹⁾ OJ L 82, 22.3.2001, p. 1.

*Article 9***Application of Joint Action 97/154/JHA**

Joint Action 97/154/JHA shall cease to apply in so far as it concerns trafficking in human beings.

*Article 10***Implementation**

1. Member States shall take the necessary measures to comply with this Framework Decision before 1 August 2004.
2. By the date referred to in paragraph 1, Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. The Council will, by 1 August 2005 at the latest, on the basis of a report established on the basis of this information and a written report transmitted by the

Commission, assess the extent to which Member States have taken the necessary measures in order to comply with this Framework Decision.

*Article 11***Entry into force**

This Framework Decision shall enter into force on the day of its publication in the Official Journal.

Done at Brussels, 19 July 2002.

For the Council

The President

T. PEDERSEN

COUNCIL DECISION

of 22 July 2002

establishing a framework programme on police and judicial cooperation in criminal matters (AGIS)

(2002/630/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 30(1), Article 31 and Article 34(2)(c) thereof,

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

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

Whereas:

(1) Article 29 of the Treaty on European Union states that the Union's objective is to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters, and by preventing and combating racism and xenophobia.

(2) The conclusions of the Tampere European Council of October 1999 call for cooperation to be stepped up on preventing and fighting crime, including crime using new information and communication technologies, in order to achieve a genuine European area of justice. The importance of cooperation in this area has again been emphasised in the action plan entitled The prevention and control of organised crime: a European Union strategy for the beginning of the new millennium ⁽³⁾.

(3) Article 12 of the Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings ⁽⁴⁾ calls for cooperation between Member States in order to facilitate more effective protection of victims' interests in criminal proceedings.

(4) It is appropriate to widen the European dimension of projects to three Member States or to two Member States and an applicant country in order to promote the formation of partnerships and the exchange of information and good national practice.

(5) The Grotius II ⁽⁵⁾, Stop II ⁽⁶⁾, Oisin II ⁽⁷⁾, Hippokrates ⁽⁸⁾ and Falcone ⁽⁹⁾ programmes, established by the Council, have helped to strengthen cooperation between the police and judiciary in the Member States and to improve mutual understanding of their police, judicial, legal and administrative systems.

(6) Following approval by the Feira European Council in June 2000 of the European Union Action Plan on Drugs (2000 to 2004), actions to combat drug trafficking are also included in this framework programme.

(7) The establishment of a single framework programme, expressly called for by the European Parliament and the Council when the previous programmes were adopted, will further boost cooperation by way of a coordinated and multidisciplinary approach involving the various persons responsible for preventing and combating crime at European Union level. In doing so, it is necessary to maintain a balanced approach between various activities aiming at the creation of the area of freedom, security and justice.

(8) It is desirable to ensure the continuity of the activities supported by the framework programme, by providing for their coordination within a single frame of reference that rationalises procedures and improves management and economies of scale. Moreover, it is necessary to make full use of the operational benefits of the programme, in particular for law enforcement authorities, and to encourage cooperation between the Member States' law enforcement authorities and to provide such authorities with a greater insight into the working methods of their counterparts in other Member States and constraints by which they may be bound.

(9) The expenditure of the framework programme should be compatible with the current ceiling under Heading 3 of the financial perspective.

(10) The annual appropriations of the framework programme should be decided upon by the budgetary authority during the budgetary procedure.

⁽¹⁾ OJ C 51 E, 26.2.2002, p. 345.

⁽²⁾ Opinion delivered on 9 April 2002 (not yet published in the Official Journal).

⁽³⁾ OJ C 124, 3.5.2000, p. 1.

⁽⁴⁾ OJ L 82, 22.3.2001, p. 1.

⁽⁵⁾ OJ L 186, 7.7.2001, p. 1 (Grotius II — Criminal).

⁽⁶⁾ OJ L 186, 7.7.2001, p. 7 (Stop II).

⁽⁷⁾ OJ L 186, 7.7.2001, p. 4 (Oisin II).

⁽⁸⁾ OJ L 186, 7.7.2001, p. 11.

⁽⁹⁾ OJ L 99, 31.3.1998, p. 8.

- (11) The framework programme needs to be made accessible to the applicant countries, as partners and participants in the projects funded under that programme. Where appropriate, participation of other States in that programme could also be envisaged.
- (12) The measures required to implement this Decision should be adopted according to the procedures laid down in it, with the assistance of a Committee.
- (13) To increase the added value of the projects implemented under this Decision, it is necessary to ensure consistency and complementarity between these projects and other forms of Community intervention.
- (14) Regular monitoring and evaluation of the framework programme need to be ensured so that the effectiveness of the projects carried out can be assessed in the light of the objectives and so that the priorities can be re-adjusted if necessary.
- (15) A financial reference amount, within the meaning of point 34 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure ⁽¹⁾, is included in this Decision for the entire duration of the framework programme, without thereby affecting the powers of the budgetary authority as they are defined by the Treaty establishing the European Community,
- (b) promote and strengthen networking, mutual cooperation on general subjects of common interest to the Member States, the exchange and dissemination of information, experience and best practice, local and regional cooperation, and the improvement and adaptation of training and technical and scientific research;
- (c) encourage Member States to step up cooperation with the applicant countries, other third countries and appropriate regional and international organisations.
2. The programme shall support projects in the following areas relating to Title VI of the Treaty on European Union:
- (a) judicial cooperation in general and criminal matters, including training;
- (b) cooperation between law enforcement authorities;
- (c) cooperation between law enforcement authorities or other public or private organisations in the Member States involved in preventing and fighting crime, organised or otherwise;
- (d) cooperation between Member States to achieve effective protection of the interests of victims in criminal proceedings.

Article 3

Access to the programme

HAS DECIDED AS FOLLOWS:

Article 1

Establishment of the framework programme

1. This Decision establishes a framework programme for police and judicial cooperation in criminal matters in the context of the area of freedom, security and justice, hereafter referred to as the programme.
2. The programme is hereby established for the period from 1 January 2003 to 31 December 2007 and may be extended beyond the latter date.

Article 2

Programme objectives

1. The programme shall contribute to the general objective of providing European Union citizens with a high level of protection in an area of freedom, security and justice. In this context, it aims, in particular, to:
- (a) develop, implement and evaluate European policies in this field;

1. The programme shall co-finance projects of a maximum duration of two years presented by public or private institutions and bodies, including professional organisations, non-governmental organisations, associations, organisations representing business, research and basic and further training institutes; the projects shall be directed at the target groups set out in paragraph 3.
2. To be eligible for co-financing, the projects must involve partners in at least three Member States, or two Member States and one applicant country, and have the objectives mentioned in Article 2. The applicant countries may participate in the projects in order to familiarise themselves with the *acquis* in this area and help them to prepare for the accession. Other third countries may also participate when this serves the aims of the projects.
3. The programme shall be directed at the following target groups:
- (a) legal practitioners: judges, public prosecutors, lawyers, law officials, criminal investigation officers, bailiffs, experts, court interpreters and other professionals associated with the judiciary;
- (b) law-enforcement officials and officers: public bodies in Member States which are responsible under national law for preventing, detecting and combating criminal offences;
- (c) officials in other government departments and representatives of associations, professional organisations, research and business involved in fighting and preventing crime, organised or otherwise;

⁽¹⁾ OJ C 172, 18.6.1999, p. 1.

(d) representatives of victim assistance services, including public departments responsible for immigration and social services.

4. Within the framework of the objectives laid down in Article 2, the programme may also cofinance:

- (a) specific projects presented in accordance with paragraph 1 that are of particular interest in terms of the programme's priorities or cooperation with the applicant countries;
- (b) complementary measures such as seminars, meetings of experts or other activities to disseminate the results obtained under the programme.

5. Within the framework of the objectives laid down in Article 2, the programme may also give direct financial support to activities included in the annual activity programmes of non-governmental organisations which meet the following criteria:

- (a) they must be non-profit-making organisations;
- (b) they must be constituted in accordance with the law of one of the Member States;
- (c) they must pursue activities with a European dimension and involve, as a general rule, at least half of the Member States;
- (d) the aims of their activities must include one or more of the objectives laid down in Article 2.

Article 4

Activities of the programme

The programme shall comprise the following types of project:

- (a) training;
- (b) setting up and launching exchange and placement schemes;
- (c) studies and research;
- (d) dissemination of the results obtained under the programme;
- (e) encouraging cooperation between the Member States' law enforcement, judicial authorities or other public or private organisations in the Member States involved in preventing and fighting crime, for instance by giving assistance for the establishment of networks;
- (f) conferences and seminars.

Article 5

Financing the programme

1. The financial reference amount for the implementation of this programme for the period 2003 to 2007 shall be EUR 65 million.

The annual appropriations shall be authorised by the budgetary authority within the limits of the financial perspective.

2. The cofinancing of a project by the programme shall be exclusive of any other financing by another programme financed by the general budget of the European Union.

3. Financing decisions shall be followed by financing contracts between the Commission and the organisers. The

financing decisions and contracts arising therefrom shall be subject to financial control by the Commission and to audits by the Court of Auditors.

4. The proportion of financial support from the general budget of the European Union shall not exceed 70 % of the total cost of the project.

5. However, the specific projects and complementary measures referred to in Article 3(4) and the activities referred to in Article 3(5) can be financed to 100 %, up to a ceiling of 10 % of the total financial package allocated annually to the programme for specific projects under Article 3(4)(a) and 5 % for complementary measures under Article 3(4)(b).

Article 6

Implementation of the programme

1. The Commission shall be responsible for the management and implementation of the programme, in cooperation with the Member States.

2. The programme shall be managed by the Commission in accordance with the Financial Regulation applicable to the general budget of the European Communities.

3. To implement the programme, the Commission shall:

- (a) prepare an annual work programme comprising specific objectives, thematic priorities and, if necessary, a list of specific projects and complementary measures; the programme shall be balanced between the areas specified in Article 2(2), with at least 15 % of annual funding being devoted to each of the areas specified in subparagraphs (a), (b) and (c) of that paragraph;
- (b) evaluate and select the projects submitted and ensure management of them.

4. Examination of the projects presented shall be carried out in accordance with the advisory procedure laid down in Article 8. Examination of the annual work programme, the specific projects and the complementary measures (referred to in Article 3(4) and the activities referred to in Article 3(5)) shall be carried out in accordance with the management procedure laid down in Article 9.

5. The Commission shall, on condition that they are compatible with the relevant policies, evaluate and select projects submitted by the organisers on the basis of the following criteria:

- (a) conformity with the programme's objectives;
- (b) European dimension of the project and scope for participation by the applicant countries;
- (c) compatibility with the work undertaken or planned within the framework of the European Union's policy priorities on judicial cooperation in general and criminal matters;
- (d) extent to which the project complements other past, present or future cooperation projects;

- (e) ability of the organiser to implement the project;
- (f) inherent quality of the project in terms of its conception, organisation, presentation and expected results;
- (g) amount of the grant requested under the programme and proportionality with the expected results;
- (h) the impact of the expected results on the programme's objectives.

Article 7

Committee

1. The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission, hereafter referred to as the Committee.
2. The Committee shall adopt its rules of procedure on a proposal by the Chair, on the basis of standard rules of procedure which have been published in the *Official Journal of the European Communities*.
3. The Commission may invite representatives from the applicant countries to information meetings after the Committee's meetings.

Article 8

Advisory procedure

1. Where reference is made to this Article, the representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft, within a time limit which the Chair may lay down according to the urgency of the matter, if necessary by taking a vote.
2. The opinion shall be recorded in the minutes; each Member State may request that its position be recorded in the minutes.
3. The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which the opinion has been taken into account.

Article 9

Management procedure

1. Where reference is made to this Article, the representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft, within a time limit which the Chair may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 205(2) of the Treaty establishing the European Community, in the case of decisions which the Council is required to adopt on a proposal

from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The Chair shall not vote.

2. The Commission shall adopt measures which shall apply immediately. However, if the measures are not in accordance with the opinion of the Committee, they shall be communicated by the Commission to the Council forthwith. In that event, the Commission may defer application of the measures which it has decided on for a period of three months from the date of such communication.

3. The Council, acting by qualified majority, may take a different decision within the period provided for by paragraph 2.

Article 10

Consistency and complementarity

The Commission, in cooperation with the Member States, shall ensure that projects complement and are consistent with other Community policies.

Article 11

Monitoring and evaluation

The Commission shall regularly monitor the programme. It shall inform the European Parliament of the work programme adopted and the list of projects co-financed and shall present to the European Parliament and the Council:

- (a) an annual report on the implementation of the programme. The first report shall be submitted by 30 June 2004;
- (b) an interim evaluation of the implementation of the programme by 30 June 2005;
- (c) a communication on the continuation of the programme, if necessary accompanied by an appropriate proposal, by 30 September 2006;
- (d) a final evaluation of the entire programme by 30 June 2008.

Article 12

Entry into force

This Decision shall take effect on the day of its publication in the Official Journal.

Done at Brussels, 22 July 2002.

For the Council
The President
P. S. MØLLER

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 1392/2002
of 31 July 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 1 August 2002.

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

Done at Brussels, 31 July 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 31 July 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	096	30,6
	999	30,6
0709 90 70	052	78,8
	999	78,8
0805 50 10	388	59,8
	524	55,7
	528	52,0
	999	55,8
0806 10 10	052	157,8
	064	114,9
	220	121,5
	508	75,3
	600	142,2
	624	190,3
	999	133,7
0808 10 20, 0808 10 50, 0808 10 90	388	92,4
	400	119,0
	508	75,5
	512	94,8
	528	69,4
	720	143,5
	804	107,1
	999	100,2
0808 20 50	052	89,6
	388	93,5
	512	79,1
	528	92,6
	804	66,9
0809 20 95	999	84,3
	052	453,9
	400	289,9
	404	251,2
0809 30 10, 0809 30 90	999	331,7
	052	110,3
	064	88,7
0809 40 05	999	99,5
	064	62,3
	999	62,3

⁽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 1393/2002
of 31 July 2002
fixing the import duties in the cereals sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1666/2000 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector ⁽³⁾, as last amended by Regulation (EC) No 597/2002 ⁽⁴⁾, and in particular Article 2(1) thereof,

Whereas:

- (1) Article 10 of Regulation (EEC) No 1766/92 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation. However, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by 55 %, minus the cif import price applicable to the consignment in question. However, that duty may not exceed the rate of duty in the Common Customs Tariff.
- (2) Pursuant to Article 10(3) of Regulation (EEC) No 1766/92, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market.

- (3) Regulation (EC) No 1249/96 lays down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector.
- (4) The import duties are applicable until new duties are fixed and enter into force. They also remain in force in cases where no quotation is available for the reference exchange referred to in Annex II to Regulation (EC) No 1249/96 during the two weeks preceding the next periodical fixing.
- (5) In order to allow the import duty system to function normally, the representative market rates recorded during a reference period should be used for calculating the duties.
- (6) Application of Regulation (EC) No 1249/96 results in import duties being fixed as set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 1 August 2002.

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

Done at Brussels, 31 July 2002.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 161, 29.6.1996, p. 125.

⁽⁴⁾ OJ L 91, 6.4.2002, p. 9.

ANNEX I

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

CN code	Description	Import duty ⁽²⁾ (EUR/tonne)
1001 10 00	Durum wheat high quality	0,00
	medium quality ⁽¹⁾	0,00
1001 90 91	Common wheat seed	0,00
1001 90 99	Common high quality wheat other than for sowing ⁽³⁾	0,00
	medium quality	0,00
	low quality	13,96
1002 00 00	Rye	29,61
1003 00 10	Barley, seed	29,61
1003 00 90	Barley, other ⁽⁴⁾	29,61
1005 10 90	Maize seed other than hybrid	50,29
1005 90 00	Maize other than seed ⁽⁵⁾	50,29
1007 00 90	Grain sorghum other than hybrids for sowing	39,70

⁽¹⁾ In the case of durum wheat not meeting the minimum quality requirements for durum wheat of medium quality, referred to in Annex I to Regulation (EC) No 1249/96, the duty applicable is that fixed for low-quality common wheat.

⁽²⁾ For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal (Article 2(4) of Regulation (EC) No 1249/96), the importer may benefit from a reduction in the duty of:

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

— EUR 2 per tonne, where the port of unloading is in Ireland, the United Kingdom, Denmark, Sweden, Finland or the Atlantic coasts of the Iberian peninsula.

⁽³⁾ The importer may benefit from a flat-rate reduction of EUR 14 per tonne, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

⁽⁴⁾ The importer may benefit from a flat-rate reduction of EUR 8 per tonne, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

⁽⁵⁾ The importer may benefit from a flat-rate reduction of EUR 24 per tonne, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

ANNEX II

Factors for calculating duties

(period from 17 July to 30 July 2002)

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

Exchange quotations	Minneapolis	Kansas City	Chicago	Chicago	Minneapolis	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2. 14 %	HRW2. 11,5 %	SRW2	YC3	HAD2	Medium quality (*)	US barley 2
Quotation (EUR/t)	138,10	133,93	122,54	94,24	179,63 (**)	169,63 (**)	104,64 (**)
Gulf premium (EUR/t)	—	22,28	9,02	11,07	—	—	—
Great Lakes premium (EUR/t)	20,88	—	—	—	—	—	—

(*) A discount of 10 EUR/t (Article 4(1) of Regulation (EC) No 1249/96).

(**) Fob Duluth.

2. Freight/cost: Gulf of Mexico–Rotterdam: 11,52 EUR/t; Great Lakes–Rotterdam: 22,79 EUR/t.

3. Subsidy within the meaning of the third paragraph of Article 4(2) of Regulation (EC) No 1249/96: 0,00 EUR/t (HRW2)
0,00 EUR/t (SRW2).

COMMISSION REGULATION (EC) No 1394/2002
of 31 July 2002
amending the corrective amount applicable to the refund on cereals

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1666/2000 ⁽²⁾, and in particular Article 13(8) thereof,

Whereas:

- (1) The corrective amount applicable to the refund on cereals was fixed by Commission Regulation (EC) No 1135/2002 ⁽³⁾.
- (2) On the basis of today's cif prices and cif forward delivery prices, taking foreseeable developments on the market into account, the corrective amount at present applicable to the refund on cereals should be altered.

- (3) The corrective amount must be fixed according to the same procedure as the refund. It may be altered in the period between fixings,

HAS ADOPTED THIS REGULATION:

Article 1

The corrective amount referred to in Article 1(1)(a), (b) and (c) of Regulation (EEC) No 1766/92 which is applicable to the export refunds fixed in advance in respect of the products referred to, except for malt, is hereby altered to the amounts set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 August 2002.

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

Done at Brussels, 31 July 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 169, 28.6.2002, p. 37.

ANNEX

to the Commission Regulation of 31 July 2002 altering the corrective amount applicable to the refund on cereals

(EUR/t)

Product code	Destination	Current 8	1st period 9	2nd period 10	3rd period 11	4th period 12	5th period 1	6th period 2
1001 10 00 9200	—	—	—	—	—	—	—	—
1001 10 00 9400	—	—	—	—	—	—	—	—
1001 90 91 9000	—	—	—	—	—	—	—	—
1001 90 99 9000	C05	-30,00	-30,00	-30,00	-30,00	-30,00	—	—
	A05	0	0	0	0	0	—	—
1002 00 00 9000	C03	-20,00	-20,00	-20,00	-20,00	-20,00	—	—
	C05	-45,00	-45,00	-45,00	-45,00	-45,00	—	—
	A05	0	0	0	0	0	—	—
1003 00 10 9000	—	—	—	—	—	—	—	—
1003 00 90 9000	A00	0	0	0	0	0	—	—
1004 00 00 9200	—	—	—	—	—	—	—	—
1004 00 00 9400	C05	-30,00	-30,00	-30,00	-30,00	-30,00	—	—
	A05	0	0	0	0	0	—	—
1005 10 90 9000	—	—	—	—	—	—	—	—
1005 90 00 9000	A00	0	0	0	0	0	—	—
1007 00 90 9000	—	—	—	—	—	—	—	—
1008 20 00 9000	—	—	—	—	—	—	—	—
1101 00 11 9000	—	—	—	—	—	—	—	—
1101 00 15 9100	A00	0	0	0	0	0	—	—
1101 00 15 9130	A00	0	0	0	0	0	—	—
1101 00 15 9150	A00	0	0	0	0	0	—	—
1101 00 15 9170	A00	0	0	0	0	0	—	—
1101 00 15 9180	A00	0	0	0	0	0	—	—
1101 00 15 9190	—	—	—	—	—	—	—	—
1101 00 90 9000	—	—	—	—	—	—	—	—
1102 10 00 9500	A00	0	0	0	0	0	—	—
1102 10 00 9700	A00	0	0	0	0	0	—	—
1102 10 00 9900	—	—	—	—	—	—	—	—
1103 11 10 9200	A00	0	0	0	0	0	—	—
1103 11 10 9400	A00	0	0	0	0	0	—	—
1103 11 10 9900	—	—	—	—	—	—	—	—
1103 11 90 9200	A00	0	0	0	0	0	—	—
1103 11 90 9800	—	—	—	—	—	—	—	—

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1) as amended.

The numeric destination codes are set out in Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6).

The other destinations are as follows:

C03 Poland, Czech Republic, Slovak Republic, Norway, Faroe Islands, Iceland, Russia, Belarus, Bosnia and Herzegovina, Croatia, Slovenia, former Republic of Yugoslavia with the exception of Slovenia, Croatia and Bosnia and Herzegovina, Albania, Romania, Bulgaria, Armenia, Georgia, Azerbaijan, Moldova, Ukraine, Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan, Turkmenistan, Morocco, Algeria, Tunisia, Libya, Egypt, Malta, Cyprus and Turkey,

C05 Hungary.

COMMISSION REGULATION (EC) No 1395/2002
of 30 July 2002
establishing unit values for the determination of the customs value of certain perishable goods

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽¹⁾, as last amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council ⁽²⁾,

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽³⁾, as last amended by Regulation (EC) No 444/2002 ⁽⁴⁾, and in particular Article 173(1) thereof,

Whereas:

- (1) Articles 173 to 177 of Regulation (EEC) No 2454/93 provide that the Commission shall periodically establish unit values for the products referred to in the classification in Annex 26 to that Regulation.

- (2) The result of applying the rules and criteria laid down in the abovementioned Articles to the elements communicated to the Commission in accordance with Article 173(2) of Regulation (EEC) No 2454/93 is that unit values set out in the Annex to this Regulation should be established in regard to the products in question,

HAS ADOPTED THIS REGULATION:

Article 1

The unit values provided for in Article 173(1) of Regulation (EEC) No 2454/93 are hereby established as set out in the table in the Annex hereto.

Article 2

This Regulation shall enter into force on 2 August 2002.

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

Done at Brussels, 30 July 2002.

For the Commission

Erkki LIIKANEN

Member of the Commission

⁽¹⁾ OJ L 302, 19.10.1992, p. 1.

⁽²⁾ OJ L 311, 12.12.2000, p. 17.

⁽³⁾ OJ L 253, 11.10.1993, p. 1.

⁽⁴⁾ OJ L 68, 12.3.2002, p. 11.

ANNEX

Code	Description	Amount of unit values per 100 kg			
	Species, varieties, CN code	EUR	DKK	SEK	GBP
1.10	New potatoes 0701 90 50	—	—	—	—
1.30	Onions (other than seed) 0703 10 19	34,36	255,40	324,40	21,77
1.40	Garlic 0703 20 00	189,36	1 407,66	1 787,93	120,00
1.50	Leeks ex 0703 90 00	80,00	594,71	755,37	50,70
1.60	Cauliflowers 0704 10 00	55,28	410,95	521,96	35,03
1.80	White cabbages and red cabbages 0704 90 10	41,13	305,76	388,35	26,06
1.90	Sprouting broccoli or calabrese (<i>Brassica oleracea</i> L. <i>convar. botrytis</i> (L.) Alef var. <i>italica</i> Plenck) ex 0704 90 90	61,43	456,66	580,03	38,93
1.100	Chinese cabbage ex 0704 90 90	42,28	314,31	399,21	26,79
1.110	Cabbage lettuce (head lettuce) 0705 11 00	90,36	671,73	853,19	57,26
1.130	Carrots ex 0706 10 00	34,84	259,00	328,96	22,08
1.140	Radishes ex 0706 90 90	132,46	984,69	1 250,70	83,94
1.160	Peas (<i>Pisum sativum</i>) 0708 10 00	375,73	2 793,15	3 547,69	238,10
1.170	Beans:				
1.170.1	Beans (<i>Vigna</i> spp., <i>Phaseolus</i> spp.) ex 0708 20 00	58,34	433,69	550,85	36,97
1.170.2	Beans (<i>Phaseolus</i> ssp. <i>vulgaris</i> var. <i>Compressus</i> Savi) ex 0708 20 00	54,23	403,14	512,05	34,37
1.180	Broad beans ex 0708 90 00	157,74	1 172,62	1 489,40	99,96
1.190	Globe artichokes 0709 10 00	—	—	—	—
1.200	Asparagus:				
1.200.1	— green ex 0709 20 00	544,73	4 049,44	5 143,36	345,19
1.200.2	— other ex 0709 20 00	247,67	1 841,15	2 338,52	156,95
1.210	Aubergines (eggplants) 0709 30 00	58,55	435,25	552,83	37,10

Code	Description	Amount of unit values per 100 kg			
	Species, varieties, CN code	EUR	DKK	SEK	GBP
1.220	Ribbed celery (<i>Apium graveolens</i> L., var. <i>dulce</i> (Mill.) Pers.) ex 0709 40 00	100,48	746,96	948,74	63,67
1.230	Chantarelles 0709 59 10	553,08	4 111,55	5 222,25	350,49
1.240	Sweet peppers 0709 60 10	107,94	802,44	1 019,22	68,40
1.270	Sweet potatoes, whole, fresh (intended for human consumption) 0714 20 10	73,80	548,62	696,82	46,77
2.10	Chestnuts (<i>Castanea</i> spp.), fresh ex 0802 40 00	176,48	1 311,93	1 666,34	111,84
2.30	Pineapples, fresh ex 0804 30 00	129,00	958,95	1 218,00	81,75
2.40	Avocados, fresh ex 0804 40 00	118,49	880,85	1 118,80	75,09
2.50	Guavas and mangoes, fresh ex 0804 50 00	125,33	931,66	1 183,34	79,42
2.60	Sweet oranges, fresh:				
2.60.1	— Sanguines and semi-sanguines 0805 10 10	45,97	341,72	434,04	29,13
2.60.2	— Navels, navelines, navelates, salustianas, vernas, Valencia lates, Maltese, shamoutis, ovalis, trovita and hamlins 0805 10 30	42,99	319,62	405,96	27,25
2.60.3	— Others 0805 10 50	35,68	265,24	336,89	22,61
2.70	Mandarins (including tangerines and satsumas), fresh; clementines, wilkings and similar citrus hybrids, fresh:				
2.70.1	— Clementines ex 0805 20 10	89,27	663,66	842,94	56,57
2.70.2	— Monreales and satsumas ex 0805 20 30	60,89	452,65	574,93	38,59
2.70.3	— Mandarines and wilkings ex 0805 20 50	97,56	725,27	921,19	61,82
2.70.4	— Tangerines and others ex 0805 20 70 ex 0805 20 90	80,34	597,22	758,56	50,91
2.85	Limes (<i>Citrus aurantifolia</i> , <i>Citrus latifolia</i>), fresh 0805 50 90	103,30	767,94	975,39	65,46
2.90	Grapefruit, fresh:				
2.90.1	— white ex 0805 40 00	38,45	285,80	363,01	24,36
2.90.2	— pink ex 0805 40 00	52,15	387,65	492,38	33,05

Code	Description	Amount of unit values per 100 kg			
	Species, varieties, CN code	EUR	DKK	SEK	GBP
2.100	Table grapes 0806 10 10	—	—	—	—
2.110	Water melons 0807 11 00	18,72	139,16	176,76	11,86
2.120	Melons (other than water melons):				
2.120.1	— Amarillo, cuper, honey dew (including cantalene), onteniente, piel de sapo (including verde liso), rochet, tendral, futuro ex 0807 19 00	89,28	663,70	843,00	56,58
2.120.2	— Other ex 0807 19 00	52,64	391,32	497,03	33,36
2.140	Pears				
2.140.1	Pears — nashi (<i>Pyrus pyrifolia</i>), Pears — Ya (<i>Pyrus bretschneideri</i>) ex 0808 20 50	—	—	—	—
2.140.2	Other ex 0808 20 50	—	—	—	—
2.150	Apricots ex 0809 10 00	147,75	1 098,36	1 395,07	93,63
2.160	Cherries 0809 20 95 0809 20 05	296,90	2 207,12	2 803,36	188,15
2.170	Peaches 0809 30 90	—	—	—	—
2.180	Nectarines ex 0809 30 10	—	—	—	—
2.190	Plums 0809 40 05	—	—	—	—
2.200	Strawberries 0810 10 00	131,51	977,63	1 241,73	83,34
2.205	Raspberries 0810 20 10	361,18	2 684,98	3 410,30	228,88
2.210	Fruit of the species <i>Vaccinium myrtillus</i> 0810 40 30	614,33	4 566,87	5 800,57	389,30
2.220	Kiwi fruit (<i>Actinidia chinensis</i> Planch.) 0810 50 00	140,07	1 041,28	1 322,57	88,76
2.230	Pomegranates ex 0810 90 95	336,63	2 502,47	3 178,49	213,32
2.240	Khakis (including sharon fruit) ex 0810 90 95	374,00	2 780,26	3 531,32	237,00
2.250	Lychees ex 0810 90 30	302,41	2 248,06	2 855,36	191,64

COMMISSION REGULATION (EC) No 1396/2002**of 31 July 2002****fixing the rates of the refunds applicable to certain milk products exported in the form of goods not covered by Annex I to the Treaty**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 15 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Commission Regulation (EC) No 509/2002 ⁽²⁾, and in particular Article 31(3) thereof,

Whereas:

(1) Article 31(1) of Regulation (EC) No 1255/1999 provides that the difference between prices in international trade for the products listed in Article 1(a), (b), (c), (d), (e), and (g) of that Regulation and prices within the Community may be covered by an export refund. Whereas Commission Regulation (EC) No 1520/2000 of 13 July 2000 laying down common implementing rules for granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and criteria for fixing the amount of such refunds ⁽³⁾, as last amended by Regulation (EC) No 1052/2002 ⁽⁴⁾, specifies the products for which a rate of refund should be fixed, to be applied where these products are exported in the form of goods listed in the Annex to Regulation (EC) No 1255/1999.

(2) In accordance with the first subparagraph of Article 4(1) of Regulation (EC) No 1520/2000, the rate of the refund per 100 kilograms for each of the basic products in question must be fixed for each month.

(3) Article 4(3) of Regulation (EC) No 1520/2000 provides that, when the rate of the refund is being fixed, account should be taken, where necessary, of production refunds, aids or other measures having equivalent effect applicable in all Member States in accordance with the Regulation on the common organisation of the market in the product in question to the basic products listed in Annex A to that Regulation or to assimilated products.

(4) Article 11(1) of Regulation (EC) No 1255/1999 provides for the payment of aid for Community-produced skimmed milk processed into casein if such milk and the casein manufactured from it fulfil certain conditions.

(5) Commission Regulation (EC) No 2571/97 of 15 December 1997 on the sale of butter at reduced prices and the granting of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs ⁽⁵⁾, as last amended by Regulation (EC) No 635/2002 ⁽⁶⁾, lays down that butter and cream at reduced prices should be made available to industries which manufacture certain goods.

(6) It is necessary to ensure continuity of strict management taking account of expenditure forecasts and funds available in the budget.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

1. The rates of the refunds applicable to the basic products appearing in Annex A to Regulation (EC) No 1520/2000 and listed in Article 1 of Regulation (EC) No 1255/1999, exported in the form of goods listed in the Annex to Regulation (EC) No 1255/1999, are hereby fixed as shown in the Annex to this Regulation.

2. No rates of refund are fixed for any of the products referred to in the preceding paragraph which are not listed in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 1 August 2002.

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 79, 22.3.2002, p. 15.

⁽³⁾ OJ L 177, 15.7.2000, p. 1.

⁽⁴⁾ OJ L 160, 18.6.2002, p. 16.

⁽⁵⁾ OJ L 350, 20.12.1997, p. 3.

⁽⁶⁾ OJ L 76, 25.3.2002, p. 9.

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

Done at Brussels, 31 July 2002.

For the Commission

Erkki LIIKANEN

Member of the Commission

ANNEX

to the Commission Regulation of 31 July 2002 fixing the rates of the refunds applicable to certain milk products exported in the form of goods not covered by Annex I to the Treaty

(EUR/100 kg)

CN code	Description	Rate of refund
ex 0402 10 19	Powdered milk, in granules or other solid forms, not containing added sugar or other sweetening matter, with a fat content not exceeding 1,5 % by weight (PG 2):	
	(a) On exportation of goods of CN code 3501	—
	(b) On exportation of other goods	85,00
ex 0402 21 19	Powdered milk, in granules or other solid forms, not containing added sugar or other sweetening matter, with a fat content of 26 % by weight (PG 3):	
	(a) Where goods incorporating, in the form of products assimilated to PG 3, reduced-price butter or cream obtained pursuant to Regulation (EC) No 2571/97 are exported	94,61
	(b) On exportation of other goods	120,90
ex 0405 10	Butter, with a fat content by weight of 82 % (PG 6):	
	(a) Where goods containing reduced-price butter or cream which have been manufactured in accordance with the conditions provided for in Regulation (EC) No 2571/97 are exported	100,00
	(b) On exportation of goods of CN code 2106 90 98 containing 40 % or more by weight of milk fat	192,25
	(c) On exportation of other goods	185,00

COMMISSION REGULATION (EC) No 1397/2002**of 31 July 2002****fixing the rates of refunds applicable to certain products from the sugar sector exported in the form of goods not covered by Annex I to the Treaty**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the market in sugar ⁽¹⁾, as amended by Commission Regulation (EC) No 680/2002 ⁽²⁾, and in particular Article 27(5)(a) and (15),

Whereas:

(1) Article 27(1) and (2) of Regulation (EEC) No 1260/2001 provides that the differences between the prices in international trade for the products listed in Article 1(1)(a), (c), (d), (f), (g) and (h) of that Regulation and prices within the Community may be covered by an export refund where these products are exported in the form of goods listed in the Annex to that Regulation. Commission Regulation (EC) No 1520/2000 of 13 July 2000 laying down common implementing rules for granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty and the criteria for fixing the amount of such refunds ⁽³⁾, as last amended by Regulation (EC) No 1052/2002 ⁽⁴⁾, specifies the products for which a rate of refund should be fixed, to be applied where these products are exported in the form of goods listed in Annex I to Regulation (EC) No 1260/2001.

(2) In accordance with Article 4(1) of Regulation (EC) No 1520/2000, the rate of the refund per 100 kilograms for each of the basic products in question must be fixed for each month.

(3) Article 27(3) of Regulation (EC) No 1260/2001 and Article 11 of the Agreement on Agriculture concluded under the Uruguay Round lay down that the export refund for a product contained in a good may not exceed the refund applicable to that product when exported without further processing.

(4) The refunds fixed under this Regulation may be fixed in advance as the market situation over the next few months cannot be established at the moment.

(5) The commitments entered into with regard to refunds which may be granted for the export of agricultural products contained in goods not covered by Annex I to the Treaty may be jeopardised by the fixing in advance of high refund rates. It is therefore necessary to take precautionary measures in such situations without, however, preventing the conclusion of long-term contracts. The fixing of a specific refund rate for the advance fixing of refunds is a measure which enables these various objectives to be met.

(6) It is necessary to ensure continuity of strict management taking account of expenditure forecasts and funds available in the budget.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

The rates of the refunds applicable to the basic products appearing in Annex A to Regulation (EC) No 1520/2000 and listed in Article 1(1) and (2) of Regulation (EC) No 1260/2001, exported in the form of goods listed in Annex V to Regulation (EC) No 1260/2001, are fixed as shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 August 2002.

⁽¹⁾ OJ L 178, 30.6.2001, p. 1.

⁽²⁾ OJ L 104, 20.4.2002, p. 26.

⁽³⁾ OJ L 177, 15.7.2000, p. 1.

⁽⁴⁾ OJ L 160, 18.6.2002, p. 16.

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

Done at Brussels, 31 July 2002.

For the Commission

Erkki LIIKANEN

Member of the Commission

ANNEX

to the Commission Regulation of 31 July 2002 fixing the rates of refunds applicable to certain products from the sugar sector exported in the form of goods not covered by Annex I to the Treaty

Product	Rate of refund in EUR/100 kg	
	In case of advance fixing of refunds	Other
White sugar:	43,55	43,55

COMMISSION REGULATION (EC) No 1398/2002**of 31 July 2002****fixing, for the 2001/02 marketing year, the actual production of unginned cotton in Greece and the resulting reduction of the guide price and derogating, for the 2001/02 marketing year, from certain management rules and aid award procedures in Greece**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Greece, and in particular Protocol 4 on cotton, as last amended by Council Regulation (EC) No 1050/2001 ⁽¹⁾,

Having regard to Council Regulation (EC) No 1051/2001 of 22 May 2001 on production aid for cotton ⁽²⁾, and in particular Article 19(1) and (2) and Article 21 thereof,

Whereas:

- (1) Under the third indent of Article 19(2) of Regulation (EC) No 1051/2001 actual production of unginned cotton is fixed taking account in particular of the quantities on which aid has been applied for. Of the total Greek production of unginned cotton delivered to ginning undertakings during the 2001/02 marketing year, namely 1 354 719 tonnes, the Greek authorities recognised 1 148 357 tonnes as eligible for aid, adjusted to 1 183 155 tonnes to take account of the quality criterion provided for in Article 15(2) of Regulation (EC) No 1051/2001 represented by cotton fibre yield.
- (2) All production of unginned cotton of sound and fair merchantable quality delivered to ginning undertakings could be treated as actual production. However, it should be noted that, generally speaking, where common agricultural policy mechanisms are applied, the production taken into account is that which fulfils the conditions laid down by the rules regarding eligibility for aid. Therefore, and because there is no specific provision concerning cotton, it is justified to regard as actual production the total production of unginned cotton of sound and fair merchantable quality which, without prejudice to Article 13(2) of Commission Regulation (EC) No 1591/2001 laying down detailed rules for applying the cotton aid scheme ⁽³⁾, comes from areas declared in accordance with Article 9 of the said Regulation and not excluded from the aid scheme pursuant to Article 17(3) of Regulation (EC) No 1051/2001, and which is delivered by producers to ginning undertakings.
- (3) The quantity of 206 362 tonnes of cotton which, on 15 May 2002, had not been recognised as eligible by the Greek authorities comprised, according to the information provided by those authorities, 138 175 tonnes which failed to comply with the national rules on the reduction of areas adopted under Article 17(3) of Regulation (EC) No 1051/2001 and/or involved failings or irregularities in the area declarations, 6 376 tonnes which were not of sound and fair merchantable quality as provided for in Article 15(1) of Regulation (EC) No 1051/2001, 52 361 tonnes excluded due to abnormally high yields revealing a failure to observe sound agricultural practice, and finally 9 450 tonnes which did not observe the delivery conditions.
- (4) According to the information communicated by the Greek authorities, for the 2001/02 marketing year the total area sown to cotton is 423 038 hectares while Greek ministerial decree No 40420 of 28 February 2001 restricts, for that year, the areas eligible for production aid to 393 770 hectares. The difference, 29 268 hectares, reflects a minimum area not eligible for the aid pursuant to Article 17(3) of Regulation (EC) No 1051/2001. On the basis of an average yield of 3,032 tonnes per hectare for cotton considered eligible by the Greek authorities, the Commission estimates production from these 29 268 hectares at 88 741 tonnes.
- (5) The remainder of the 138 175 tonnes, i.e. at the most 49 434 tonnes, consists of cotton delivered for ginning covered by a declaration under the Integrated Administration and Control System (IACS) which does not mention, at least in total, the area actually sown to cotton by the producer in question. In other words, it comes either from an area not declared and as such not eligible for aid or from an area declared as being sown to another crop but actually sown to cotton. For cotton from an area not properly declared, under Article 13(2) of Regulation (EC) No 1591/2001, without prejudice to the national penalties to be applied to the producers concerned, aid is granted to the ginning undertaking provided that all the other requirements have been met. In view of the impossibility of establishing within the 49 434 tonnes a direct link between irregularities committed within the meaning of the said Article and the batches of cotton concerned, the conditions are not met for application of the said Article. Consequently the 49 434 tonnes should be excluded in their entirety from actual production.

⁽¹⁾ OJ L 148, 1.6.2001, p. 1.

⁽²⁾ OJ L 148, 1.6.2001, p. 3.

⁽³⁾ OJ L 210, 3.8.2001, p. 12.

- (6) As a result, a quantity of 1 210 168 tonnes may be regarded as the total production of unginned cotton of sound and fair merchantable quality coming from areas eligible for aid and delivered by producers to ginning undertakings. Taking into account the adjustment for fibre yield, actual production of unginned cotton in Greece for the 2001/02 marketing year may therefore be put at 1 246 839 tonnes.
- (7) Under Article 7(2) of Regulation (EEC) No 1051/2001, if actual production in Spain and Greece exceeds 1 031 000 tonnes, the guide price referred to in Article 3(1) of that Regulation is to be reduced in each Member State where production exceeds its guaranteed national quantity (GNQ). This reduction is calculated differently depending on whether the GNQ is exceeded in both Greece and Spain or in only one of those Member States.
- (8) In the 2001/02 marketing year there has been an overrun in both Spain and Greece. Moreover, if the sum of actual production in Spain and Greece reduced by 1 031 000 tonnes is higher than 469 000 tonnes, the 50 % reduction in the guide price increases gradually in accordance with the rules laid down in the second subparagraph of Article 7(4) of Regulation (EC) No 1051/2001. For the 2001/02 marketing year, actual production of unginned cotton in Greece is in the eighth step of 15 170 tonnes above its guaranteed national quantity increased by 356 000 tonnes. The reduction in the guide price in Greece is therefore 66 %.
- (9) Community law does not provide for the exclusion from the aid scheme of the 52 361 tonnes of cotton that was delivered and produced while failing to observe good agricultural practice. By contrast, the failure to observe the delivery conditions in the case of 9 450 tonnes may be a criterion for not recognising those quantities as eligible for aid.
- (10) Of the quantities of cotton delivered to ginning undertakings in the 2001/02 marketing year but not recognised as eligible by the Greek authorities there is therefore a maximum 1 237 103 which may be eligible under Community rules. For these quantities, therefore, it should be possible to lodge aid applications as referred to in Article 5 of Regulation (EC) No 1591/2001 and to lodge applications for supervised storage as referred to in Article 6 of that Regulation. As regards these aid applications and applications for supervised storage, to take account of their retrospective submission, it is necessary to derogate from certain management rules or aid calculation procedures laid down by Regulation (EC) No 1591/2001.
- (11) Under Article 14(1) of Regulation (EC) No 1051/2001 the amount of the aid to be paid is the amount applicable on the day the application for aid is submitted. Under the transitional measures provided for in Article 21 of Regulation (EC) No 1051/2001, as regards aid applications in Greece submitted from the entry into force of this Regulation for the 2001/02 marketing year, it is necessary to derogate from this provision in order to avoid having to choose, *a posteriori*, the amount of aid. Under these circumstances, it should be laid down that the amount of aid is that which is valid on the day on which the quantities concerned by the applications in question enter the cotton ginning undertaking.
- (12) Under Article 14(2) of Regulation (EC) No 1051/2001 the balance of the aid is paid before the end of the marketing year at the latest, once any adjustments to the aid resulting from application of Article 7 of that Regulation have been determined. The time limits required in the case of new aid applications for Greek unginned cotton eligible for aid for the 2001/02 marketing year do not allow the Greek authorities to pay the balance of the aid before 31 August 2002. Pursuant to the transitional measures provided for in Article 21 of Regulation (EC) No 1051/2001, it is therefore necessary to extend, in Greece, the deadline for the payment of the balance of the aid for that year.
- (13) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Natural Fibres,

HAS ADOPTED THIS REGULATION:

Article 1

- For the 2001/02 marketing year, actual production of unginned cotton is fixed at 1 246 839 tonnes for Greece.
- The amount by which the guide price is to be reduced for the 2001/02 marketing year is fixed at EUR 41,670/100 kg for Greece.

Article 2

- Notwithstanding the deadlines referred to in the second subparagraph of Article 5(1) and in Article 6(1), (3) and (6) of Regulation (EC) No 1591/2001, the aid applications and applications for supervised storage for the 2001/02 marketing year in Greece may, for the cotton referred to in paragraph 2, be submitted until 15 September 2002.

Article 14(3) of Regulation (EC) No 1591/2001 does not apply to the aid applications referred to in the first subparagraph.

The applications for supervised storage referred to in the first subparagraph shall mention the date of entry of the batch or batches concerned into the ginning undertaking.

- The applications referred to in paragraph 1 shall relate to cotton of sound and fair merchantable quality:

- not coming from areas which have been disqualified under Article 17(3) of Regulation (EC) No 1051/2001,
- delivered to ginning undertakings for the 2001/02 marketing year in Greece and not having been recognised as eligible by 15 May 2002, including cotton for which no aid was applied for,

- identified by batch and sampled in accordance with Article 6(1) and (2) of Regulation (EC) No 1591/2001 and then ginned before 1 September 2002,
- recorded in accordance with Article 12 of Regulation (EC) No 1591/2001,
- where applicable, by way of derogation from Article 11 of Regulation (EC) No 1051/2001, at a price such that, for each producer concerned and for the total quantities of unginned cotton eligible for aid that producer has delivered for the 2001/02 marketing year, the average price paid is more than or equal to the minimum price referred to in Article 3(2) of Regulation (EC) No 1051/2001.

Article 3

1. Notwithstanding Article 14(1) of Regulation (EC) No 1051/2001, the amount of the aid corresponding to the aid

applications referred to in Article 2(1) shall be that which is valid on the day on which the quantities of unginned cotton concerned enter the cotton ginning undertaking.

2. Notwithstanding the second subparagraph of Article 14(2) of Regulation (EC) No 1051/2001, the balance of the aid for the quantities of unginned cotton recognised as eligible for the 2001/02 marketing year in Greece may be granted until 15 October 2002.

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, 31 July 2002.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 1399/2002

of 31 July 2002

**definitively fixing the aid for unginned cotton in Greece from 1 September 2001 to 31 March 2002
for the 2001/02 marketing year**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Article 1

Having regard to the Act of Accession of Greece, and in particular Protocol 4 on cotton, as last amended by Council Regulation (EC) No 1050/2001 ⁽¹⁾,

Having regard to Council Regulation (EC) No 1051/2001 of 22 May 2001 on production aid for cotton ⁽²⁾, and in particular Article 2(1) thereof,

Whereas:

The amounts of the aid for unginned cotton corresponding to the world prices fixed in Commission Regulations (EC) No 1738/2001 ⁽³⁾, (EC) No 1784/2001 ⁽⁴⁾, (EC) No 1855/2001 ⁽⁵⁾, (EC) No 1912/2001 ⁽⁶⁾, (EC) No 1985/2001 ⁽⁷⁾, (EC) No 2061/2001 ⁽⁸⁾, (EC) No 2143/2001 ⁽⁹⁾, (EC) No 2191/2001 ⁽¹⁰⁾, (EC) No 2207/2001 ⁽¹¹⁾, (EC) No 2255/2001 ⁽¹²⁾, (EC) No 2321/2001 ⁽¹³⁾, (EC) No 2344/2001 ⁽¹⁴⁾, (EC) No 2409/2001 ⁽¹⁵⁾, (EC) No 2518/2001 ⁽¹⁶⁾, (EC) No 2549/2001 ⁽¹⁷⁾, (EC) No 39/2002 ⁽¹⁸⁾, (EC) No 106/2002 ⁽¹⁹⁾, (EC) No 159/2002 ⁽²⁰⁾, (EC) No 186/2002 ⁽²¹⁾, (EC) No 248/2002 ⁽²²⁾, (EC) No 253/2002 ⁽²³⁾, (EC) No 267/2002 ⁽²⁴⁾, (EC) No 282/2002 ⁽²⁵⁾, (EC) No 321/2002 ⁽²⁶⁾, (EC) No 374/2002 ⁽²⁷⁾, (EC) No 441/2002 ⁽²⁸⁾ and (EC) No 499/2002 ⁽²⁹⁾ shall be as set out in the Annex hereto. Those amounts shall be fixed definitively from the entry into force of each of the Regulations concerned.

- (1) Under Article 4 of Regulation (EC) No 1051/2001, the world market price for unginned cotton is fixed periodically during the marketing year.

Article 2

- (2) Commission Regulation (EC) No 1398/2002 ⁽³⁾ fixes actual production of unginned cotton in Greece and the amount by which the guide price is to be reduced as a result for the 2001/02 marketing year.

- (3) Article 4(1) of Commission Regulation (EC) No 1591/2001 of 2 August 2001 laying down detailed rules for applying the cotton aid scheme ⁽⁴⁾ provides for the aid for unginned cotton applicable for each period for which a world market price for unginned cotton has been determined to be fixed no later than 30 June.

- (4) The aid for the 2001/02 marketing year should accordingly be fixed definitively at the levels indicated below,

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

⁽¹⁾ OJ L 148, 1.6.2001, p. 1.

⁽²⁾ OJ L 148, 1.6.2001, p. 3.

⁽³⁾ See page 24 of this Official Journal.

⁽⁴⁾ OJ L 210, 3.8.2001, p. 12.

⁽⁵⁾ OJ L 234, 1.9.2001, p. 35.

⁽⁶⁾ OJ L 241, 11.9.2001, p. 9.

⁽⁷⁾ OJ L 253, 21.9.2001, p. 23.

⁽⁸⁾ OJ L 261, 29.9.2001, p. 34.

⁽⁹⁾ OJ L 270, 11.10.2001, p. 24.

⁽¹⁰⁾ OJ L 277, 20.10.2001, p. 24.

⁽¹¹⁾ OJ L 288, 1.11.2001, p. 15.

⁽¹²⁾ OJ L 293, 10.11.2001, p. 23.

⁽¹³⁾ OJ L 297, 15.11.2001, p. 6.

⁽¹⁴⁾ OJ L 304, 21.11.2001, p. 13.

⁽¹⁵⁾ OJ L 313, 30.11.2001, p. 17.

⁽¹⁶⁾ OJ L 315, 1.12.2001, p. 28.

⁽¹⁷⁾ OJ L 326, 11.12.2001, p. 13.

⁽¹⁸⁾ OJ L 339, 21.12.2001, p. 30.

⁽¹⁹⁾ OJ L 341, 22.12.2001, p. 104.

⁽²⁰⁾ OJ L 7, 11.1.2002, p. 12.

⁽²¹⁾ OJ L 17, 19.1.2002, p. 53.

⁽²²⁾ OJ L 25, 29.1.2002, p. 40.

⁽²³⁾ OJ L 31, 1.2.2002, p. 39.

⁽²⁴⁾ OJ L 39, 9.2.2002, p. 16.

⁽²⁵⁾ OJ L 40, 12.2.2002, p. 8.

⁽²⁶⁾ OJ L 43, 14.2.2002, p. 17.

⁽²⁷⁾ OJ L 45, 15.2.2002, p. 35.

⁽²⁸⁾ OJ L 50, 21.2.2002, p. 59.

⁽²⁹⁾ OJ L 60, 1.3.2002, p. 13.

⁽³⁰⁾ OJ L 67, 9.3.2002, p. 13.

⁽³¹⁾ OJ L 78, 21.3.2002, p. 11.

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

Done at Brussels, 31 July 2002.

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

ANNEX

AID FOR UNGINNED COTTON

Regulation (EC) No	(EUR/100 kg)
	Aid amount
	Greece
1738/2001	43,408
1784/2001	43,500
1855/2001	44,763
1912/2001	44,870
1985/2001	46,079
2061/2001	46,189
2143/2001	47,118
2191/2001	46,331
2207/2001	45,009
2255/2001	44,487
2321/2001	43,185
2344/2001	42,809
2409/2001	42,740
2518/2001	42,890
2549/2001	42,866
39/2002	42,536
106/2002	42,100
159/2002	40,497
186/2002	40,633
248/2002	40,555
253/2002	42,078
267/2002	40,635
282/2002	42,289
321/2002	42,581
374/2002	42,576
441/2002	42,814
499/2002	43,000

COMMISSION REGULATION (EC) No 1400/2002**of 31 July 2002****on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 19/65/EEC of 2 March 1965 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices ⁽¹⁾, as last amended by Regulation (EC) No 1215/1999 ⁽²⁾, and in particular Article 1 thereof,

Having published a draft of this Regulation ⁽³⁾,

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

- (1) Experience acquired in the motor vehicle sector regarding the distribution of new motor vehicles, spare parts and after sales services makes it possible to define categories of vertical agreements which can be regarded as normally satisfying the conditions laid down in Article 81(3).
- (2) This experience leads to the conclusion that rules stricter than those provided for by Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices ⁽⁴⁾ are necessary in this sector.
- (3) These stricter rules for exemption by category (the exemption) should apply to vertical agreements for the purchase or sale of new motor vehicles, vertical agreements for the purchase or sale of spare parts for motor vehicles and vertical agreements for the purchase or sale of repair and maintenance services for such vehicles where these agreements are concluded between non-competing undertakings, between certain competitors, or by certain associations of retailers or repairers. This includes vertical agreements concluded between a distributor acting at the retail level or an authorised repairer and a (sub)distributor or repairer. This Regulation should also apply to these vertical agreements when they contain ancillary provisions on the assignment or use of intellectual property rights. The term 'vertical agreements' should be defined accordingly to include both such agreements and the corresponding concerted practices.

- (4) The benefit of the exemption should be limited to vertical agreements for which it can be assumed with sufficient certainty that they satisfy the conditions of Article 81(3).

- (5) Vertical agreements falling within the categories defined in this Regulation can improve economic efficiency within a chain of production or distribution by facilitating better coordination between the participating undertakings. In particular, they can lead to a reduction in the transaction and distribution costs of the parties and to an optimisation of their sales and investment levels.

- (6) The likelihood that such efficiency-enhancing effects will outweigh any anti-competitive effects due to restrictions contained in vertical agreements depends on the degree of market power held by the undertakings concerned and therefore on the extent to which those undertakings face competition from other suppliers of goods or services regarded by the buyer as interchangeable or substitutable for one another, by reason of the products' characteristics, prices or intended use.

- (7) Thresholds based on market share should be fixed in order to reflect suppliers' market power. Furthermore, this sector-specific Regulation should contain stricter rules than those provided for by Regulation (EC) No 2790/1999, in particular for selective distribution. The thresholds below which it can be presumed that the advantages secured by vertical agreements outweigh their restrictive effects should vary with the characteristics of different types of vertical agreement. It can therefore be presumed that in general, vertical agreements have such advantages where the supplier concerned has a market share of up to 30 % on the markets for the distribution of new motor vehicles or spare parts, or of up to 40 % where quantitative selective distribution is used for the sale of new motor vehicles. As regards after sales services it can be presumed that, in general, vertical agreements by which the supplier sets criteria on how its authorised repairers have to provide repair or maintenance services for the motor vehicles of the relevant make and provides them with equipment and training for the provision of such services have such advantages where the network of authorised repairers of the supplier concerned has a market share of up to 30 %. However, in the case of vertical agreements containing exclusive supply obligations, it is the market share of the buyer which is relevant for determining the overall effects of such vertical agreements on the market.

⁽¹⁾ OJ 36, 6.3.1965, p. 533/65.

⁽²⁾ OJ L 148, 15.6.1999, p. 1.

⁽³⁾ OJ C 67, 16.3.2002, p. 2.

⁽⁴⁾ OJ L 336, 29.12.1999, p. 21.

- (8) Above those market share thresholds, there can be no presumption that vertical agreements falling within the scope of Article 81(1) will usually give rise to objective advantages of such a character and magnitude as to compensate for the disadvantages which they create for competition. However, such advantages can be anticipated in the case of qualitative selective distribution, irrespective of the supplier's market share.
- (9) In order to prevent a supplier from terminating an agreement because a distributor or a repairer engages in pro-competitive behaviour, such as active or passive sales to foreign consumers, multi-branding or subcontracting of repair and maintenance services, every notice of termination must clearly set out in writing the reasons, which must be objective and transparent. Furthermore, in order to strengthen the independence of distributors and repairers from their suppliers, minimum periods of notice should be provided for the non-renewal of agreements concluded for a limited duration and for the termination of agreements of unlimited duration.
- (10) In order to foster market integration and to allow distributors or authorised repairers to seize additional business opportunities, distributors or authorised repairers have to be allowed to purchase other undertakings of the same type that sell or repair the same brand of motor vehicles within the distribution system. To this end, any vertical agreement between a supplier and a distributor or authorised repairer has to provide for the latter to have the right to transfer all of its rights and obligations to any other undertaking of its choice of the same type that sell or repairs the same brand of motor vehicles within the distribution system.
- (11) In order to favour the quick resolution of disputes which arise between the parties to a distribution agreement and which might otherwise hamper effective competition, agreements should only benefit from exemption if they provide for each party to have a right of recourse to an independent expert or arbitrator, in particular where notice is given to terminate an agreement.
- (12) Irrespective of the market share of the undertakings concerned, this Regulation does not cover vertical agreements containing certain types of severely anti-competitive restraints (hardcore restrictions) which in general appreciably restrict competition even at low market shares and which are not indispensable to the attainment of the positive effects mentioned above. This concerns in particular vertical agreements containing restraints such as minimum or fixed resale prices and, with certain exceptions, restrictions of the territory into which, or of the customers to whom, a distributor or repairer may sell the contract goods or services. Such agreements should not benefit from the exemption.
- (13) It is necessary to ensure that effective competition within the common market and between distributors located in different Member States is not restricted if a supplier uses selective distribution in some markets and other forms of distribution in others. In particular selective distribution agreements which restrict passive sales to any end user or unauthorised distributor located in markets where exclusive territories have been allocated should be excluded from the benefit of the exemption, as should those selective distribution agreements which restrict passive sales to customer groups which have been allocated exclusively to other distributors. The benefit of the exemption should also be withheld from exclusive distribution agreements if active or passive sales to any end user or unauthorised distributor located in markets where selective distribution is used are restricted.
- (14) The right of any distributor to sell new motor vehicles passively or, where relevant, actively to end users should include the right to sell such vehicles to end users who have given authorisation to an intermediary or purchasing agent to purchase, take delivery of, transport or store a new motor vehicle on their behalf.
- (15) The right of any distributor to sell new motor vehicles or spare parts or of any authorised repairer to sell repair and maintenance services to any end user passively or, where relevant, actively should include the right to use the Internet or Internet referral sites.
- (16) Limits placed by suppliers on their distributors' sales to any end user in other Member States, for instance where distributor remuneration or the purchase price is made dependent on the destination of the vehicles or on the place of residence of the end users, amount to an indirect restriction on sales. Other examples of indirect restrictions on sales include supply quotas based on a sales territory other than the common market, whether or not these are combined with sales targets. Bonus systems based on the destination of the vehicles or any form of discriminatory product supply to distributors, whether in the case of product shortage or otherwise, also amount to an indirect restriction on sales.
- (17) Vertical agreements that do not oblige the authorised repairers within a supplier's distribution system to honour warranties, perform free servicing and carry out recall work in respect of any motor vehicle of the relevant make sold in the common market amount to an indirect restriction of sales and should not benefit from the exemption. This obligation is without prejudice to the right of a motor vehicle supplier to oblige a distributor to make sure as regards the new motor vehicles that he has sold that the warranties are honoured and that free servicing and recall work is carried out, either by the distributor itself or, in case of subcontracting, by the authorised repairer(s) to whom these services have

been subcontracted. Therefore consumers should in these cases be able to turn to the distributor if the above obligations have not been properly fulfilled by the authorised repairer to whom the distributor has subcontracted these services. Furthermore, in order to allow sales by motor vehicle distributors to end users throughout the common market, the exemption should apply only to distribution agreements which require the repairers within the supplier's network to carry out repair and maintenance services for the contract goods and corresponding goods irrespective of where these goods are sold in the common market.

(18) In markets where selective distribution is used, the exemption should apply in respect of a prohibition on a distributor from operating out of an additional place of establishment where he is a distributor of vehicles other than passenger cars or light commercial vehicles. However, this prohibition should not be exempted if it limits the expansion of the distributor's business at the authorised place of establishment by, for instance, restricting the development or acquisition of the infrastructure necessary to allow increases in sales volumes, including increases brought about by Internet sales.

(19) It would be inappropriate to exempt any vertical agreement that restricts the sale of original spare parts or spare parts of matching quality by members of the distribution system to independent repairers which use them for the provision of repair or maintenance services. Without access to such spare parts, these independent repairers would not be able to compete effectively with authorised repairers, since they could not provide consumers with good quality services which contribute to the safe and reliable functioning of motor vehicles.

(20) In order to give end users the right to purchase new motor vehicles with specifications identical to those sold in any other Member State, from any distributor selling corresponding models and established in the common market, the exemption should apply only to vertical agreements which enable a distributor to order, stock and sell any such vehicle which corresponds to a model within its contract range. Discriminatory or objectively unjustified supply conditions, in particular those regarding delivery times or prices, applied by the supplier to corresponding vehicles, are to be considered a restriction on the ability of the distributor to sell such vehicles.

(21) Motor vehicles are expensive and technically complex mobile goods which require repair and maintenance at

regular and irregular intervals. However, it is not indispensable for distributors of new motor vehicles also to carry out repair and maintenance. The legitimate interests of suppliers and end users can be fully satisfied if the distributor subcontracts these services, including the honouring of warranties, free servicing and recall work, to a repairer or to a number of repairers within the supplier's distribution system. It is nevertheless appropriate to facilitate access to repair and maintenance services. Therefore, a supplier may require distributors who have subcontracted repair and maintenance services to one or more authorised repairers to give end users the name and address of the repair shop or shops in question. If any of these authorised repairers is not established in the vicinity of the sales outlet, the supplier may also require the distributor to tell end users how far the repair shop or shops in question are from the sales outlet. However, a supplier can only impose such obligations if he also imposes similar obligations on distributors whose own repair shop is not on the same premises as their sales outlet.

(22) Furthermore, it is not necessary, in order to adequately provide for repair and maintenance services, for authorised repairers to also sell new motor vehicles. The exemption should therefore not cover vertical agreements containing any direct or indirect obligation or incentive which leads to the linking of sales and servicing activities or which makes the performance of one of these activities dependent on the performance of the other; this is in particular the case where the remuneration of distributors or authorised repairers relating to the purchase or sale of goods or services necessary for one activity is made dependent on the purchase or sale of goods or services relating to the other activity, or where all such goods or services are indistinctly aggregated into a single remuneration or discount system.

(23) In order to ensure effective competition on the repair and maintenance markets and to allow repairers to offer end users competing spare parts such as original spare parts and spare parts of matching quality, the exemption should not cover vertical agreements which restrict the ability of authorised repairers within the distribution system of a vehicle manufacturer, independent distributors of spare parts, independent repairers or end users to source spare parts from the manufacturer of such spare parts or from another third party of their choice. This does not affect spare part manufacturers' liability under civil law.

- (24) Furthermore, in order to allow authorised and independent repairers and end users to identify the manufacturer of motor vehicle components or of spare parts and to choose between competing spare parts, the exemption should not cover agreements by which a manufacturer of motor vehicles limits the ability of a manufacturer of components or original spare parts to place its trade mark or logo on these parts effectively and in a visible manner. Moreover, in order to facilitate this choice and the sale of spare parts, which have been manufactured according to the specifications and production and quality standards provided by the vehicle manufacturer for the production of components or spare parts, it is presumed that spare parts constitute original spare parts, if the spare part producer issues a certificate that the parts are of the same quality as the components used for the assembly of a motor vehicle and have been manufactured according to these specifications and standards. Other spare parts for which the spare part producer can issue a certificate at any moment attesting that they match the quality of the components used for the assembly of a certain motor vehicle, may be sold as spare parts of matching quality.
- (25) The exemption should not cover vertical agreements which restrict authorised repairers from using spare parts of matching quality for the repair or maintenance of a motor vehicle. However, in view of the vehicle manufacturers' direct contractual involvement in repairs under warranty, free servicing, and recall operations, agreements containing obligations on authorised repairers to use original spare parts supplied by the vehicle manufacturer for these repairs should be covered by the exemption.
- (26) In order to protect effective competition on the market for repair and maintenance services and to prevent foreclosure of independent repairers, motor vehicle manufacturers must allow all interested independent operators to have full access to all technical information, diagnostic and other equipment, tools, including all relevant software, and training required for the repair and maintenance of motor vehicles. Independent operators who must be allowed such access include in particular independent repairers, manufacturers of repair equipment or tools, publishers of technical information, automobile clubs, roadside assistance operators, operators offering inspection and testing services and operators offering training for repairers. In particular, the conditions of access must not discriminate between authorised and independent operators, access must be given upon request and without undue delay, and the price charged for the information should not discourage access to it by failing to take into account the extent to which the independent operator uses it. A supplier of motor vehicles should be required to give independent operators access to technical information on new motor vehicles at the same time as such access is given to its authorised repairers and must not oblige independent operators to purchase more than the information necessary to carry out the work in question. Suppliers should be obliged to give access to the technical information necessary for re-programming electronic devices in a motor vehicle. It is, however, legitimate and proper for them to withhold access to technical information which might allow a third party to bypass or disarm on-board anti-theft devices, to recalibrate electronic devices or to tamper with devices which for instance limit the speed of a motor vehicle, unless protection against theft, re-calibration or tampering can be attained by other less restrictive means. Intellectual property rights and rights regarding know-how including those which relate to the aforementioned devices must be exercised in a manner which avoids any type of abuse.
- (27) In order to ensure access to and to prevent collusion on the relevant markets and to give distributors opportunities to sell vehicles of brands from two or more manufacturers that are not connected undertakings, certain specific conditions are attached to the exemption. To this end, the exemption should not be accorded to non-compete obligations. In particular, without prejudice to the ability of the supplier to require the distributor to display the vehicles in brand-specific areas of the showroom in order to avoid brand confusion, any prohibition on sales of competing makes should not be exempted. The same applies to an obligation to display the full range of motor vehicles if it makes the sale or display of vehicles manufactured by undertakings which are not connected impossible or unreasonably difficult. Furthermore, an obligation to have brand-specific sales personnel is considered to be an indirect non-compete obligation and therefore should not be covered by the exemption, unless the distributor decides to have brand-specific sales personnel and the supplier pays all the additional costs involved.
- (28) In order to ensure that repairers are able to carry out repairs or maintenance on all motor vehicles, the exemption should not apply to any obligation limiting the ability of repairers of motor vehicles to provide repair or maintenance services for brands of competing suppliers.
- (29) In addition, specific conditions are required to exclude certain restrictions, sometimes imposed in the context of a selective distribution system, from the scope of the exemption. This applies in particular to obligations which have the effect of preventing the members of a selective distribution system from selling the brands of particular competing suppliers, which could easily lead to foreclosure of certain brands. Additional conditions are necessary in order to foster intra-brand competition and market integration within the common market, to create opportunities for distributors and authorised repairers who wish to seize business opportunities

outside their place of establishment, and to create conditions which allow the development of multi-brand distributors. In particular a restriction on operating out of an unauthorised place of establishment for the distribution of passenger cars and light commercial vehicles or the provision of repair and maintenance services should not be exempted. The supplier may require additional sales or delivery outlets for passenger cars and light commercial vehicles or repair shops to comply with the relevant qualitative criteria applicable for similar outlets located in the same geographic area.

(30) The exemption should not apply to restrictions limiting the ability of a distributor to sell leasing services for motor vehicles.

(31) The market share limitations, the fact that certain vertical agreements are not covered, and the conditions provided for in this Regulation, should normally ensure that the agreements to which the exemption applies do not enable the participating undertakings to eliminate competition in respect of a substantial part of the goods or services in question.

(32) In particular cases in which agreements which would otherwise benefit from the exemption nevertheless have effects incompatible with Article 81(3), the Commission is empowered to withdraw the benefit of the exemption; this may occur in particular where the buyer has significant market power on the relevant market on which it resells the goods or provides the services or where parallel networks of vertical agreements have similar effects which significantly restrict access to a relevant market or competition thereon; such cumulative effects may for example arise in the case of selective distribution. The Commission may also withdraw the benefit of the exemption if competition is significantly restricted on a market due to the presence of a supplier with market power or if prices and conditions of supply to motor vehicle distributors differ substantially between geographic markets. It may also withdraw the benefit of the exemption if discriminatory prices or sales conditions, or unjustifiably high supplements, such as those charged for right hand drive vehicles, are applied for the supply of goods corresponding to the contract range.

(33) Regulation No 19/65/EEC empowers the national authorities of Member States to withdraw the benefit of the exemption in respect of vertical agreements having effects incompatible with the conditions laid down in Article 81(3), where such effects are felt in their territory, or in a part thereof, and where such territory has the

characteristics of a distinct geographic market; the exercise of this national power of withdrawal should not prejudice the uniform application throughout the common market of the Community competition rules or the full effect of the measures adopted in implementation of those rules.

(34) In order to allow for better supervision of parallel networks of vertical agreements which have similar restrictive effects and which cover more than 50 % of a given market, the Commission should be permitted to declare the exemption inapplicable to vertical agreements containing specific restraints relating to the market concerned, thereby restoring the full application of Article 81(1) to such agreements.

(35) The exemption should be granted without prejudice to the application of the provisions of Article 82 of the Treaty on the abuse by an undertaking of a dominant position.

(36) Commission Regulation (EC) No 1475/95 of 28 June 1995 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements⁽¹⁾ is applicable until 30 September 2002. In order to allow all operators time to adapt vertical agreements which are compatible with that regulation and which are still in force when the exemption provided for therein expires, it is appropriate for such agreements to benefit from a transition period until 1 October 2003, during which time they should be exempted from the prohibition laid down in Article 81(1) under this Regulation.

(37) In order to allow all operators within a quantitative selective distribution system for new passenger cars and light commercial vehicles to adapt their business strategies to the non-application of the exemption to location clauses, it is appropriate to stipulate that the condition set out in Article 5(2)(b) shall enter into force on 1 October 2005.

(38) The Commission should monitor the operation of this Regulation on a regular basis, with particular regard to its effects on competition in motor vehicle retailing and in after sales servicing in the common market or relevant parts of it. This should include monitoring the effects of this Regulation on the structure and level of concentration of motor vehicle distribution and any resulting effects on competition. The Commission should also carry out an evaluation of the operation of this Regulation and draw up a report not later than 31 May 2008.

⁽¹⁾ OJ L 145, 29.6.1995, p. 25.

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

1. For the purposes of this Regulation:

- (a) 'competing undertakings' means actual or potential suppliers on the same product market; the product market includes goods or services which are regarded by the buyer as interchangeable with or substitutable for the contract goods or services, by reason of the products' characteristics, their prices and their intended use;
- (b) 'non-compete obligation' means any direct or indirect obligation causing the buyer not to manufacture, purchase, sell or resell goods or services which compete with the contract goods or services, or any direct or indirect obligation on the buyer to purchase from the supplier or from another undertaking designated by the supplier more than 30 % of the buyer's total purchases of the contract goods, corresponding goods or services and their substitutes on the relevant market, calculated on the basis of the value of its purchases in the preceding calendar year. An obligation that the distributor sell motor vehicles from other suppliers in separate areas of the showroom in order to avoid confusion between the makes does not constitute a non-compete obligation for the purposes of this Regulation. An obligation that the distributor have brand-specific sales personnel for different brands of motor vehicles constitutes a non-compete obligation for the purposes of this Regulation, unless the distributor decides to have brand-specific sales personnel and the supplier pays all the additional costs involved;
- (c) 'vertical agreements' means agreements or concerted practices entered into by two or more undertakings, each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain;
- (d) 'vertical restraints' means restrictions of competition falling within the scope of Article 81(1), when such restrictions are contained in a vertical agreement;
- (e) 'exclusive supply obligation' means any direct or indirect obligation causing the supplier to sell the contract goods or services only to one buyer inside the common market for the purposes of a specific use or for resale;
- (f) 'selective distribution system' means a distribution system where the supplier undertakes to sell the contract goods or services, either directly or indirectly, only to distributors or repairers selected on the basis of specified criteria and where these distributors or repairers undertake not to sell such goods or services to unauthorised distributors or independent repairers, without prejudice to the ability to sell spare parts to independent repairers or the obligation to provide independent operators with all technical information, diagnostic equipment, tools and training required for the repair and maintenance of motor vehicles or for the implementation of environmental protection measures;
- (g) 'quantitative selective distribution system' means a selective distribution system where the supplier uses criteria for the selection of distributors or repairers which directly limit their number;
- (h) 'qualitative selective distribution system' means a selective distribution system where the supplier uses criteria for the selection of distributors or repairers which are only qualitative in nature, are required by the nature of the contract goods or services, are laid down uniformly for all distributors or repairers applying to join the distribution system, are not applied in a discriminatory manner, and do not directly limit the number of distributors or repairers;
- (i) 'intellectual property rights' includes industrial property rights, copyright and neighbouring rights;
- (j) 'know-how' means a package of non-patented practical information, derived from experience and testing by the supplier, which is secret, substantial and identified; in this context, 'secret' means that the know-how, as a body or in the precise configuration and assembly of its components, is not generally known or easily accessible; 'substantial' means that the know-how includes information which is indispensable to the buyer for the use, sale or resale of the contract goods or services; 'identified' means that the know-how must be described in a sufficiently comprehensive manner so as to make it possible to verify that it fulfils the criteria of secrecy and substantiality;
- (k) 'buyer', whether distributor or repairer, includes an undertaking which sells goods or services on behalf of another undertaking;
- (l) 'authorised repairer' means a provider of repair and maintenance services for motor vehicles operating within the distribution system set up by a supplier of motor vehicles;
- (m) 'independent repairer' means a provider of repair and maintenance services for motor vehicles not operating within the distribution system set up by the supplier of the motor vehicles for which it provides repair or maintenance. An authorised repairer within the distribution system of a given supplier shall be deemed to be an independent repairer for the purposes of this Regulation to the extent that he provides repair or maintenance services for motor vehicles in respect of which he is not a member of the respective supplier's distribution system;
- (n) 'motor vehicle' means a self propelled vehicle intended for use on public roads and having three or more road wheels;
- (o) 'passenger car' means a motor vehicle intended for the carriage of passengers and comprising no more than eight seats in addition to the driver's seat;

- (p) 'light commercial vehicle' means a motor vehicle intended for the transport of goods or passengers with a maximum mass not exceeding 3,5 tonnes; if a certain light commercial vehicle is also sold in a version with a maximum mass above 3,5 tonnes, all versions of that vehicle are considered to be light commercial vehicles;
- (q) the 'contract range' means all the different models of motor vehicles available for purchase by the distributor from the supplier;
- (r) a 'motor vehicle which corresponds to a model within the contract range' means a vehicle which is the subject of a distribution agreement with another undertaking within the distribution system set up by the manufacturer or with his consent and which is:
- manufactured or assembled in volume by the manufacturer, and
 - identical as to body style, drive-line, chassis, and type of motor to a vehicle within the contract range;
- (s) 'spare parts' means goods which are to be installed in or upon a motor vehicle so as to replace components of that vehicle, including goods such as lubricants which are necessary for the use of a motor vehicle, with the exception of fuel;
- (t) 'original spare parts' means spare parts which are of the same quality as the components used for the assembly of a motor vehicle and which are manufactured according to the specifications and production standards provided by the vehicle manufacturer for the production of components or spare parts for the motor vehicle in question. This includes spare parts which are manufactured on the same production line as these components. It is presumed, unless the contrary is proven, that parts constitute original spare parts if the part manufacturer certifies that the parts match the quality of the components used for the assembly of the vehicle in question and have been manufactured according to the specifications and production standards of the vehicle manufacturer;
- (u) 'spare parts of matching quality' means exclusively spare parts made by any undertaking which can certify at any moment that the parts in question match the quality of the components which are or were used for the assembly of the motor vehicles in question;
- (v) 'undertakings within the distribution system' means the manufacturer and undertakings which are entrusted by the manufacturer or with the manufacturer's consent with the distribution or repair or maintenance of contract goods or corresponding goods;
- (w) 'end user' includes leasing companies unless the leasing contracts used provide for a transfer of ownership or an option to purchase the vehicle prior to the expiry of the contract.

2. The terms 'undertaking', 'supplier', 'buyer', 'distributor' and 'repairer' shall include their respective connected undertakings.

'Connected undertakings' are:

- (a) undertakings in which a party to the agreement, directly or indirectly:
 - (i) has the power to exercise more than half the voting rights, or
 - (ii) has the power to appoint more than half the members of the supervisory board, board of management or bodies legally representing the undertaking, or
 - (iii) has the right to manage the undertaking's affairs;
- (b) undertakings which directly or indirectly have, over a party to the agreement, the rights or powers listed in (a);
- (c) undertakings in which an undertaking referred to in (b) has, directly or indirectly, the rights or powers listed in (a);
- (d) undertakings in which a party to the agreement together with one or more of the undertakings referred to in (a), (b) or (c), or in which two or more of the latter undertakings, jointly have the rights or powers listed in (a);
- (e) undertakings in which the rights or the powers listed in (a) are jointly held by:
 - (i) parties to the agreement or their respective connected undertakings referred to in (a) to (d), or
 - (ii) one or more of the parties to the agreement or one or more of their connected undertakings referred to in (a) to (d) and one or more third parties.

Article 2

Scope

1. Pursuant to Article 81(3) of the Treaty and subject to the provisions of this Regulation, it is hereby declared that the provisions of Article 81(1) shall not apply to vertical agreements where they relate to the conditions under which the parties may purchase, sell or resell new motor vehicles, spare parts for motor vehicles or repair and maintenance services for motor vehicles.

The first subparagraph shall apply to the extent that such vertical agreements contain vertical restraints.

The exemption declared by this paragraph shall be known for the purposes of this Regulation as 'the exemption'.

2. The exemption shall also apply to the following categories of vertical agreements:

- (a) Vertical agreements entered into between an association of undertakings and its members, or between such an association and its suppliers, only if all its members are distributors of motor vehicles or spare parts for motor vehicles or repairers and if no individual member of the association, together with its connected undertakings, has a total annual turnover exceeding EUR 50 million; vertical agreements

entered into by such associations shall be covered by this Regulation without prejudice to the application of Article 81 to horizontal agreements concluded between the members of the association or decisions adopted by the association;

- (b) vertical agreements containing provisions which relate to the assignment to the buyer or use by the buyer of intellectual property rights, provided that those provisions do not constitute the primary object of such agreements and are directly related to the use, sale or resale of goods or services by the buyer or its customers. The exemption shall apply on condition that those provisions do not contain restrictions of competition relating to the contract goods or services which have the same object or effect as vertical restraints which are not exempted under this Regulation.

3. The exemption shall not apply to vertical agreements entered into between competing undertakings.

However, it shall apply where competing undertakings enter into a non-reciprocal vertical agreement and:

- (a) the buyer has a total annual turnover not exceeding EUR 100 million, or
- (b) the supplier is a manufacturer and a distributor of goods, while the buyer is a distributor not manufacturing goods competing with the contract goods, or
- (c) the supplier is a provider of services at several levels of trade, while the buyer does not provide competing services at the level of trade where it purchases the contract services.

Article 3

General conditions

1. Subject to paragraphs 2, 3, 4, 5, 6 and 7, the exemption shall apply on condition that the supplier's market share on the relevant market on which it sells the new motor vehicles, spare parts for motor vehicles or repair and maintenance services does not exceed 30 %.

However, the market share threshold for the application of the exemption shall be 40 % for agreements establishing quantitative selective distribution systems for the sale of new motor vehicles.

Those thresholds shall not apply to agreements establishing qualitative selective distribution systems.

2. In the case of vertical agreements containing exclusive supply obligations, the exemption shall apply on condition that the market share held by the buyer does not exceed 30 % of the relevant market on which it purchases the contract goods or services.

3. The exemption shall apply on condition that the vertical agreement concluded with a distributor or repairer provides

that the supplier agrees to the transfer of the rights and obligations resulting from the vertical agreement to another distributor or repairer within the distribution system and chosen by the former distributor or repairer.

4. The exemption shall apply on condition that the vertical agreement concluded with a distributor or repairer provides that a supplier who wishes to give notice of termination of an agreement must give such notice in writing and must include detailed, objective and transparent reasons for the termination, in order to prevent a supplier from ending a vertical agreement with a distributor or repairer because of practices which may not be restricted under this Regulation.

5. The exemption shall apply on condition that the vertical agreement concluded by the supplier of new motor vehicles with a distributor or authorised repairer provides

- (a) that the agreement is concluded for a period of at least five years; in this case each party has to undertake to give the other party at least six months' prior notice of its intention not to renew the agreement;
- (b) or that the agreement is concluded for an indefinite period; in this case the period of notice for regular termination of the agreement has to be at least two years for both parties; this period is reduced to at least one year where:
 - (i) the supplier is obliged by law or by special agreement to pay appropriate compensation on termination of the agreement, or
 - (ii) the supplier terminates the agreement where it is necessary to re-organise the whole or a substantial part of the network.

6. The exemption shall apply on condition that the vertical agreement provides for each of the parties the right to refer disputes concerning the fulfilment of their contractual obligations to an independent expert or arbitrator. Such disputes may relate, *inter alia*, to any of the following:

- (a) supply obligations;
- (b) the setting or attainment of sales targets;
- (c) the implementation of stock requirements;
- (d) the implementation of an obligation to provide or use demonstration vehicles;
- (e) the conditions for the sale of different brands;
- (f) the issue whether the prohibition to operate out of an unauthorised place of establishment limits the ability of the distributor of motor vehicles other than passenger cars or light commercial vehicles to expand its business, or
- (g) the issue whether the termination of an agreement is justified by the reasons given in the notice.

The right referred to in the first sentence is without prejudice to each party's right to make an application to a national court.

7. For the purposes of this Article, the market share held by the undertakings referred to in Article 1(2)(e) shall be apportioned equally to each undertaking having the rights or the powers listed in Article 1(2)(a).

Article 4

Hardcore restrictions

(Hardcore restrictions concerning the sale of new motor vehicles, repair and maintenance services or spare parts)

1. The exemption shall not apply to vertical agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object:

- (a) the restriction of the distributor's or repairer's ability to determine its sale price, without prejudice to the supplier's ability to impose a maximum sale price or to recommend a sale price, provided that this does not amount to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties;
- (b) the restriction of the territory into which, or of the customers to whom, the distributor or repairer may sell the contract goods or services; however, the exemption shall apply to:
 - (i) the restriction of active sales into the exclusive territory or to an exclusive customer group reserved to the supplier or allocated by the supplier to another distributor or repairer, where such a restriction does not limit sales by the customers of the distributor or repairer;
 - (ii) the restriction of sales to end users by a distributor operating at the wholesale level of trade;
 - (iii) the restriction of sales of new motor vehicles and spare parts to unauthorised distributors by the members of a selective distribution system in markets where selective distribution is applied, subject to the provisions of point (i);
 - (iv) the restriction of the buyer's ability to sell components, supplied for the purposes of incorporation, to customers who would use them to manufacture the same type of goods as those produced by the supplier;
- (c) the restriction of cross-supplies between distributors or repairers within a selective distribution system, including between distributors or repairers operating at different levels of trade;
- (d) the restriction of active or passive sales of new passenger cars or light commercial vehicles, spare parts for any motor vehicle or repair and maintenance services for any motor vehicle to end users by members of a selective distribution system operating at the retail level of trade in markets where selective distribution is used. The exemption shall apply to agreements containing a prohibition on a member

of a selective distribution system from operating out of an unauthorised place of establishment. However, the application of the exemption to such a prohibition is subject to Article 5(2)(b);

- (e) the restriction of active or passive sales of new motor vehicles other than passenger cars or light commercial vehicles to end users by members of a selective distribution system operating at the retail level of trade in markets where selective distribution is used, without prejudice to the ability of the supplier to prohibit a member of that system from operating out of an unauthorised place of establishment;

(Hardcore restrictions only concerning the sale of new motor vehicles)

- (f) the restriction of the distributor's ability to sell any new motor vehicle which corresponds to a model within its contract range;
- (g) the restriction of the distributor's ability to subcontract the provision of repair and maintenance services to authorised repairers, without prejudice to the ability of the supplier to require the distributor to give end users the name and address of the authorised repairer or repairers in question before the conclusion of a sales contract and, if any of these authorised repairers is not in the vicinity of the sales outlet, to also tell end users how far the repair shop or repair shops in question are from the sales outlet; however, such obligations may only be imposed provided that similar obligations are imposed on distributors whose repair shop is not on the same premises as their sales outlet;

(Hardcore restrictions only concerning the sale of repair and maintenance services and of spare parts)

- (h) the restriction of the authorised repairer's ability to limit its activities to the provision of repair and maintenance services and the distribution of spare parts;
- (i) the restriction of the sales of spare parts for motor vehicles by members of a selective distribution system to independent repairers which use these parts for the repair and maintenance of a motor vehicle;
- (j) the restriction agreed between a supplier of original spare parts or spare parts of matching quality, repair tools or diagnostic or other equipment and a manufacturer of motor vehicles, which limits the supplier's ability to sell these goods or services to authorised or independent distributors or to authorised or independent repairers or end users;
- (k) the restriction of a distributor's or authorised repairer's ability to obtain original spare parts or spare parts of matching quality from a third undertaking of its choice and to use them for the repair or maintenance of motor vehicles, without prejudice to the ability of a supplier of new motor vehicles to require the use of original spare parts supplied by it for repairs carried out under warranty, free servicing and vehicle recall work;

(l) the restriction agreed between a manufacturer of motor vehicles which uses components for the initial assembly of motor vehicles and the supplier of such components which limits the latter's ability to place its trade mark or logo effectively and in an easily visible manner on the components supplied or on spare parts.

2. The exemption shall not apply where the supplier of motor vehicles refuses to give independent operators access to any technical information, diagnostic and other equipment, tools, including any relevant software, or training required for the repair and maintenance of these motor vehicles or for the implementation of environmental protection measures.

Such access must include in particular the unrestricted use of the electronic control and diagnostic systems of a motor vehicle, the programming of these systems in accordance with the supplier's standard procedures, the repair and training instructions and the information required for the use of diagnostic and servicing tools and equipment.

Access must be given to independent operators in a non-discriminatory, prompt and proportionate way, and the information must be provided in a usable form. If the relevant item is covered by an intellectual property right or constitutes know-how, access shall not be withheld in any abusive manner.

For the purposes of this paragraph 'independent operator' shall mean undertakings which are directly or indirectly involved in the repair and maintenance of motor vehicles, in particular independent repairers, manufacturers of repair equipment or tools, independent distributors of spare parts, publishers of technical information, automobile clubs, roadside assistance operators, operators offering inspection and testing services and operators offering training for repairers.

Article 5

Specific conditions

1. As regards the sale of new motor vehicles, repair and maintenance services or spare parts, the exemption shall not apply to any of the following obligations contained in vertical agreements:

- (a) any direct or indirect non-compete obligation;
- (b) any direct or indirect obligation limiting the ability of an authorised repairer to provide repair and maintenance services for vehicles from competing suppliers;
- (c) any direct or indirect obligation causing the members of a distribution system not to sell motor vehicles or spare parts of particular competing suppliers or not to provide repair and maintenance services for motor vehicles of particular competing suppliers;
- (d) any direct or indirect obligation causing the distributor or authorised repairer, after termination of the agreement, not

to manufacture, purchase, sell or resell motor vehicles or not to provide repair or maintenance services.

2. As regards the sale of new motor vehicles, the exemption shall not apply to any of the following obligations contained in vertical agreements:

- (a) any direct or indirect obligation causing the retailer not to sell leasing services relating to contract goods or corresponding goods;
- (b) any direct or indirect obligation on any distributor of passenger cars or light commercial vehicles within a selective distribution system, which limits its ability to establish additional sales or delivery outlets at other locations within the common market where selective distribution is applied.

3. As regards repair and maintenance services or the sale of spare parts, the exemption shall not apply to any direct or indirect obligation as to the place of establishment of an authorised repairer where selective distribution is applied.

Article 6

Withdrawal of the benefit of the Regulation

1. The Commission may withdraw the benefit of this Regulation, pursuant to Article 7(1) of Regulation No 19/65/EEC, where it finds in any particular case that vertical agreements to which this Regulation applies nevertheless have effects which are incompatible with the conditions laid down in Article 81(3) of the Treaty, and in particular:

- (a) where access to the relevant market or competition therein is significantly restricted by the cumulative effect of parallel networks of similar vertical restraints implemented by competing suppliers or buyers, or
- (b) where competition is restricted on a market where one supplier is not exposed to effective competition from other suppliers, or
- (c) where prices or conditions of supply for contract goods or for corresponding goods differ substantially between geographic markets, or
- (d) where discriminatory prices or sales conditions are applied within a geographic market.

2. Where in any particular case vertical agreements to which the exemption applies have effects incompatible with the conditions laid down in Article 81(3) of the Treaty in the territory of a Member State, or in a part thereof, which has all the characteristics of a distinct geographic market, the relevant authority of that Member State may withdraw the benefit of application of this Regulation in respect of that territory, under the same conditions as those provided in paragraph 1.

*Article 7***Non-application of the Regulation**

1. Pursuant to Article 1a of Regulation No 19/65/EEC, the Commission may by regulation declare that, where parallel networks of similar vertical restraints cover more than 50 % of a relevant market, this Regulation shall not apply to vertical agreements containing specific restraints relating to that market.

2. A regulation pursuant to paragraph 1 shall not become applicable earlier than one year following its adoption.

*Article 8***Market share calculation**

1. The market shares provided for in this Regulation shall be calculated

- (a) for the distribution of new motor vehicles on the basis of the volume of the contract goods and corresponding goods sold by the supplier, together with any other goods sold by the supplier which are regarded as interchangeable or substitutable by the buyer, by reason of the products' characteristics, prices and intended use;
- (b) for the distribution of spare parts on the basis of the value of the contract goods and other goods sold by the supplier, together with any other goods sold by the supplier which are regarded as interchangeable or substitutable by the buyer, by reason of the products' characteristics, prices and intended use;
- (c) for the provision of repair and maintenance services on the basis of the value of the contract services sold by the members of the supplier's distribution network together with any other services sold by these members which are regarded as interchangeable or substitutable by the buyer, by reason of their characteristics, prices and intended use.

If the volume data required for those calculations are not available, value data may be used or vice versa. If such information is not available, estimates based on other reliable market information may be used. For the purposes of Article 3(2), the market purchase volume or the market purchase value respectively, or estimates thereof shall be used to calculate the market share.

2. For the purposes of applying the market share thresholds of 30 % and 40 % provided for in this Regulation the following rules shall apply:

- (a) the market share shall be calculated on the basis of data relating to the preceding calendar year;
- (b) the market share shall include any goods or services supplied to integrated distributors for the purposes of sale;
- (c) if the market share is initially not more than 30 % or 40 % respectively but subsequently rises above that level without exceeding 35 % or 45 % respectively, the exemption shall continue to apply for a period of two consecutive calendar years following the year in which the market share threshold of 30 % or 40 % respectively was first exceeded;
- (d) if the market share is initially not more than 30 % or 40 % respectively but subsequently rises above 35 % or 45 % respectively, the exemption shall continue to apply for one calendar year following the year in which the level of 30 % or 40 % respectively was first exceeded;
- (e) the benefit of points (c) and (d) may not be combined so as to exceed a period of two calendar years.

*Article 9***Turnover calculation**

1. For the purposes of calculating total annual turnover figures referred to in Article 2(2)(a) and 2(3)(a) respectively, the turnover achieved during the previous financial year by the relevant party to the vertical agreement and the turnover achieved by its connected undertakings in respect of all goods and services, excluding all taxes and other duties, shall be added together. For this purpose, no account shall be taken of dealings between the party to the vertical agreement and its connected undertakings or between its connected undertakings.

2. The exemption shall remain applicable where, for any period of two consecutive financial years, the total annual turnover threshold is exceeded by no more than 10 %.

*Article 10***Transitional period**

The prohibition laid down in Article 81(1) shall not apply during the period from 1 October 2002 to 30 September 2003 in respect of agreements already in force on 30 September 2002 which do not satisfy the conditions for exemption provided for in this Regulation but which satisfy the conditions for exemption provided for in Regulation (EC) No 1475/95.

*Article 11***Monitoring and evaluation report**

1. The Commission shall monitor the operation of this Regulation on a regular basis, with particular regard to its effects on:

- (a) competition in motor vehicle retailing and in after sales servicing in the common market or relevant parts of it;
- (b) the structure and level of concentration of motor vehicle distribution and any resulting effects on competition.

2. The Commission shall draw up a report on this Regulation not later than 31 May 2008 having regard in particular to the conditions set out in Article 81(3).

*Article 12***Entry into force and expiry**

- 1. This Regulation shall enter into force on 1 October 2002.
- 2. Article 5(2)(b) shall apply from 1 October 2005.
- 3. This Regulation shall expire on 31 May 2010.

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

Done at Brussels, 31 July 2002.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION REGULATION (EC) No 1401/2002

of 31 July 2002

laying down detailed rules for the opening and administration of the tariff quotas for rice, originating in the least developed countries, for the marketing years 2002/03 to 2008/09

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2501/2001 of 10 December 2001 applying a scheme of generalised tariff preferences for the period from 1 January 2002 to 31 December 2004 ⁽¹⁾, and in particular Article 9(6) thereof,

Whereas:

- (1) Article 9(5) of Regulation (EC) No 2501/2001 lays down that, until Common Customs Tariff duties are entirely suspended as from 1 September 2009, a global tariff quota at zero duty is to be opened for every marketing year for products of CN code 1006, originating in a country that according to Annex I of that Regulation, benefits from the special arrangements for least developed countries. The tariff quota for the marketing year 2002/03 is to be equal to 2 895 tonnes, husked rice equivalent, for products of CN code 1006. For each of the following marketing years, the quotas shall be increased by 15 % over the quotas of the previous marketing year.
- (2) Those provisions have to be implemented within the framework of the common trading system established by Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽²⁾, as last amended by Regulation (EC) No 411/2002 ⁽³⁾.
- (3) The detailed rules governing the opening and administration of the quota should be valid for the seven marketing years.
- (4) The quantities of rice benefiting from the global tariff quota should be imported under the fairest possible conditions of competition and in order to avoid disturbances on the Community market.
- (5) Commission Regulation (EC) No 2305/2001 of 27 November 2001 on opening a tariff quota for rice, originating in the least developed countries, for the marketing year 2001/02 ⁽⁴⁾, was valid for only one marketing year. Its fourth recital specifies that at the end of that

period, and in the light of the experience gained in the first year, rules for a longer period may subsequently be established.

- (6) The provisions concerning the proof of origin set out in Articles 67 to 97 of Commission Regulation (EC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EC) No 2913/92 establishing the Community Customs Code ⁽⁵⁾, as last amended by Regulation (EC) No 444/2002 ⁽⁶⁾, establish the definition of the concept of originating products to be used for the purposes of generalised tariff preferences.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Generalised Preferences Committee,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down the rules for the opening and administration of the tariff quotas for rice referred to in Article 9(5) of Regulation (EC) No 2501/2001, for the marketing years 2002/03, 2003/04, 2004/05, 2005/06, 2006/07, 2007/08 and 2008/09.

Article 2

For the purposes of this Regulation, 'marketing year' shall mean the marketing year referred to in Article 2 of Regulation (EC) No 3072/95.

Article 3

1. Global tariff quotas set at zero duty for products of CN code 1006, expressed as husked rice equivalent, are opened for the seven marketing years commencing 2002/03, in accordance with the table set out in the Annex.

Those quotas shall apply only to imports originating in the countries which, pursuant to Annex I to Regulation (EC) No 2501/2001, benefit from the special arrangements for least developed countries.

⁽¹⁾ OJ L 346, 31.12.2001, p. 1.

⁽²⁾ OJ L 329, 30.12.1995, p. 18.

⁽³⁾ OJ L 62, 4.3.2002, p. 27.

⁽⁴⁾ OJ L 310, 28.11.2001, p. 10.

⁽⁵⁾ OJ L 253, 11.10.1993, p. 1.

⁽⁶⁾ OJ L 68, 12.3.2002, p. 11.

2. The conversion rate between husked rice and paddy rice, semi-milled or wholly-milled rice shall be the rate laid down in Article 1 of Commission Regulation No 467/67/EEC ⁽¹⁾.

For broken rice, quantities demanded shall be counted as such.

3. All Common Customs Tariff duties on imports under the quotas referred to in paragraph 1 shall be suspended.

Article 4

1. The provisions of Commission Regulation (EC) No 1291/2000 ⁽²⁾ concerning licences, shall apply to licences referred to in paragraph 2, save as otherwise provided in this Regulation.

2. Imports under the quotas referred to in Article 3(1) shall be conditional upon presentation of an import licence issued in accordance with this Regulation.

3. Applications for import licences shall be lodged with the competent authorities in the Member States in the first five working days of the marketing year concerned.

Each licence application shall be for a quantity that may not exceed the quantity available for the import of husked rice equivalent in the marketing year concerned.

4. The import licence application and the import licence shall contain the following information:

(a) in section 8, the name of the country of origin. The word 'yes' shall be marked with a cross;

(b) in section 20, the following indication:

'Rice originating in ... (name of the country referred to in Annex I to Regulation (EC) No 2501/2001) imported pursuant to Article 9(5) of Council Regulation (EC) No 2501/2001'.

5. The import licence shall contain, in section 24, the following information:

'Exemption from customs duty up to the quantity indicated in sections 17 and 18 of this licence (Regulation (EC) No 1401/2002)'.

6. By way of derogation from Article 10 of Commission Regulation (EC) No 1162/95 ⁽³⁾, the security for the import licences shall be EUR 46 per tonne.

7. Applications for import licences for the quota concerned shall be accompanied by:

(a) proof that the applicant is a natural or legal person who has carried out a commercial activity in the rice sector for at least 12 months and who is registered in the Member State in which the application is submitted,

(b) a written declaration by the applicant stating that he has submitted only one application in respect of the quota referred to in Article 3(1), or, if the case arises, in respect of the remaining quantity available for the additional tranche referred to in Article 5(4).

Where an applicant submits more than one application for an import licence, all his applications shall be rejected.

Article 5

1. Within two working days following the last day of the period referred to in Article 4(3), the Member State shall notify the Commission of the quantities for which import licences have been requested, broken down by eight-digit CN codes and by country of origin.

Member States shall also notify the name and addresses of the applicants, as well as the number and title of this Regulation.

Notifications shall be sent to the Commission by e-mail or by fax on the forms supplied by the Commission to the Member States for that purpose.

Notification shall be made even where no application has been submitted in a Member State: it shall state that no submission has been received within the period referred to in Article 4(3).

2. Within the 10 working days following the last day of the period referred to in paragraph 1, the Commission shall decide to what extent the applications may be accepted.

If the total of the quantities applied for exceeds the quantity of the relevant quota, the Commission shall set a percentage reduction coefficient to be applied to each application.

3. If the application of the percentage referred to in paragraph 2 results, in any Member State, in one or more quantities of less than 20 tonnes per application, the Member State concerned shall allocate the total of these quantities by drawing lots among applicants by composing one or more 20-tonne lots and, where applicable, the remaining lot.

4. If the total or parts of the quotas referred to in Article 3(1) are not covered by import licences issued, the remaining quantities may be covered by an additional tranche in February of the marketing year in question. The procedure under this Regulation for issuing import licences shall apply *mutatis mutandis*.

Article 6

1. Within two working days of the date of publication of the Commission's decision, import licences shall be issued for the quantities resulting from the application of Article 5.

⁽¹⁾ OJ 204, 24.8.1967, p. 1.

⁽²⁾ OJ L 152, 24.6.2000, p. 1.

⁽³⁾ OJ L 117, 24.5.1995, p. 2.

2. By way of derogation from Article 9 of Commission Regulation (EC) No 1291/2000, rights deriving under import licences shall not be transferable.

3. Import licences issued pursuant to this Regulation shall be valid as from the actual day of issue. By way of derogation from Article 6(1) of Regulation (EC) No 1162/95, import licences shall be valid until the end of the sixth month thereafter.

However, the period of validity of import licences may not extend beyond the end of the marketing year.

Article 7

1. Proof of the originating status of the imports under the quotas referred to in Article 3(1) shall be furnished by the certificate of origin Form A issued in accordance with the provisions of Articles 67 to 97 of Regulation (EEC) No 2454/93.

2. The certificate of origin Form A shall bear, in box 4:

- (a) the phrase 'Quota — Regulation (EC) No 1401/2002';
- (b) the date of loading of the rice in the exporting beneficiary country, and the marketing year in respect of which delivery is being made;
- (c) CN code 1006, broken down by eight-digit CN codes.

Article 8

Member States shall notify the Commission by fax or e-mail:

- (a) within two working days following issue of the import licence referred to in Article 6(1), the quantities, broken down by eight-digit CN codes, for which licences have been issued, specifying date, country of origin and name and address of holder;
- (b) within two working days following cancellation, if an import licence already issued is cancelled, the quantities, broken down by eight-digit CN codes, for which licences have been cancelled and the names and addresses of the holders of the cancelled licences;
- (c) on the last working day of the second subsequent month, the quantities, broken down by eight-digit CN codes, by country of origin actually entered for free circulation during each month.

The above information must be notified in the same way as, but separately from, information on other import licences in the rice sector.

A notification shall be sent even if no licence has been issued and/or no imports have taken place in the period concerned. The notification shall indicate the absence of any issued certificate and/or of any imports.

Article 9

This Regulation shall enter into force on 1 September 2002.

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

Done at Brussels, 31 July 2002.

For the Commission

Pascal LAMY

Member of the Commission

ANNEX

(Table referred to in Article 3(1))

Marketing year	Order No	Volume (tonnes of husked rice equivalent)
2002/03	09.4172	2 895
2003/04	09.4173	3 329
2004/05	09.4174	3 828
2005/06	09.4175	4 402
2006/07	09.4176	5 062
2007/08	09.4177	5 821
2008/09	09.4178	6 694

COMMISSION REGULATION (EC) No 1402/2002
of 31 July 2002
on the issue of import licences for frozen thin skirt of bovine animals

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 996/97 of 3 June 1997 on the opening and administration of an import tariff quota for frozen thin skirt of bovine animals falling within CN code 0206 29 91 ⁽¹⁾, as last amended by Regulation (EC) No 1266/98 ⁽²⁾, and in particular Article 8(3) thereof,

Whereas:

- (1) Article 1(3)(b) of Regulation (EC) No 996/97 fixes the amount of frozen thin skirt which may be imported on special terms in 2002/2003 at 800 tonnes.
- (2) Article 8(3) of Regulation (EC) No 996/97 lays down that the quantities applied for may be reduced. The applications lodged relate to total quantities which

exceed the quantities available. Under these circumstances and taking care to ensure an equitable distribution of the available quantities, it is appropriate to reduce proportionally the quantities applied for,

HAS ADOPTED THIS REGULATION:

Article 1

All applications for import licences made pursuant to Article 8 of Regulation (EC) No 996/97 are hereby met to the extent of 0,4940 % of the quantity requested.

Article 2

This Regulation shall enter into force on 1 August 2002.

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

Done at Brussels, 31 July 2002.

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

⁽¹⁾ OJ L 144, 4.6.1997, p. 6.

⁽²⁾ OJ L 175, 19.6.1998, p. 9.

COMMISSION REGULATION (EC) No 1403/2002**of 31 July 2002****determining the extent to which applications for import licences lodged in respect of subquota II for frozen meat of bovine animals, provided for in Regulation (EC) No 954/2002, can be accepted**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 954/2002 of 4 June 2002 opening and providing for the administration of a tariff quota for frozen meat of bovine animals covered by CN code 0202 and products covered by CN code 0206 29 91 (1 July 2002 to 30 June (2003) (1)), and in particular Article 12(4) thereof,

Whereas:

Article 12(2) of Regulation (EC) No 954/2002 fixes at 13 250 tonnes the quantity of subquota II in respect of which approved operators can lodge an application for an import licence based on imports in the period 15 to 17 July 2002. As the import licences applied for exceed the available quantity, a reduction

coefficient should be fixed in accordance with Article 12(4) of Regulation (EC) No 954/2002,

HAS ADOPTED THIS REGULATION:

Article 1

Each application for an import licence lodged in accordance with Article 12(2) of Regulation (EC) No 954/2002 in the period 15 to 17 July 2002 shall be accepted at a rate of 2,8816 % of the quantities applied for.

Article 2

This Regulation shall enter into force on 1 August 2002.

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

Done at Brussels, 31 July 2002.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

(1) OJ L 147, 5.6.2002, p. 8.

COMMISSION REGULATION (EC) No 1404/2002
of 31 July 2002
fixing the import duties in the rice sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Commission Regulation (EC) No 411/2002 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1503/96 of 29 July 1996 laying down detailed rules for the application of Council Regulation (EC) No 3072/95 as regards import duties in the rice sector ⁽³⁾, as last amended by Regulation (EC) No 2831/98 ⁽⁴⁾, and in particular Article 4(1) thereof,

Whereas:

- (1) Article 11 of Regulation (EC) No 3072/95 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation. However, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by a certain percentage according to whether it is husked or milled rice, minus the cif import price provided that duty does not exceed the rate of the Common Customs Tariff duties.
- (2) Pursuant to Article 12(3) of Regulation (EC) No 3072/95, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market or on the Community import market for the product.

- (3) Regulation (EC) No 1503/96 lays down detailed rules for the application of Regulation (EC) No 3072/95 as regards import duties in the rice sector.
- (4) The import duties are applicable until new duties are fixed and enter into force. They also remain in force in cases where no quotation is available from the source referred to in Article 5 of Regulation (EC) No 1503/96 during the two weeks preceding the next periodical fixing.
- (5) In order to allow the import duty system to function normally, the market rates recorded during a reference period should be used for calculating the duties.
- (6) Application of Regulation (EC) No 1503/96 results in import duties being fixed as set out in the Annexes to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import duties in the rice sector referred to in Article 11(1) and (2) of Regulation (EC) No 3072/95 shall be those fixed in Annex I to this Regulation on the basis of the information given in Annex II.

Article 2

This Regulation shall enter into force on 1 August 2002.

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

Done at Brussels, 31 July 2002.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 62, 5.3.2002, p. 27.

⁽³⁾ OJ L 189, 30.7.1996, p. 71.

⁽⁴⁾ OJ L 351, 29.12.1998, p. 25.

ANNEX I

Import duties on rice and broken rice

(EUR/t)

CN code	Duties ⁽¹⁾				
	Third countries (except ACP and Bangladesh) ⁽²⁾	ACP ⁽¹⁾ ⁽²⁾ ⁽³⁾	Bangladesh ⁽⁴⁾	Basmati India and Pakistan ⁽⁵⁾	Egypt ⁽⁶⁾
1006 10 21	(7)	69,51	101,16		158,25
1006 10 23	(7)	69,51	101,16		158,25
1006 10 25	(7)	69,51	101,16		158,25
1006 10 27	(7)	69,51	101,16		158,25
1006 10 92	(7)	69,51	101,16		158,25
1006 10 94	(7)	69,51	101,16		158,25
1006 10 96	(7)	69,51	101,16		158,25
1006 10 98	(7)	69,51	101,16		158,25
1006 20 11	264,00	88,06	127,66		198,00
1006 20 13	264,00	88,06	127,66		198,00
1006 20 15	264,00	88,06	127,66		198,00
1006 20 17	264,00	88,06	127,66	14,00	198,00
1006 20 92	264,00	88,06	127,66		198,00
1006 20 94	264,00	88,06	127,66		198,00
1006 20 96	264,00	88,06	127,66		198,00
1006 20 98	264,00	88,06	127,66	14,00	198,00
1006 30 21	(7)	133,21	193,09		312,00
1006 30 23	(7)	133,21	193,09		312,00
1006 30 25	(7)	133,21	193,09		312,00
1006 30 27	(7)	133,21	193,09		312,00
1006 30 42	(7)	133,21	193,09		312,00
1006 30 44	(7)	133,21	193,09		312,00
1006 30 46	(7)	133,21	193,09		312,00
1006 30 48	(7)	133,21	193,09		312,00
1006 30 61	(7)	133,21	193,09		312,00
1006 30 63	(7)	133,21	193,09		312,00
1006 30 65	(7)	133,21	193,09		312,00
1006 30 67	(7)	133,21	193,09		312,00
1006 30 92	(7)	133,21	193,09		312,00
1006 30 94	(7)	133,21	193,09		312,00
1006 30 96	(7)	133,21	193,09		312,00
1006 30 98	(7)	133,21	193,09		312,00
1006 40 00	(7)	41,18	(7)		96,00

⁽¹⁾ The duty on imports of rice originating in the ACP States is applicable, under the arrangements laid down in Council Regulation (EC) No 1706/98 (OJ L 215, 1.8.1998, p. 12) and amended Commission Regulation (EC) No 2603/97 (OJ L 351, 23.12.1997, p. 22).

⁽²⁾ In accordance with Regulation (EC) No 1706/98, the duties are not applied to products originating in the African, Caribbean and Pacific States and imported directly into the overseas department of Réunion.

⁽³⁾ The import levy on rice entering the overseas department of Réunion is specified in Article 11(3) of Regulation (EC) No 3072/95.

⁽⁴⁾ The duty on imports of rice not including broken rice (CN code 1006 40 00), originating in Bangladesh is applicable under the arrangements laid down in Council Regulation (EEC) No 3491/90 (OJ L 337, 4.12.1990, p. 1) and amended Commission Regulation (EEC) No 862/91 (OJ L 88, 9.4.1991, p. 7).

⁽⁵⁾ No import duty applies to products originating in the OCT pursuant to Article 101(1) of amended Council Decision 91/482/EEC (OJ L 263, 19.9.1991, p. 1).

⁽⁶⁾ For husked rice of the Basmati variety originating in India and Pakistan, a reduction of EUR/t 250 applies (Article 4a of amended Regulation (EC) No 1503/96).

⁽⁷⁾ Duties fixed in the Common Customs Tariff.

⁽⁸⁾ The duty on imports of rice originating in and coming from Egypt is applicable under the arrangements laid down in Council Regulation (EC) No 2184/96 (OJ L 292, 15.11.1996, p. 1) and Commission Regulation (EC) No 196/97 (OJ L 31, 1.2.1997, p. 53).

ANNEX II

Calculation of import duties for rice

	Paddy	Indica rice		Japonica rice		Broken rice
		Husked	Milled	Husked	Milled	
1. Import duty (EUR/tonne)	(¹)	264,00	416,00	264,00	416,00	(¹)
2. Elements of calculation:						
(a) Arag cif price (EUR/tonne)	—	207,32	239,46	264,36	265,87	—
(b) fob price (EUR/tonne)	—	—	—	233,86	235,37	—
(c) Sea freight (EUR/tonne)	—	—	—	30,50	30,50	—
(d) Source	—	USDA and operators	USDA and operators	Operators	Operators	—

(¹) Duties fixed in the Common Customs Tariff.

COMMISSION REGULATION (EC) No 1405/2002
of 31 July 2002
determining the world market price for unginned cotton

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Protocol 4 on cotton, annexed to the Act of Accession of Greece, as last amended by Council Regulation (EC) No 1050/2001 ⁽¹⁾,

Having regard to Council Regulation (EC) No 1051/2001 of 22 May 2001 on production aid for cotton ⁽²⁾, and in particular Article 4 thereof,

Whereas:

- (1) In accordance with Article 4 of Regulation (EC) No 1051/2001, a world market price for unginned cotton is to be determined periodically from the price for ginned cotton recorded on the world market and by reference to the historical relationship between the price recorded for ginned cotton and that calculated for unginned cotton. That historical relationship has been established in Article 2(2) of Commission Regulation (EC) No 1591/2001 of 2 August 2001 ⁽³⁾. Where the world market price cannot be determined in this way, it is to be based on the most recent price determined.
- (2) In accordance with Article 5 of Regulation (EC) No 1051/2001, the world market price for unginned cotton is to be determined in respect of a product of specific characteristics and by reference to the most favourable offers and quotations on the world market among those

considered representative of the real market trend. To that end, an average is to be calculated of offers and quotations recorded on one or more European exchanges for a product delivered cif to a port in the Community and coming from the various supplier countries considered the most representative in terms of international trade. However, there is provision for adjusting the criteria for determining the world market price for ginned cotton to reflect differences justified by the quality of the product delivered and the offers and quotations concerned. Those adjustments are specified in Article 3(2) of Regulation (EC) No 1591/2001.

- (3) The application of the above criteria gives the world market price for unginned cotton determined hereinafter,

HAS ADOPTED THIS REGULATION:

Article 1

The world price for unginned cotton as referred to in Article 4 of Regulation (EC) No 1051/2001 is hereby determined as equalling EUR 24,238/100 kg.

Article 2

This Regulation shall enter into force on 1 August 2002.

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

Done at Brussels, 31 July 2002.

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

⁽¹⁾ OJ L 148, 1.6.2001, p. 1.

⁽²⁾ OJ L 148, 1.6.2001, p. 3.

⁽³⁾ OJ L 210, 3.8.2001, p. 10.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 7 May 2002

on aid allegedly granted by Germany to RAG AG in connection with the privatisation of Saarbergwerke AG

(notified under document number C(2002) 1810)

(Only the German text is authentic)

(Text with EEA relevance)

(2002/631/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 4(c) thereof,

Having regard to Commission Decision 3632/93/ECSC of 28 December 1993 establishing Community rules for State aid to the coal industry ⁽¹⁾,

Having given notice to the parties concerned to submit their comments in accordance with Article 88 of the ECSC Treaty ⁽²⁾ and having regard to those comments,

Whereas:

the trade unions of the coalmining and electricity sectors (hereinafter referred to as the 'coal compromise').

I. PROCEDURE

(1) By letter of 13 November 1997, RAG AG (hereinafter referred to as 'RAG') notified the Commission under Article 66(1) of the ECSC Treaty that it intended to acquire the entire share capital of Saarbergwerke AG and Preussag Anthrazit AG.

(2) By letter of 9 March 1998, Germany notified the Commission under Article 67 of the ECSC Treaty of the planned privatisation of Saarbergwerke AG through its sale to RAG for a token price. This letter indicated that the privatisation was an integral part of an agreement concluded on 13 March 1997 between the German Federal Government, the Governments of North Rhine Westphalia and Saarland, the coalmining industry and

(3) Saarbergwerke AG (hereinafter referred to as 'Saarbergwerke') was a public sector company whose main activities included coal extraction in Germany, production of coke, power generation, district heating, environmental protection, trade and services (in particular trading in coal, oil transport and oil distribution) and rubber manufacturing. Coal extraction has traditionally been referred to as the company's 'black' area of activity and the other activities constitute the 'white' area of activity. Saarbergwerke was jointly owned by the Federal Republic of Germany (74 %) and Saarland (26 %). It operated three coalmines, with a total production in 1997 of 7,3 million tce ⁽³⁾.

(4) The coal compromise, in which new guidelines were laid down for coal policy for the period to 2005, provided for a steady reduction in annual production from 47 million tce in 1997 to 42 million tce in 2000 and 30 million tce in 2005 and a reduction in the number of production units from 17 to 12. These 1997 data should be corrected downwards. Coal production in 2000, for which Germany transmitted estimates when it notified the Commission of State aid, will total about 35 million tce and in 2005 production is unlikely to exceed 26 million tce.

⁽¹⁾ OJ L 329, 30.12.1993, p. 12.

⁽²⁾ OJ C 101, 8.4.2000, p. 3.

⁽³⁾ tce: tonnes of coal equivalent.

- (5) In the coal compromise, the total State aid package for the period 1997 to 2005 was fixed at DEM 68 billion, with a declining scale for the level of aid: starting with DEM 10,5 billion in 1997, the aid ceiling for 2005 was put at DEM 5,5 billion. The grant of a total sum of DEM 2,5 billion was made subject to RAG taking over Saarbergwerke.
- (6) On 3 April 1998, the Federal Government, the Government of Saarland and the RAG concluded an agreement under which RAG took over Saarbergwerke's entire share capital by acquiring the shares held by the Federal Government and the Saarland Government. The selling price was fixed at DEM 2, namely DEM 1 for the Federal Government's shares and DEM 1 for those held by Saarland. It was further agreed to merge the companies' coalmining activities within a single company, Deutsche Steinkohle AG, which is wholly controlled by RAG.
- (7) By decision of 29 July 1998, the Commission authorised, under Article 66 of the ECSC Treaty, the acquisition of Saarbergwerke and Preussag Anthrazit by RAG, following a commitment by RAG to divest the coal import business of Saarbergwerke and to separate the sale of coal produced in Germany from the sale of imported coal⁽⁴⁾. The Commission specifically indicated that the aforementioned decision only concerns the 'application of Article 66 of the ECSC Treaty and in no way prejudices any decision the Commission may take in application of other articles of the EC or ECSC Treaties and in particular any decision relating to State aids'.
- (8) The merger of RAG and Saarbergwerke took effect on 1 October 1998. For accounting reasons, however, provision was made for retrospective effect from 1 January 1998.
- (9) On 29 September 1998, the United Kingdom RJB Mining company (now known as 'UK coal') applied to the Court of First Instance of the European Communities, asking it to annul the Commission's decision of 29 July 1998 authorising the merger of RAG, Saarbergwerke and Preussag Anthrazit on the grounds that in its analysis of the merger the Commission had not verified whether the selling price included State aid. RJB Mining took the view that it can be concluded from the information which Germany transmitted to the Commission that State aid of the order of DEM 1 billion to RAG was inherent in the sale of Saarbergwerke.
- (10) By judgment of 31 January 2001 in Case T-156/98, *RJB Mining v Commission*, the Court of First Instance annulled the Commission's decision of 29 July 1998⁽⁵⁾. According to Court, the Commission had failed to verify the selling price and in particular to examine the extent to which the financial support that may be connected with a purely symbolic selling price might have strengthened RAG's financial power and thereby also its economic power. On 12 and 19 April 2001, Germany and RAG appealed against the judgment⁽⁶⁾.
- (11) The Commission asked a firm of [...] (*) consultants for a study examining what effects the merger might have on RAG's financial power. In its study, [...] focused in particular on the way in which Saarbergwerke's accounts had been consolidated with those of RAG.

II. DESCRIPTION

II.1. Selling price

- (12) In its letter of 9 March 1998 notifying the Commission of the planned privatisation of Saarbergwerke, Germany argued that the risks connected with the takeover of the Saarbergwerke's mining sector justified selling the company for a token price. According to Germany, the Government had made a commitment in the coal compromise only to subsidise coal production up to 2005. The expiry of the ECSC Treaty and of the provisions on State aid to coalmining under Decision 3632/93/ECSC of 23 July 2002 allegedly created considerable uncertainty for the future of coalmining. Germany argued that the selling price therefore largely ensued from the imponderabilities of future national and Community decisions on the future of German coalmining.
- (13) Germany also stressed the significant risks connected with fluctuations in the price of coal on the world market, in particular as these prices served as the reference for calculating subsidies per tonne of coal. Any reduction in coal prices on international markets that was not offset by a rise in productivity would lead to an increase in subsidy per tonne of coal. However, as a ceiling had been imposed on the level of aid that Germany could grant each year, a drop in world coal prices would inevitably oblige the company to reduce its production as it would otherwise be unable to continue to cover its operating losses from State aid. Apart from the fact that it would be difficult to adapt production in the short term, a decline in coal production would also lead to an increase in production costs.

⁽⁴⁾ Case IV/ECSC.1252 — RAG/Saarbergwerke/Preussag Anthrazit.

⁽⁵⁾ [2001] ECR II-337.

⁽⁶⁾ Cases C-157/01 P and C-169/01 P.

(*) Confidential information.

- (14) Germany also pointed to various obligations that had been imposed on RAG when it took over Saarbergwerke. For instance, RAG had to cover losses in the coal sector up to 2000 and between 2001 and 2005 transfer DEM 200 million each year from the 'white' to the 'black' sector. This obligation, laid down in the coal compromise, was already applicable prior to the compromise in respect of RAG's existing coal and non-coal activities, and consequently it was not connected with the merger, nor was it dependent on it. For instance, German coal companies were until 1997 obliged to use 75 % of their profits from the 'white' sector to cover losses from mining activities. Moreover, RAG was subject to additional obligations — in particular to retain activities in Saarbergwerke's 'white' sector and include its own environmental activities in Saarbergwerke, which according to Germany's arguments constrained the company's economic freedom to act.
- (15) In view of all these facts, it would have been difficult to find a buyer for Saarbergwerke. In this connection, Germany stresses, in particular in its letter of 15 April 1998, that attempts had been made since 1991 to find a buyer for the company.
- (19) In the report of 9 July 1998 updating valuations for Saarbergwerke, [...] described the value of mining sector as unquantifiably negative on account of the uncompetitiveness of mining activities. The report also referred to unquantifiable political risks from 2002 in connection with the expiry of the ECSC Treaty and from 2005 because of the absence of political obligations for Germany with regard to the level and duration of subsidies after that date.
- (20) In the light of all the information at its disposal, the Commission believed that various elements led to the conclusion that the privatisation of Saarbergwerke involved non-notified State aid of DEM 1 billion. Under Article 88 of the ECSC Treaty, the Commission invited Germany by letter of 4 February 2000 to submit comprehensive information, in particular a detailed economic, business and financial valuation of Saarbergwerke and an assessment of the risks involved in acquiring the company. The Commission's letter was published in the *Official Journal of the European Communities*. At the same time, the Commission also invited interested parties to submit their views ⁽⁸⁾.

II.2. Letter of 4 February 2000 inviting comments

- (16) The information which Germany sent to the Commission by letter of 30 June 1998 in connection with the merger includes parts of a report on the consolidation plan for Saarbergwerke. The report had been compiled in January 1996 by Roland Berger & Partners at the German Government's request in its capacity of main shareholder (majority partner) in Saarbergwerke.
- (17) By letter of 10 July 1998, Germany transmitted to the Commission parts of an evaluation of March 1996 by Roland Berger & Partners containing comprehensive solutions for the German coal industry and a brief report of 9 July 1998 on updating valuations for Saarbergwerke. This report had been compiled for the German Government by [...], following a Commission request for further information to enable it to investigate the merger.
- (18) The information which Germany transmitted to the Commission did not include any figures on the value of the 'white' sector. However, VASA Energy GmbH & Co. KG, when it instituted proceedings before the Court of First Instance of the European Communities ⁽⁹⁾, submitted pages from the January 1996 report by Roland Berger & Partners which Germany had not submitted to the Commission. In this part of the report, Roland Berger & Partners valued the 'white' sector at about DEM 1 billion.
- (21) In its letter, the Commission pointed out that if it considered that the sale of Saarbergwerke included non-notified aid to the coal sector, it would examine the aid in the context of Article 4(c) ECSC and in the light of Decisions 98/687/ECSC ⁽⁹⁾, 1999/270/ECSC ⁽¹⁰⁾ and 1999/299/ECSC ⁽¹¹⁾ taken in accordance with Decision 3632/93/ECSC, and of the notification received for the year 2000. The Commission further announced that: 'Should the Commission find, following receipt and examination of the reply from the Federal Republic of Germany, that the sale of Saarbergwerke AG included non-notified aid to the non-coal activities, then this will be examined in conformity with the State aid rules laid down in the Treaty establishing the European Community.'

III. GERMANY'S COMMENTS

- (22) In response to the Commission's letter, Germany transmitted the information requested and stated its position on the token price paid by RAG for acquiring Saarbergwerke. With its letter, dated 8 May 2000, Germany enclosed various documents: an expert report by [...] of 2 May 2000 including a valuation of Saarbergwerke on the basis of discounted cash flows and several scenarios for the sale and winding-up of Saarbergwerke's activities (the winding-up scenario concerns in particular Saarbergwerke's coal activities which reportedly involved very high risks and might have to be discontinued); an expert opinion from [...] of 29 February 2000 which

⁽⁸⁾ See footnote 2.

⁽⁹⁾ OJ L 324, 2.12.1998, p. 30.

⁽¹⁰⁾ OJ L 109, 27.4.1999, p. 14.

⁽¹¹⁾ OJ L 117, 5.5.1999, p. 44.

⁽⁷⁾ Case T-29/99, *Vasa Energy v Commission* (ruling not published).

included a valuation of Saarbergwerke in accordance with the gross rental method; an expert opinion of 29 April 2000 on the procedure adopted to determine the company value of Saarbergwerke; and a letter from Roland Berger & Partners dated 14 April 2000 once again sketching the background and views expressed in their statement of January 1996, in particular the irrelevance of the sum of DEM 1 billion mentioned there.

- (23) According to Germany, the privatisation of Saarbergwerke through its sale to RAG for the sum of DEM 2 did not include an aid component. Rather, from the viewpoint of the public authorities the sale of this company 'as is', i.e. without any prior financial consolidation, — a company burdened with substantial business risks — constitutes an optimum economic result. The proprietors of Saarbergwerke, i.e. the German Federal Government and the Government of Saarland, are said to have behaved like sellers acting in accordance with free-market conditions and seeking to optimise revenue from the sale.
- (24) The expert reports which [...] compiled for Germany confirm that at the time of privatisation Saarbergwerke had a negative value overall. On account of the fact that the mining sector was structurally in deficit, [...] calculated a negative value of DEM [...] million for the company as a whole. Winding up the mining sector was not a plausible alternative as the liquidation costs, which [...] estimated to represent a negative overall value of DEM [...] billion, would have greatly exceeded the expected revenue from a sell-off of the 'white' sector. Nor would a break-up of Saarbergwerke through the sale of the various company components on balance have led to a positive value as the coal sector as such would have been unsellable and hiving off the energy sector would in particular have led 'to the destruction of the economic values' of this sector. Germany's argumentation is based on the close economic linkage between the various components of the company, in particular that between the power generation sector and the coal sector.
- (25) Germany's position is that by selling Saarbergwerke to RAG in one package at the price of DEM 2 it had chosen the economically most sensible formula.

IV. OPINIONS OF THIRD PARTIES

- (26) After the Commission's letter to Germany inviting it to submit comments had been published in the *Official Journal of the European Communities*, the Commission received two opinions from third parties. The Permanent Representation of the United Kingdom to the European Union sent a letter dated 5 May 2000 in which the United Kingdom gave its support on all points of the analysis which the Commission had set forth in its published letter.
- (27) RJB Mining (now UK Coal) also submitted an opinion, in a letter of 5 May 2000. According to RJB Mining, the

conditions for the RAG/Saarbergwerke merger are not transparent, in particular with regard to fixing the selling price. Breaking up the company and selling off the individual company components separately, moreover, would have made it possible through a tendering procedure to attain a higher price than the token sum paid by RAG.

V. EVALUATION

- (28) In order to ascertain whether the RAG/Saarbergwerke merger involved State aid, the Commission first of all examined how a private company acting in accordance with free-market conditions would have behaved. On the basis of this criterion, it can be assessed whether the German Federal Government and the Saarland Government when selling Saarbergwerke for the sum of DEM 2 waived part of the revenue they could have obtained if Saarbergwerke had been sold in its entirety. Next, the Commission examined whether, as indicated in recitals 55 to 59, the sale of the 'white' and 'black' sectors, irrespective of the valuation of the company as a whole, was tantamount to aid flowing from the former (whose value was positive) to the latter (whose value was negative).

V.1. Value of the 'black' sector

- (29) Germany, mainly basing its argument on [...]s report, arrives at a negative continuation value of DEM [...] million for this sector and a negative liquidation value of DEM [...] billion. Germany takes the view that the sale of the entire company to RAG for DEM 2 was thus an economically highly sensible measure. [...] have calculated a negative value of DEM [...] million for all the activities of Saarbergwerke taken together, in which the coal sector accounts for this negative result (– DEM [...] million for the 'black' sector and + DEM [...] million for the 'white' sector).
- (30) In 1997 Saarbergwerke's mining activities comprised three sites for coal extraction (Ensdoft, Warndt/Luisenthal and Göttelborn/Reden) and a coking plant (Fürstenhausen) in Völklingen which, however, ceased operating in June 1997 when Saarbergwerke and RAG merged. In 1997 the output of the Ensdoft, Warndt/Luisenthal and Göttelborn/Reden mines was 2,8 million tce, 2,4 million tce and 2,1 million tce respectively. In this sector worked 12 697 of a total of 18 000 employees of Saarbergwerke.
- (31) In Decision 1999/270/ECSC on German aid to the coal industry under the coal compromise, the Commission declared that the restructuring of the Saarbergwerke production units would lead to a further reduction in production and in particular to the closure of the Göttelborn/Reden mine in 2000 on account of the considerable geological difficulties at this mine, making it impossible to continue mining there.

- (32) According to information supplied by Germany in its statements on State aid to coalmining, production costs at the Warndt/Luisenthal mine were DEM [...]tce in 1998 compared with an average selling price of coal of DEM [...]tce in the same year as estimated by Germany (i.e. production costs amounted to [...] times the selling price of coal). The Ensldorf mine was considered to have the lowest deficit in Germany, with production costs of DEM [...]tce in 1998 which was still more than [...] times the selling price of coal.
- (33) At the time Saarbergwerke was privatised, the Ensldorf and Warndt/Luisenthal mines were receiving operating aid authorised by the Commission in particular through Decision 98/687/ECSC. On the basis of information supplied by Germany, the Commission assumed that both mines were able to further improve its economic viability by reducing production costs and thereby meet the criteria laid down in Article 3 of Decision 3632/93/ECSC.
- (34) According to the judgment of 9 September 1999 of the Court of First Instance of the European Communities in Case T-110/98 *RJB Mining v Commission* ⁽¹²⁾, the provisions of Article 3 of Decision 3632/93/ECSC do not require that the undertaking in receipt of aid achieve viability by the end of a fixed period. They require only that economic viability 'improve'. According to the Court, the reason for that 'open-ended formulation is the economic reality on which the scheme of State aid to the Community's coal industry is based, namely the structural uncompetitiveness faced by that industry because most of its undertakings remain uncompetitive in relation to imports from third countries ... It follows that improvement in the economic viability of a given undertaking necessarily means no more than a reduction in the level of its non-profitability and its non-competitiveness.'
- (35) Even if these mines improved their economic viability and came closer to meeting the criteria for the grant of operating aid within the meaning of Article 3 of Decision 3632/93/ECSC, the fact would remain that their prospects for attaining the viability threshold would still be slight. Decision 1999/270/ECSC provides that '... it can be concluded that a substantial reduction in aid can largely be achieved by means of measures to reduce mining activity.' The text goes on to point out that 'Even if the average production costs in the German coal industry have fallen slightly, taking account of Article 3(3) of Decision 3632/93/ECSC, the production costs, expressed at 1992 constant prices, are still too high as they should be DEM [...] per tce in 2002 as compared with DEM [...] per tce in 1992.'
- (36) Given the geological difficulties inherent in coal deposits in Germany and the production costs connected with extraction, it is clear that the coal produced by these units cannot compete with coal imported from third countries and will not be competitive in the future. Despite drastic restructuring, modernisation and rationalisation in the coal industry intended to enhance competitiveness, German coal production is and remains uncompetitive compared with imports from third countries, even if there is a discernible rise in productivity, progressive closure of the least profitable units and drastic cuts in employment in the sector.
- (37) This analysis is confirmed by the way the coal sector developed in the years following the RAG/Saarbergwerke merger. While the coal compromise envisaged coal production of 37 million tce in 2002, the output-reducing measures connected with the chronic uncompetitiveness of the sector will probably mean that output in Germany in 2002 will be less than 29 million tce. The figure of 35 million tce estimated for 2000 is less than that envisaged for 2002 in the coal compromise.
- (38) When on 22 November 2000 Germany notified aid to the coal industry for 2002, it stated that further measures for reducing mining activity would be required, involving additional closures. In Commission Decision 2001/361/ECSC ⁽¹³⁾, the Commission took note that this reduction in capacity marked the continuation of the extensive measures for restructuring, rationalisation, modernisation and reduction of mining activity that had been taken since the coal compromise of 1997.
- (39) The study which [...] carried out for the Commission confirms that there was a high risk involved for RAG in taking over Saarbergwerke's coal sector. This risk concerns in particular the steady diminution of aid, the amounts of which are laid down in the coal compromise, the uncertainties about the period after 2005, as the coal compromise expires at the end of 2005, the fact that State aid to the coal industry has to be authorised by the Commission, the uncertainty about the level of coal prices on the world market, and the difficulty of adjusting production so as to optimise the use of State aid. The [...] study reaches the conclusion that these risks, although difficult to quantify, will most probably have a negative impact for RAG as it assumed considerable risks in buying Saarbergwerke without a clear quid pro quo. At the time of the merger, the expiry of the ECSC Treaty and of the rules on State aid to the coal industry laid down in Decision 3632/93/ECSC on 23 July 2002 were to be considered additional risks for RAG.

⁽¹²⁾ [1999] ECR II-2585.

⁽¹³⁾ OJ L 127, 9.5.2001, p. 55.

- (40) In this connection, the Commission refers to the fact that the valuation of the coal sector by [...] is based on the assumption that after 2005, that is, after the expiry of the coal compromise, no more coal will be produced in Germany. Consequently, there is considerable doubt with regard to the future of the sector in Germany after 2005.
- (41) Notwithstanding all the difficulties to accurately determine the value of the coal sector, it is concluded from the above observations that this sector has a negative value, in spite of the subsidies which Germany has paid from year to year to cover operating losses. The absence of any prospect for competitiveness at the time of the merger has been confirmed since. Accordingly, it can safely be assumed that [...]’s estimation that there is a negative continuation value of DEM [...] million is realistic.

V.2. Value of the ‘white’ sector

- (42) According to [...], the electricity generation sector has a negative value of DEM [...] million. This value has been determined on the basis of two hypotheses: on the one hand, the sector is closely linked with the Saarland coal industry and, on the other hand, coal production will be abandoned after 2005. Because of this close link between the mining sector and electricity generation, the value of the electricity sector is strongly dependent on the availability of coal produced in Saarland. At the time when Saarbergwerke was sold, Germany gave a commitment only to cover operating losses in the coal industry up to 2005. As there is no guarantee of aid being granted after that and as the German coal industry suffers from chronic uncompetitiveness, [...] believe that it cannot be excluded that after 2005 the coal industry will simply disappear. Disappearance of the German coal industry would oblige power stations to use imported coal, which according to data supplied by Germany would entail significant additional costs, in particular for transporting coal from transshipment ports.
- (43) The hypothetical disappearance of the coal industry after 2005 would therefore completely neutralise the value of electricity generation. If coal continues to be produced in Germany after 2005, however, [...] estimate the value of electricity generation positively at DEM [...] million.
- (44) [...] have valued the activities in the ‘white’ sector other than electricity generation as follows: (a) district heating: DEM [...] million; (b) environment: DEM [...] million; (c) trade and services: DEM [...] million; (d) rubber: DEM [...] million.
- (45) [...] have analysed performance in the ‘white’ sector on the one hand and the proceeds from the sale of particular segments of this sector after the merger, on the other. It found that the profitability of these activities between 1992 and 1996 was very low [...]. Accordingly,

there is no evidence that activities in the ‘white’ sector of Saarbergwerke would have given RAG an added value. Apparently, the sale of particular areas of activity after the merger incurred losses totalling DEM [...] million.

- (46) In light of these observations, the overall value of the ‘white’ sector can be evaluated as mildly positive. The [...] analysis shows that the value estimated by [...] is realistic. This value is assessed to lie between DEM [...] million and DEM [...] million in light of the hypothesis concerning the future of the coal industry after 2005 and its impact on the value of the power generation sector.

V.3. Sale of the company

- (47) The arguments adduced by Germany in its letter of 8 May 2000 are based on the hypothesis that the only option was to sell Saarbergwerke in its entirety and that this package had a negative value. The positive value of particular components of the company’s ‘white’ sector could not have offset the substantially negative value of the ‘black’ sector, whether the sector were continued or wound up. Given the chronic deficit of Saarbergwerke’s coal sector, Germany’s best option was to sell the company ‘as is’ for the sum of DEM 2.
- (48) Germany points out that a break-up of Saarbergwerke by selling the various components of the company separately would not have led to a positive value.
- (49) An additional factor is that the various areas of activity within the Saarbergwerke group were not structurally separated. This means that if one or more loss-making sectors — in particular the coal sector — with a negative residual value had been wound up, it would have had to be offset by the positive value accruing from the sale of other parts of the company. The wind-up of the coal-mining sector, whose negative value [...] have estimated to amount to DEM [...] billion, would thus have largely absorbed the proceeds from the sale of profitable company sectors.
- (50) An analysis of RAG’s accounts confirms that the take-over of Saarbergwerke has not led to a positive value. At the end of the operation, rather, there was a negative result of DEM [...] million. This negative sum results in particular from accounting adjustments made after the merger. In accordance with general accounting principles, many of these adjustments should have been made by Saarbergwerke prior to the merger. Other adjustments were justified by the fact that Saarbergwerke applied different accounting principles from RAG. According to [...], some of these adjustments were set too high, though only by DEM [...] million. [...] concludes that no positive value could have accrued for RAG from the sale of Saarbergwerke in 1998.

V.4. The alleged DEM 1 billion value

- (51) According to Roland Berger & Partners' report of March 1996, the value of the 'white' sector could be estimated at about DEM 1 billion. However, this report was not compiled as a valuation in view of the privatisation of Saarbergwerke. Germany, in its letter of 8 May 2000, indicates that this amount is based on the hypothesis that the requisite restructuring measures are actually taken, which was not the case when the company was privatised. The DEM 1 billion value was therefore not based on a valuation of the company 'as is' but anticipated the restructuring measures which Roland Berger & Partners considered necessary. Accordingly, the value specified was a 'restructuring value'.
- (52) The value of the 'white' sector estimated by Roland Berger & Partners in their report of March 1996 has in fact not been confirmed by any other report, neither by [...] or [...] nor by the [...] study carried out for the Commission.
- (53) The letter of 4 February 2000 in which the Commission asked Germany to submit comprehensive information and according to which the privatisation of Saarbergwerke might have involved DEM 1 billion in State aid was first and foremost based on the fact that all of the measures provided for in the coal compromise, in particular the merging of the coalmining sectors of Saarbergwerke and Preussag Anthrazit within RAG, were intended to ensure supra-regional rationalisation on the one hand and to cover the adaptation process by an industrial agreement on the other hand with a view to enhancing the efficiency of the coal industry ensuring its survival beyond 2005.
- (54) Unfortunately, the restructuring of coalmining after the privatisation of Saarbergwerke in 1998 did not lead to a discernible improvement of the economic viability of this sector. The restructuring efforts, which have led to far more extensive mine closures and production cuts than envisaged in the coal compromise, have failed to improve the sector's competitiveness. Under these circumstances, the long-term survival of Saarland's coal industry is highly questionable.

V.5. Examination of the sale in the light of Commission practice vis-à-vis cluster sales

- (55) As expounded in recitals 20 and 21, the Commission was of the opinion that the sale for the sum of DEM 2 might be tantamount to State aid as it included assets with a potentially highly positive value. Even if the low price, viewed in the light of all the business sectors sold, was justified, the Commission normally assumes in cases in which authorities demand that separate business components be sold together that the sale is not effected without specific conditions and, accordingly, may

include State aid. In particular where a business sector with a negative value and another one with a positive value are to be sold off together, it might be assumed that the sale involves State aid for the former, and the same applies to a separate sale of the business sector at a negative price.

- (56) An example of this strategy is the Commission's letter to Germany of 8 December 1992 (SG(92)D/17613), in which the Commission notes that 'in cases where such companies have not historically grown together, the Commission cannot take the view that an artificial merger of companies meets its requirement that the offers must not be subject to conditions.' This argument was adduced in particular in the sale of the Lintra group (aid N 49/95) ⁽¹⁴⁾. This view can be justified in particular by referring to the likely behaviour of an investor who acts in accordance with free-market conditions and is otherwise in the same situation, who would dissolve a company with negative value rather than waive the proceeds from the sale of a company with positive value.
- (57) The Commission has verified whether these arguments apply to Saarbergwerke's case. It has found (see recital 49) that an investor acting in accordance with free-market conditions who was in the same position as the owners of Saarbergwerke would have had no way of preventing the positive value of the 'white' sector from being drained by the negative value of the 'black' sector as Saarbergwerke's coal sector was not constituted as a separate legal person. The company's structure shows that the coal sector formed part of the Saarbergwerke AG holding company.
- (58) Nevertheless, the Commission is of the opinion that this is not a wholly convincing analysis. Given the lack of profitability and the substantial potential debts of the 'black' sector, whose survival fully depends on State aid, it seems questionable whether an investor acting in accordance with free-market conditions would have allowed assets with a strongly positive value to go unprotected. Such an investor can therefore not be simply referred to as a yardstick for comparison.

- (59) On the other hand, Germany has also indicated that there are historical and commercial links between Saarbergwerke's various business components, in particular between the coal and electricity generation sectors, even though in electricity generation German coal has been steadily replaced by imported coal (from 1992 to 1998, German coal dropped from 72 million tce to 47 million tce and this trend still continues, with less than 35 million tce in 2000). In the 1998 merger there was at least a certain link between Saarbergwerke's areas of activity, and if German coal had in the short term been replaced by imported coal this link could have led to

⁽¹⁴⁾ OJ C 168, 12.10.1996, p. 10.

difficulties. In view of all these facts, the Commission has reached the conclusion that the arguments on cluster sales have no relevance for the Saarbergwerke case. However, it wishes to point out that for such sales in clear-cut cases (in particular if there are no commercial or historical links between business sectors and if they belong to separate companies), the Commission will continue to use these arguments in the manner set down in recitals 55 and 56.

VI. CONCLUSION

- (60) The privatisation of Saarbergwerke through its sale to RAG at the price of DEM 2 included no aid component. Account being taken of the considerable business risks involved, the sale of the company 'as is', i.e. without any prior financial consolidation measures, was an operation in which the public authorities behaved like a seller acting in accordance with free-market conditions and seeking to optimise proceeds from the sale.
- (61) Saarbergwerke's lack of positive value is connected with the coal sector which suffers from a chronic deficit and has a very uncertain future. The lack of positive value is confirmed by three reports, one of which was compiled by an audit company at the Commission's request.

- (62) According to the report compiled by [...], the continuation value of Saarbergwerke must be estimated at a negative value of DEM [...] million, i.e. a negative value of DEM [...] million for the 'black' sector and a positive value of DEM [...] million for the 'white' sector,

HAS DECIDED AS FOLLOWS:

Article 1

The privatisation of the Saarbergwerke AG company through its sale to the RAG AG company at the price of DEM 2 involves no State aid.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 7 May 2002.

For the Commission
Loyola DE PALACIO
Vice-President

COMMISSION DECISION
of 12 March 2002
on the State aid which Germany is planning to implement for Flender Werft AG, Lübeck

(notified under document number C(2002) 913)

(Only the German text is authentic)

(Text with EEA relevance)

(2002/632/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 regard to Council Regulation (EC) No 1540/98 of 29 June 1998 establishing new rules on aid to shipbuilding ⁽¹⁾,

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

Whereas:

I. PROCEDURE

- (1) By letter dated 20 October 2000, Germany notified the Commission of the aid that it intended to grant to Flender Werft, Lübeck. It provided the Commission with further information by letters dated 15 December 2000 and 15 February 2001.
- (2) By letter dated 18 April 2001, 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 the aid.
- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽²⁾. The Commission called on interested parties to submit their comments.
- (4) The Commission received no comments from interested parties.

II. DETAILED DESCRIPTION OF THE AID

- (5) Germany plans to grant regional investment aid to Flender Werft AG, Lübeck, under the approved joint Federal Government/*Länder* scheme for improving regional economic structures (*Gemeinschaftsaufgabe: Verbesserung der regionalen Wirtschaftsstruktur*) ⁽³⁾. The aid is to be for investment in a new floating dock with a

lifting capacity of 20 000 tonnes. The yard would build the dock itself. The cost of the dock would be EUR 16,4 million and the amount of aid, EUR 869 000.

- (6) The new dock is to replace the former floating dock, which had a lifting capacity of 16 000 tonnes. The old dock was sold and delivered to the new owner in February 2001. The proceeds of EUR 9,2 million have been used to finance the new dock.
- (7) The recipient of the aid is the shipyard Flender Werft AG in Lübeck, Schleswig-Holstein, an area assisted under Article 87(3)(c) of the EC Treaty. The yard builds seagoing ships and currently has 780 employees. Besides shipbuilding, it also carries out ship repair. On the basis of man hours, ship repair represents around 5 % of its work. The yard also builds floating docks.
- (8) In its decision initiating the procedure the Commission noted that, under Article 7 of Council Regulation (EC) No 1540/98 of 29 June 1998 establishing new rules on aid to shipbuilding ⁽⁴⁾ (hereinafter referred to as the 'Shipbuilding Regulation'), aid may be allowed only for investment in upgrading or modernising yards with the objective of improving the productivity of existing installations. It was the Commission's opinion that the scope of Article 7 was restricted to the upgrading of existing installations in order to improve productivity and thereby boost the competitiveness of the yards concerned. The Commission therefore doubted whether replacing the old floating dock with a lifting capacity of 16 000 tonnes by a new one with greater lifting capacity could constitute modernisation or upgrading within the meaning of Article 7 of the Regulation.

III. COMMENTS FROM GERMANY

- (9) Germany states that the ever increasing traffic in the Baltic sea makes it necessary to have sufficient capacity for ship repair in Lübeck, Germany's largest Baltic port. Consequently, Flender Werft has concentrated in particular on ship repair and has maintained the necessary

⁽¹⁾ OJ L 202, 18.7.1998, p. 1.

⁽²⁾ OJ C 191, 7.7.2001, p. 15.

⁽³⁾ 29th outline plan, State aid E 3/2001; acknowledgement of appropriate measures communicated to Germany by letter D/50559 of 8 February 2001.

⁽⁴⁾ See footnote 1.

repair capacity over many years. The old floating dock of 16 000 tonnes has been in use since 1986 but has increasingly proved to be too small for current requirements. When construction of the large ferries which are soon to start operating in the Baltic is complete, there will be at least 16 ships that cannot be repaired by Flender Werft owing to the small size of the old floating dock. Unless it adapts its dock to this development, not only will the yard's activity in this area stagnate but its turnover will also decrease still further, since experience shows that customers go where their requirements are met. This would produce a situation in which the workforce could not be used to full capacity, which in turn would lead to a decrease in the yard's competitiveness and to workers being laid off. The new floating dock would help to reverse this development, maintaining jobs and keeping the yard competitive. By changing to a larger floating dock, Flender Werft will adapt to market development and ensure sufficient repair capacity in accordance with market demand.

- (10) Germany states that the old floating dock could not have been made longer or broader or otherwise larger for valid technical reasons. Modernising the dock is therefore technically impossible. In Germany's view, replacing the dock is made necessary by the changed market conditions and is therefore compatible with the provisions of the Shipbuilding Regulation on the granting of investment aid.
- (11) Germany also stresses that the Shipbuilding Regulation is intended in particular to reduce building capacity, whereas the purpose of granting the aid in the present case is to support the replacement of a floating dock which in practice would be used exclusively for ship repair, with the exception of the painting of new vessels. It will be possible to obtain repair contracts for the new large ferries operating in the Baltic only with the new dock.

IV. ASSESSMENT OF THE AID

- (12) Under Article 87(1) of the EC Treaty, any aid granted by a Member State or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market. Pursuant to the established case law of the Court of Justice and Court of First Instance of the European Communities, the criterion of trade being affected is met

if the recipient firm carries on an economic activity involving trade between Member States.

- (13) The Commission notes that the notified aid involves the financing through state resources of part of the costs that the yard itself would normally have to bear when acquiring a new floating dock. Moreover, shipbuilding is an economic activity involving trade between Member States. The aid therefore falls within the scope of Article 87(1) of the EC Treaty.
- (14) Pursuant to Article 87(3)(e) of the EC Treaty, categories of aid specified by a decision of the Council acting by a qualified majority on a proposal from the Commission may be considered compatible with the common market.
- (15) The Commission notes that on this basis the Council adopted the Shipbuilding Regulation on 29 June 1998 ⁽⁵⁾. Under Article 2 of this Regulation, aid granted directly or indirectly for shipbuilding, ship repair and ship conversion must comply with its provisions in order to be declared compatible with the common market.
- (16) Under Article 10(2)(b) of the Shipbuilding Regulation, any decision by a Member State to apply a generally applicable aid scheme, including generally applicable regional aid schemes, to undertakings covered by the Regulation must be notified to the Commission in advance so that the aid's compatibility with Article 87 of the Treaty can be verified.
- (17) The Commission notes that, under the Regulation, 'shipbuilding' means the building, in the Community, of self-propelled seagoing commercial vessels. The Commission further notes that Flender Werft builds such ships and consequently is an undertaking covered by the Regulation. By notifying the aid in question, Germany has thus complied with its notification obligation as laid down in Article 10(2)(b) of the Regulation.
- (18) Article 7 of the Shipbuilding Regulation stipulates that aid granted for investment in upgrading or modernising existing yards, not linked to a financial restructuring of the yards concerned, with the objective of improving the productivity of existing installations, may be deemed compatible with the common market provided that in regions meeting the criteria of Article 87(3)(c) of the Treaty, the intensity of the aid does not exceed 12,5 % or the applicable regional ceiling, whichever is the lower.

⁽⁵⁾ See footnote 1.

- (19) The yard is located in Lübeck in an area assisted under Article 87(3)(c) with a regional ceiling of 18 % gge. The Commission notes that the new dock is to cost EUR 16,4 million. The old dock has been sold and the proceeds of EUR 9,2 million used to finance the new dock.
- (20) The Commission notes that, according to Germany, the replacement of the old dock by a new one with a greater load capacity should be viewed not as a new investment but as an investment in replacing and thus modernising the old one. Accordingly, only the difference between the cost of the new dock and the proceeds from the sale of the old dock should be counted as eligible costs for the purpose of calculating the aid intensity. Assuming eligible costs to be EUR 7,2 million, the intensity of aid worth EUR 869 000 would be 12 %, which would comply with the Regulation.
- (21) As to whether the replacement of the old floating dock by a new, larger one can be considered to constitute upgrading or modernising within the meaning of Article 7 of the Shipbuilding Regulation, the Commission takes note of the comments submitted by Germany when the procedure was initiated. The information in the Commission's possession confirms that increasingly larger vessels are now operating in the Baltic Sea ⁽⁶⁾ and that a larger floating dock is clearly necessary if Flender Werft is to remain in the repair market in the years to come. This finding is based not only on information on the docking weight of the vessels, but also on their larger physical size. The width and the lifting capacity of a floating dock are correlated and greater lifting capacity also requires a larger dock. Not only the lower lifting capacity, but also the dimensions of the old floating dock would make the repair of these larger vessels very difficult ⁽⁷⁾.
- (22) The Commission notes that replacing the old floating dock by the larger one will help to improve the productivity of repair work at the yard. Considering the development of the market, use of the old floating dock had reached its limits, making optimal usage of the workforce unlikely in the coming years. The larger dock allows repair contracts to be concluded for all sizes of vessels operating in the market. Provided that the yard is competitive and succeeds in getting orders in all market segments, it will be able to make better use of its existing workforce and thereby increase its productivity. The current potential increase in productivity, however, would not be directly attributable to the larger floating dock, but to the overall competitiveness of the yard. The larger floating dock will contribute to this potential development in that it is a precondition for it to happen in the first place.
- (23) The information in the Commission's possession also confirms that for technical reasons, the old floating dock could not have been enlarged or modified to a dock with greater lifting capacity. Consequently, the only possibility for upgrading the floating dock is to replace it by a new one.
- (24) As regards capacity, the Commission notes that using a floating dock for building new ships increases the shipbuilding capacity of the yard concerned. However, according to its information, 95 % of existing floating docks in the world are currently used for ship repair or conversion, and not for new building.
- (25) The old dock was used for ship repair by Flender Werft and was sold to the port authority of Dunkirk, France, where floating docks are used exclusively for repair, since there is no shipbuilding activity in Dunkirk. Germany also confirms that Flender Werft will use the new replacement dock, except for painting new vessels, only for ship repair.
- (26) Accordingly, and in particular given the fact that the old floating dock could not have been enlarged for technical reasons and that the larger ships in the Baltic make it necessary for the yard to adapt its repair facilities in order to remain in the business, it is the opinion of the Commission that replacing the old floating dock by a new one with greater breadth and lifting capacity to be used exclusively in ship repair can be considered to constitute the upgrading of an existing facility within the meaning of Article 7 of the Shipbuilding Regulation.
- (27) However, the Commission considers that replacing the floating dock can rank as upgrading an existing facility within the meaning of the Shipbuilding Regulation only if the dock is used exclusively for ship repair. A floating dock used for new building could not be viewed in terms of upgrading or modernisation but would constitute a new facility that would increase new building capacity. Consequently, the aid can be considered compatible with the Shipbuilding Regulation and thereby with the common market only if the use of the floating dock is restricted to ship repair and does not include new building, thereby ensuring that there is no increase of capacity in this area.
- ⁽⁶⁾ The most frequently encountered vessels in the Baltic are the following: passenger ferries, RoRo vessels, feeder container vessels, general cargo vessels and small tankers.
- ⁽⁷⁾ The internal width of the old dock was 34 m while that of the new dock is 37 m. Panama Canal maximum-sized vessels, like the passenger ferries operating, in the Baltic have a width of some 32 m.

- (28) The Commission therefore requires Germany to ensure that the new floating dock is used exclusively for ship repair by Flender Werft. The only exception is the use of the floating dock for painting new vessels. Germany must also ensure that the floating dock with a lifting capacity of 20 000 tonnes used by Flender Werft for ship repair, whenever it may be sold by Flender Werft, will not be sold to any shipyard that might use it for new shipbuilding.

V. CONCLUSION

- (29) For the above reasons, the Commission considers the replacement of the floating dock with a lifting capacity of 16 000 tonnes by a larger one with a lifting capacity of 20 000 tonnes to constitute the upgrading of an existing facility within the meaning of Article 7 of the Shipbuilding Regulation. However, in order to ensure that the floating dock is not used for new building of ships, thereby contributing to a capacity increase in this sensitive area, Germany must ensure that the floating dock is used exclusively for ship repair. Germany must also ensure that the floating dock is not sold in the future to any yard that might use it for new shipbuilding,

HAS ADOPTED THIS DECISION:

Article 1

The aid amounting to EUR 869 000 which Germany is planning to grant to Flender Werft AG, Lübeck, is compatible

with the common market subject to the conditions set out in Article 2.

Article 2

Germany shall ensure that Flender Werft AG uses the floating dock with a lifting capacity of 20 000 tonnes only for ship repair and the painting of new vessels.

Germany shall ensure that the floating dock with a lifting capacity of 20 000 tonnes, whenever it may be sold by Flender Werft AG, will not be sold to any shipyard that might use it for building new vessels.

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, 12 March 2002.

For the Commission

Mario MONTI

Member of the Commission

CORRIGENDA

Corrigendum to Commission Directive 2002/62/EC of 9 July 2002 adapting to technical progress for the ninth time Annex I to Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substance and preparations (organostannic compounds)

(Official Journal of the European Communities L 183 of 12 July 2002)

On page 59 in the table in the Annex, point 2(a):

for: '(a) tall craft ...',

read: '(a) all craft ...'.
